Internal Revenue
bulletin

Bulletin No. 2012-10
March 5, 2012

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2012–18, page 438.

This notice informs state housing finance agencies participating in a specified pilot program of an alternative way to satisfy certain inspection and review responsibilities under regulations section 1.42–5(c)(2). The notice also invites taxpayers to comment generally on issues relating to regulations section 1.42–5 for potential changes to those rules.

Notice 2012–19, page 440.

This notice provides adjusted limitations on housing expenses for tax year 2012 for purposes of section 911 of the Code. Notices 2006–87, 2007–25, 2007–77, 2008–107, 2010–27 and 2011–8 superseded.

Rev. Proc. 2012–17, page 453.

This procedure provides the requirements for furnishing substitute Schedule K–1, *Partner's Share of Income, Deductions, Credits, etc.*, in electronic format.

ESTATE TAX

Notice 2012–21, page 450.

This notice grants to qualifying estates a six-month extension of time for filing an estate tax return (Form 706) to elect portability of an unused exclusion amount provided that qualifying estates file a request for an extension (Form 4768) within 15 months of the decedent's death. A qualifying estate is the estate of a person who died, survived by a spouse, during the first half of calendar year 2011, and whose gross estate has a fair market value that does not exceed $5 million. With the extension granted by this notice, Form 706 must be filed within 15 months of the decedent's death.

ADMINISTRATIVE

Notice 2012–21, page 450.

This notice grants to qualifying estates a six-month extension of time for filing an estate tax return (Form 706) to elect portability of an unused exclusion amount provided that qualifying estates file a request for an extension (Form 4768) within 15 months of the decedent's death. A qualifying estate is the estate of a person who died, survived by a spouse, during the first half of calendar year 2011, and whose gross estate has a fair market value that does not exceed $5 million. With the extension granted by this notice, Form 706 must be filed within 15 months of the decedent's death.

Rev. Proc. 2012–16, page 452.

This procedure provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Code, and issuers of mortgage credit certificates, as defined in section 25(c), with the United States median gross income figure most recently computed by the Department of Housing and Urban Development (HUD). The proposed procedure also provides these issuers with guidance concerning the area median gross incomes as computed by HUD. Issuers of qualified mortgage bonds (QMB) and mortgage credit certificates (MCC) must use these income figures in determining whether the income limitation placed on the beneficiaries of the mortgages and certificates may be increased because the residences to be financed are located in high housing cost areas. See sections 25(c)(2)(A)(iii)(IV) and 143(f)(5). Rev. Proc. 2011–37 obsoleted in part.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Rev. Proc. 2012–17, page 453.
This procedure provides the requirements for furnishing substitute Schedule K–1, *Partner's Share of Income, Deductions, Credits, etc.*, in electronic format.

Rev. Proc. 2012–18, page 455.
This procedure provides guidance regarding *ex parte* communications between Appeals and other Internal Revenue Service functions. Rev. Proc. 2000–43 amplified, modified and superseded.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 2010.—Unified Credit Against Estate Tax

This notice grants to qualifying estates a six-month extension of time for filing an estate tax return (Form 706) to elect portability of an unused exclusion amount provided that qualifying estates file a request for an extension (Form 4768) within 15 months of the decedent's death. A qualifying estate is the estate of a person who died, survived by a spouse, during the first half of calendar year 2011, and whose gross estate has a fair market value that does not exceed $5 million. With the extension granted by this notice, Form 706 must be filed within 15 months of the decedent's death. See Notice 2012-21, page 450.

Section 6075.—Time for Filing Estate and Gift Tax Returns

26 CFR 20.6075–1: Returns; time for filing estate tax return.

This notice grants to qualifying estates a six-month extension of time for filing an estate tax return (Form 706) to elect portability of an unused exclusion amount provided that qualifying estates file a request for an extension (Form 4768) within 15 months of the decedent's death. A qualifying estate is the estate of a person who died, survived by a spouse, during the first half of calendar year 2011, and whose gross estate has a fair market value that does not exceed $5 million. With the extension granted by this notice, Form 706 must be filed within 15 months of the decedent's death. See Notice 2012-21, page 450.

Section 6081.—Extension of Time for Filing Returns

26 CFR 20.6081–1: Extension of time for filing the return.

This notice grants to qualifying estates a six-month extension of time for filing an estate tax return (Form 706) to elect portability of an unused exclusion amount provided that qualifying estates file a request for an extension (Form 4768) within 15 months of the decedent's death. A qualifying estate is the estate of a person who died, survived by a spouse, during the first half of calendar year 2011, and whose gross estate has a fair market value that does not exceed $5 million. With the extension granted by this notice, Form 706 must be filed within 15 months of the decedent's death. See Notice 2012-21, page 450.

Part III. Administrative, Procedural, and Miscellaneous

Physical Inspections Pilot Program

Notice 2012–18

PURPOSE

Under § 1.42–5(c)(2) of the Income Tax Regulations, State housing finance agencies are required to conduct certain physical inspections and other building reviews. In connection with inspections that are conducted under the Physical Inspection Pilot Program described below, this notice informs those State agencies of an alternate manner for satisfying these review requirements. This notice also solicits comments generally on § 1.42–5 and, in particular, on the review requirements of § 1.42–5(c)(2).

BACKGROUND

Section 42 of the Internal Revenue Code sets forth rules for determining the amount of the low-income housing credit, which is allowed as a credit against income tax pursuant to § 38. Section 42(a) provides that the amount of the low-income housing credit determined under § 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in § 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in § 42(g)(1) as any project for residential rental property if the project meets one of the following tests elected by the taxpayer: (A) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (B) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. A low-income unit is a residential unit that is rent-restricted and its occupants meet the applicable income limit elected by the taxpayer as described in § 42(g)(1)(A) or (B). Section 42(i)(3)(B)(i) provides that a low-income unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis. Section 42(i)(3)(B)(ii) provides that the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes. Failure of the project to meet the requirements for the test elected by the taxpayer may result in ineligibility for the § 42 credit, reduction in the amount of the credit, and/or recapture of previously allowed credits.

Section 1.42–5 provides monitoring procedures that a State housing finance agency (or its Authorized Delegate within the meaning of § 1.42–5(f)(1)), hereafter referred to as "HFA," must follow in monitoring for compliance with the provisions of § 42. As part of their compliance-monitoring responsibilities, HFAs must perform physical inspections and review annual low-income certifications.

In particular, § 1.42–5(c)(2)(ii) requires that, for each low-income housing project, and within prescribed time periods, the HFA must conduct an on-site inspection of each building in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the annual low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those inspected units.

Section 1.42–5(c)(2)(iii) requires the HFA to randomly select which low-income units will be inspected and the records reviewed.

Section 1.42–5(c)(5) requires the HFA to report its compliance monitoring activities annually on Form 8610, *"Annual Low-Income Housing Credit Agencies Report."*

In 2010, the White House Domestic Policy Council (DPC) established the Rental Policy Working Group (RPWG) to explore ways to improve existing Federal rental policies. The RPWG consists of representatives from the DPC, the National Economic Council, the Office of Management and Budget, and the U.S. Departments of Housing and Urban Development (HUD), Agriculture, and the Treasury.

The RPWG solicited from a cross section of affordable-rental-housing developers and managers and State and local officials (Stakeholders) suggestions for more efficiently achieving Federal rental objectives, including the coordination of programmatic rules between the various Federal rental programs. Stakeholders identified many areas where administrative changes could increase overall programmatic efficiency and reduce burdens on the public. For example, many projects benefit from more than one Federal source (*e.g.*, both Federal funding and low-income housing tax credits). The rules associated with these different programs may require physical inspections of the same project that use different inspection protocols. As a result, these project owners and managers must now spend significant time preparing for, and responding to, multiple physical inspection visits for the same project.

Using input from Stakeholders, the RPWG prepared specific, actionable proposals for coordination. One such proposal is to avoid duplicative physical inspections by conducting one coordinated inspection. The Physical Inspection Pilot Program (Pilot Program) is testing the feasibility of this proposal in six states (Michigan, Minnesota, Ohio, Oregon, Washington, and Wisconsin).

Under this proposal, the HFAs in these six states may satisfy their property-inspection responsibilities under § 1.42–5(c)(2)(ii) by using either their current property-inspection protocol or the inspection protocol of HUD's Real Estate Assessment Center (REAC).[1] The RPWG hopes to ascertain through the Pilot Program whether this sort of coordinated effort will generate savings for property owners and managers, as well as reduce cost burdens on local, State, and Federal governments.

If the participating HFA chooses to use the REAC inspection protocol for a particular project, HUD (or its agent) will conduct a physical inspection of the project us-

[1] Information on the REAC inspection protocol can be accessed electronically through the following link: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac*

ing the REAC inspection protocol on behalf of the HFA. To achieve the desired efficiencies, these inspections must satisfy the HFA's physical inspection responsibilities under § 1.42–5(c)(2)(ii). As described above, however, § 1.42–5(c)(2)(ii) requires that at least 20 percent of the low-income units in a project be physically inspected and that the records for those same units be reviewed. In some cases, the number of low-income units physically inspected under the REAC inspection protocol may not satisfy the 20 percent requirement. Absent an exception, an HFA would need to perform inspections and certification reviews for any shortfall of inspected units in these projects to meet the minimum standard under § 1.42–5(c)(2). That necessity would undermine the Pilot Program's objective of minimizing duplication of effort and reducing burdens on the public. Also, if HUD completes the physical inspections late in the year, the HFA may not be able to perform its review of the annual low-income certifications for those units timely.

SATISFACTION OF CERTAIN PROVISIONS OF § 1.42–5(c)(2)

The Internal Revenue Service recognizes the potential inconsistency between the REAC inspection protocol and certain review provisions of § 1.42–5(c)(2) and the potential administrative burdens caused by those differences. Accordingly, for the HFAs in States that are participating in the Pilot Program, and during the time period of the Pilot Program (scheduled for November 7, 2011, through December 31, 2012), if a project is physically inspected by HUD (or its agent) under the REAC inspection protocol, then, for that project—

(1) The HFA is deemed to satisfy the minimum 20 percent low-income unit physical inspection requirement and the requirement to conduct on-site inspections of all buildings in a project under § 1.42–5(c)(2)(ii); and

(2) The HFA may satisfy the certification review requirement under § 1.42–5(c)(2)(ii) by reviewing the annual low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in at least 20 percent of the low-income units in the project, regardless of whether any of the units whose files are reviewed are among the units that are physically inspected by HUD (or its agent).

Use of the REAC inspection protocol does not supersede or preempt any other requirements under § 1.42–5. In particular, under § 1.42–5(d)(2), low-income buildings and units must be suitable for occupancy, taking into account local health, safety, and building codes. Thus, if a participating HFA becomes aware of any violation of these codes, the HFA must report the violation to the Service.

REQUEST FOR COMMENTS

The Service and Treasury Department invite taxpayers to submit written comments on issues relating to this notice and § 1.42–5 generally. In particular, the Service and Treasury Department encourage taxpayers to submit written comments regarding:

(1) Whether the 20 percent rule under § 1.42–5(c)(2)(ii)(A) and (B) for both physical inspections and certification review is appropriate, including—

- Whether this percentage appropriately balances the Service's compliance concerns against the desirability of reducing the inspection burden on HFAs, tenants, and building owners;
- Whether the percentage should vary depending on the type of inspection the HFA is performing (*i.e.*, physical inspection or annual low-income certification review);
- Whether the percentage should vary with the number of low-income units in a project (that is, the size of the population from which the units that will be inspected are to be randomly drawn); and
- Whether the percentage should vary depending on whether the inspection is the initial inspection performed under § 1.42–5(c)(2)(ii)(A) or the on-going inspection performed under § 1.42–5(c)(2)(ii)(B).

(2) Whether permitting reviews of the annual low-income certifications for a sample of units different from the units physically inspected would simplify the inspection process under § 1.42–5(c)(2)(ii)(A) and (B), and whether the use of a different sample would impair the value of the data obtained.

(3) Whether the Service should amend the current regulations to provide an exception from the inspection provisions of § 1.42–5(d) for inspections done under the REAC protocol, similar to the exception under § 1.42–5(d)(3) for inspections performed by the Rural Housing Service under the section 515 program.

Comments should be submitted by May 31, 2012. Comments may be mailed to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2011–18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2011–18)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address: *Notice.Comments@irscounsel.treas.gov*. Persons should include "Notice 2012–18" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this notice is Julie Hanlon Bolton of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Ms. Hanlon Bolton at (202) 622–3040 (not a toll-free call).

Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2012

Notice 2012–19

SECTION 1. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code (Code) for specific locations for 2012. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

SECTION 2. BACKGROUND

Section 911(a) of the Code allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. Section 911(c)(1) defines the term "housing cost amount" as an amount equal to the excess of (A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under section 911(c)(2), over (B) 16 percent of the exclusion amount (computed on a daily basis) in effect under section 911(b)(2)(D) for the calendar year in which such taxable year begins ($259.84 per day for 2012, or $95,100 for the full year), multiplied by the number of days of that taxable year within the applicable period described in section 911(d)(1). The applicable period is the period during which the individual meets the tax home requirement of section 911(d)(1) and either the *bona fide* residence requirement of section 911(d)(1)(A) or the physical presence requirement of section 911(d)(1)(B). Assuming that the entire taxable year of a qualified individual is within the applicable period, the section 911(c)(1)(B) amount for 2012 is $15,216 ($95,100 x .16).

Section 911(c)(2)(A) of the Code limits the housing expenses taken into account in section 911(c)(1)(A) to an amount equal to (i) 30 percent (adjusted as may be provided under the Secretary's authority under section 911(c)(2)(B)) of the amount in effect under section 911(b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by (ii) the number of days of that taxable year within the applicable period described in section 911(d)(1). Thus, under this general limitation, a qualified individual whose entire taxable year is within the applicable period is limited to maximum housing expenses of $28,530 ($95,100 x .30) in 2012.

Section 911(c)(2)(B) of the Code authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) based on geographic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Internal Revenue Service (IRS) and the Treasury Department published Notice 2006–87, 2006–2 C.B. 766, and Notice 2007–25, 2007–1 C.B. 760, for 2006, Notice 2007–77, 2007–2 C.B. 735, for 2007, Notice 2008–107, 2008–2 C.B. 1266, for 2008 and 2009, Notice 2010–27, 2010–15 I.R.B. 531, for 2009 and 2010, and Notice 2011–8, 2011–8 I.R.B. 503, for 2010 and 2011 to provide adjustments to the limitation on housing expenses for qualified individuals incurring housing expenses in countries with high housing costs relative to housing costs in the United States.

SECTION 3. TABLE OF ADJUSTED LIMITATIONS FOR 2012

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of $28,530) for 2012.

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Angola	Luanda	229.51	84,000
Argentina	Buenos Aires	154.37	56,500
Australia	Adelaide	89.62	32,800
Australia	Brisbane	88.52	32,400
Australia	Darwin, Northern Country	83.61	30,600
Australia	Gold Coast	88.52	32,400
Australia	Melbourne	113.39	41,500
Australia	Oakey	88.52	32,400
Australia	Perth	121.31	44,400
Australia	Sydney	89.57	32,782
Australia	Toowoomba	88.52	32,400
Austria	Vienna	96.72	35,400
Bahamas, The	Nassau	135.79	49,700
Bahrain	Bahrain	120.22	44,000
Barbados	Barbados	103.01	37,700

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Belgium	Antwerp	98.63	36,100
Belgium	Brussels	130.33	47,700
Belgium	Gosselies	118.31	43,300
Belgium	Hoogbuul	98.63	36,100
Belgium	Mons	118.31	43,300
Belgium	SHAPE/Chievres	118.31	43,300
Bermuda	Bermuda	245.90	90,000
Bosnia-Herzegovina	Sarajevo	83.61	30,600
Brazil	Brasilia	144.26	52,800
Brazil	Rio de Janeiro	95.90	35,100
Brazil	Sao Paulo	154.64	56,600
Canada	Calgary	109.02	39,900
Canada	Dartmouth	93.44	34,200
Canada	Edmonton	96.99	35,500
Canada	Halifax	93.44	34,200
Canada	London, Ontario	82.79	30,300
Canada	Montreal	154.37	56,500
Canada	Ottawa	136.07	49,800
Canada	Toronto	134.70	49,300
Canada	Vancouver	128.42	47,000
Canada	Victoria	91.53	33,500
Canada	Winnipeg	90.16	33,000
Cayman Islands	Grand Cayman	131.15	48,000
Chile	Santiago	140.16	51,300
China	Beijing	194.54	71,200
China	Hong Kong	312.30	114,300
China	Shanghai	155.74	57,001
Colombia	Bogota	147.81	54,100
Colombia	All cities other than Bogota	134.97	49,400
Costa Rica	San Jose	87.43	32,000
Denmark	Copenhagen	119.41	43,704
Dominican Republic	Santo Domingo	124.32	45,500
Ecuador	Guayaquil	84.15	30,800
Ecuador	Quito	88.52	32,400
Estonia	Tallinn	127.32	46,600
France	Garches	231.69	84,800
France	Le Havre	96.17	35,200
France	Lyon	133.88	49,000

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
France	Marseille	124.86	45,700
France	Montpellier	107.92	39,500
France	Paris	231.69	84,800
France	Sevres	231.69	84,800
France	Suresnes	231.69	84,800
France	Versailles	231.69	84,800
Germany	Babenhausen	113.66	41,600
Germany	Bad Aibling	96.99	35,500
Germany	Bad Nauheim	90.98	33,300
Germany	Baumholder	108.47	39,700
Germany	Berlin	138.80	50,800
Germany	Birkenfeld	108.47	39,700
Germany	Boeblingen	137.70	50,400
Germany	Bonn	114.75	42,000
Germany	Butzbach	88.80	32,500
Germany	Cologne	153.55	56,200
Germany	Darmstadt	113.66	41,600
Germany	Frankfurt am Main	118.58	43,400
Germany	Friedberg	90.98	33,300
Germany	Garmisch-Partenkirchen	103.55	37,900
Germany	Gelnhausen	143.17	52,400
Germany	Germersheim	85.79	31,400
Germany	Giebelstadt	98.09	35,900
Germany	Giessen	98.36	36,000
Germany	Grafenwoehr	111.75	40,900
Germany	Hanau	143.17	52,400
Germany	Hannover	84.70	31,000
Germany	Heidelberg	107.65	39,400
Germany	Idar-Oberstein	108.47	39,700
Germany	Ingolstadt	160.11	58,600
Germany	Kaiserslautern, Landkreis	139.07	50,900
Germany	Kitzingen	98.09	35,900
Germany	Leimen	107.65	39,400
Germany	Ludwigsburg	137.70	50,400
Germany	Mainz	153.55	56,200
Germany	Mannheim	107.65	39,400
Germany	Munich	160.11	58,600
Germany	Nellingen	137.70	50,400

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Germany	Neubruecke	108.47	39,700
Germany	Ober Ramstadt	113.66	41,600
Germany	Oberammergau	103.55	37,900
Germany	Pirmasens	139.07	50,900
Germany	Rheinau	107.65	39,400
Germany	Schwetzingen	107.65	39,400
Germany	Seckenheim	107.65	39,400
Germany	Sembach	139.07	50,900
Germany	Stuttgart	137.70	50,400
Germany	Vilseck	111.75	40,900
Germany	Wahn	114.75	42,000
Germany	Wertheim	98.09	35,900
Germany	Wiesbaden	153.55	56,200
Germany	Wuerzburg	98.09	35,900
Germany	Zweibruecken	139.07	50,900
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Germersheim, Giebelstadt, Giessen, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Vilseck, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zirndorf, and Zweibruecken	110.11	40,300
Ghana	Accra	98.36	36,000
Greece	Argyroupolis	88.52	32,400
Greece	Athens	113.66	41,600
Greece	Elefsis	113.66	41,600
Greece	Ellinikon	113.66	41,600

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Greece	Mt. Hortiatis	88.52	32,400
Greece	Mt. Parnis	113.66	41,600
Greece	Mt. Pateras	113.66	41,600
Greece	Nea Makri	113.66	41,600
Greece	Perivolaki	88.52	32,400
Greece	Piraeus	113.66	41,600
Greece	Tanagra	113.66	41,600
Greece	Thessaloniki	88.52	32,400
Guatemala	Guatemala City	115.03	42,100
Guyana	Georgetown	95.63	35,000
Holy See, The	Holy See, The	154.37	56,500
Hungary	Budapest	88.80	32,500
Hungary	Papá	121.58	44,500
India	Mumbai	185.57	67,920
India	New Delhi	82.66	30,252
Indonesia	Jakarta	103.21	37,776
Ireland	Dublin	134.15	49,100
Ireland	Shannon Area	106.01	38,800
Israel	Tel Aviv	138.80	50,800
Italy	Catania	90.16	33,000
Italy	Genoa	114.21	41,800
Italy	Gioia Tauro	85.25	31,200
Italy	La Spezia	110.38	40,400
Italy	Leghorn	96.72	35,400
Italy	Milan	230.60	84,400
Italy	Naples	146.45	53,600
Italy	Parma	117.21	42,900
Italy	Pisa	96.72	35,400
Italy	Pordenone-Aviano	117.21	42,900
Italy	Rome	154.37	56,500
Italy	Sardinia	79.23	29,000
Italy	Sigonella	90.16	33,000
Italy	Turin	115.30	42,200
Italy	Vicenza	118.31	43,300
Italy	All cities other than Avellino, Brindisi, Catania, Florence, Gaeta, Genoa, Gioia Tauro, La Spezia, Leghorn, Milan, Mount Vergine, Naples, Nettuno, Parma, Pisa, Pordenone-Aviano, Rome, Sardinia, Sigonella, Turin, Verona, and Vicenza	92.62	33,900

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Jamaica	Kingston	112.57	41,200
Japan	Akashi	116.67	42,700
Japan	Akizuki	102.73	37,600
Japan	Atsugi	150.55	55,100
Japan	Camp Zama	150.55	55,100
Japan	Chiba-Ken	150.55	55,100
Japan	Fussa	150.55	55,100
Japan	Gifu	203.01	74,300
Japan	Gotemba	111.48	40,800
Japan	Haneda	150.55	55,100
Japan	Iwakuni	117.76	43,100
Japan	Kanagawa-Ken	150.55	55,100
Japan	Komaki	203.01	74,300
Japan	Machidi-Shi	150.55	55,100
Japan	Misawa	126.50	46,300
Japan	Nagoya	203.01	74,300
Japan	Okinawa Prefecture	202.73	74,200
Japan	Osaka-Kobe	247.72	90,664
Japan	Sagamihara	150.55	55,100
Japan	Saitama-Ken	150.55	55,100
Japan	Sasebo	126.23	46,200
Japan	Tachikawa	150.55	55,100
Japan	Tokyo	349.73	128,000
Japan	Tokyo-to	150.55	55,100
Japan	Yokohama	189.34	69,300
Japan	Yokosuka	175.68	64,300
Japan	Yokota	150.55	55,100
Kazakhstan	Almaty	131.15	48,000
Korea	Camp Carroll	83.06	30,400
Korea	Camp Colbern	143.44	52,500
Korea	Camp Market	143.44	52,500
Korea	Camp Mercer	143.44	52,500
Korea	K–16	143.44	52,500
Korea	Kimhae	78.14	28,600
Korea	Kimpo Airfield	143.44	52,500
Korea	Munsan	87.98	32,200
Korea	Osan AB	90.71	33,200
Korea	Pusan	78.14	28,600

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Korea	Pyongtaek	89.07	32,600
Korea	Seoul	143.44	52,500
Korea	Suwon	143.44	52,500
Korea	Taegu	86.07	31,500
Korea	Tongduchon	78.96	28,900
Korea	Uijongbu	84.97	31,100
Korea	Waegwan	83.06	30,400
Korea	All cities other than Ammo Depot #9, Camp Carroll, Camp Colbern, Camp Market, Camp Mercer, Changwon, Chinhae, Chunchon, K–16, Kimhae, Kimpo Airfield, Kunsun, Kwangju, Munsan, Osan AB, Pusan, Pyongtaek, Seoul, Suwon, Taegu, Tongduchon, Uijongbu, and Waegwan	82.79	30,300
Kuwait	Kuwait City	175.96	64,400
Kuwait	All cities other than Kuwait City	157.65	57,700
Luxembourg	Luxembourg	126.50	46,300
Macedonia	Skopje	96.72	35,400
Malaysia	Kuala Lumpur	126.23	46,200
Malaysia	All cities other than Kuala Lumpur	92.08	33,700
Malta	Malta	137.98	50,500
Mexico	Mazatlan	84.70	31,000
Mexico	Merida	103.55	37,900
Mexico	Mexico City	118.58	43,400
Mexico	Monterrey	90.71	33,200
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Reynosa, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz	107.65	39,400
Mozambique	Maputo	107.92	39,500
Namibia	Windhoek	87.70	32,100
Netherlands	Amsterdam	144.54	52,900
Netherlands	Aruba	98.36	36,000
Netherlands	Brunssum	108.74	39,800
Netherlands	Eygelshoven	108.74	39,800
Netherlands	Hague, The	183.88	67,300
Netherlands	Heerlen	108.74	39,800
Netherlands	Hoensbroek	108.74	39,800
Netherlands	Hulsberg	108.74	39,800
Netherlands	Kerkrade	108.74	39,800

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Netherlands	Landgraaf	108.74	39,800
Netherlands	Maastricht	108.74	39,800
Netherlands	Papendrecht	110.93	40,600
Netherlands	Rotterdam	110.93	40,600
Netherlands	Schaesburg	108.74	39,800
Netherlands	Schinnen	108.74	39,800
Netherlands	Schiphol	144.54	52,900
Netherlands	Ypenburg	183.88	67,300
Netherlands	All cities other than Amsterdam, Aruba, Brunssum, Coevorden, Eygelshoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg	110.93	40,600
Netherlands Antilles	Curacao	125.14	45,800
New Zealand	Auckland	97.54	35,700
New Zealand	Wellington	92.35	33,800
Nicaragua	Managua	86.89	31,800
Nigeria	Abuja	98.36	36,000
Norway	Oslo	141.26	51,700
Norway	Stavanger	119.95	43,900
Norway	All cities other than Oslo and Stavanger.	103.01	37,700
Panama	Panama City	96.99	35,500
Philippines	Cavite	106.56	39,000
Philippines	Manila	106.56	39,000
Poland	Poland	80.33	29,400
Portugal	Alverca	141.26	51,700
Portugal	Lisbon	141.26	51,700
Qatar	Doha	99.08	36,264
Qatar	All cities other than Doha	88.52	32,400
Russia	Moscow	295.08	108,000
Russia	Saint Petersburg	163.93	60,000
Russia	Sakhalin Island	211.75	77,500
Russia	Vladivostok	211.75	77,500
Russia	Yekaterinburg	129.51	47,400
Rwanda	Kigali	86.07	31,500
Saudi Arabia	Jeddah	83.79	30,667
Saudi Arabia	Riyadh	109.29	40,000
Singapore	Singapore	184.43	67,500

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
South Africa	Pretoria	107.38	39,300
Spain	Barcelona	110.93	40,600
Spain	Madrid	188.25	68,900
Spain	Rota	113.39	41,500
Spain	Valencia	108.20	39,600
Spain	All cities other than Barcelona, Madrid, Rota, Seville, Seville Province, and Valencia	81.69	29,900
Suriname	Paramaribo	90.16	33,000
Switzerland	Bern	181.69	66,500
Switzerland	Geneva	257.10	94,100
Switzerland	Zurich	107.16	39,219
Switzerland	All cities other than Bern, Geneva, and Zurich	89.89	32,900
Taiwan	Taipei	126.20	46,188
Tanzania	Dar Es Salaam	120.22	44,000
Thailand	Bangkok	161.20	59,000
Trinidad and Tobago	Port of Spain	148.91	54,500
Turkey	Izmir-Cigli	86.34	31,600
Turkey	Yamanlar	86.34	31,600
Ukraine	Kiev	196.72	72,000
United Arab Emirates	Abu Dhabi	135.76	49,687
United Arab Emirates	Dubai	156.21	57,174
United Kingdom	Basingstoke	112.29	41,099
United Kingdom	Bath	112.02	41,000
United Kingdom	Bracknell	169.67	62,100
United Kingdom	Bristol	105.74	38,700
United Kingdom	Brookwood	116.12	42,500
United Kingdom	Cambridge	117.49	43,000
United Kingdom	Caversham	201.64	73,800
United Kingdom	Cheltenham	140.98	51,600
United Kingdom	Croughton	117.21	42,900
United Kingdom	Fairford	116.94	42,800
United Kingdom	Farnborough	149.45	54,700
United Kingdom	Felixstowe	111.75	40,900
United Kingdom	Gibraltar	121.90	44,616
United Kingdom	Harrogate	123.50	45,200
United Kingdom	High Wycombe	169.67	62,100
United Kingdom	Kemble	116.94	42,800

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
United Kingdom	Lakenheath	145.90	53,400
United Kingdom	Liverpool	106.01	38,800
United Kingdom	London	228.42	83,600
United Kingdom	Loudwater	173.50	63,500
United Kingdom	Menwith Hill	123.50	45,200
United Kingdom	Mildenhall	145.90	53,400
United Kingdom	Oxfordshire	115.85	42,400
United Kingdom	Plymouth	115.85	42,400
United Kingdom	Portsmouth	115.85	42,400
United Kingdom	Reading	169.67	62,100
United Kingdom	Rochester	120.22	44,000
United Kingdom	Southampton	120.77	44,200
United Kingdom	Surrey	132.25	48,402
United Kingdom	Waterbeach	119.67	43,800
United Kingdom	Wiltshire	113.66	41,600
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brookwood, Brough, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire	116.12	42,500
Venezuela	Caracas	155.74	57,000
Vietnam	Hanoi	127.87	46,800
Vietnam	Ho Chi Minh City	114.75	42,000

SECTION 4. ELECTION TO APPLY 2012 ADJUSTED LIMITATIONS TO 2011 TAXABLE YEAR

For some locations, the limitation on housing expenses provided in section 3 of this notice may be higher than the limitation on housing expenses provided in the "Table of Adjusted Limitations for 2011" in Notice 2011–8. A qualified individual incurring housing expenses in such a location during 2011 may apply the adjusted limitation on housing expenses provided in section 3 of this notice in lieu of the amounts provided in the "Table of Adjusted Limitations for 2011" in Notice 2011–8 (and as set forth in the Instructions to Form 2555 (2011)).

Treasury and the IRS anticipate that future annual notices providing adjustments to housing expense limitations will make a similar election available to qualified individuals that incur housing expenses in the immediately preceding year. For example, when adjusted housing expense limitations for 2013 are issued, it is expected that taxpayers will be permitted to apply those adjusted limitations to the 2012 taxable year.

EFFECT ON OTHER DOCUMENTS

This notice supersedes Notice 2006–87, 2006–2 C.B. 766, Notice 2007–25, 2007–1 C.B. 760, Notice 2007–77, 2007–2 C.B. 735, Notice 2008–107, 2008–2 C.B. 1266, Notice 2010–27, 2010–15 I.R.B. 531, and Notice 2011–8, 2011–8 I.R.B. 503.

EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2012. However, as provided in section 4, a taxpayer may elect to apply the 2012 adjusted housing limitations contained in section 3 of this notice to his or her taxable year beginning in 2011.

DRAFTING INFORMATION

The principal author of this notice is Susan E. Massey of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Massey at (202) 622–3840 (not a toll-free call).

Extension of Time to File an Estate Tax Return Solely to Elect Portability of a Deceased Spousal Unused Exclusion Amount

Notice 2012–21

SECTION 1. PURPOSE

This notice grants to qualifying estates, for the purpose of electing under section 2010(c)(5)(A) of the Internal Revenue Code (Code) (a "portability election"), a six-month extension of time for filing Form 706 *(United States Estate (and Generation-Skipping Transfer) Tax Return)*. This extension applies when the executor of a qualifying estate did not file a Form 4768 *(Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer)* Taxes) within nine months after the decedent's date of death, and therefore the estate did not receive the benefit of the automatic six-month extension. An executor of a qualifying estate that wants to obtain the extension granted by this notice must file the application for a six-month extension no later than 15 months after the decedent's date of death. With the extension granted by this notice, the Form 706 of a qualifying estate will be due 15 months after the decedent's date of death.

Generally, this notice defines a qualifying estate as the estate of a decedent (1) whose date of death is after December 31, 2010, and before July 1, 2011, (2) who is survived by a spouse, and (3) whose gross estate does not exceed the $5,000,000 basic exclusion amount for 2011. The extension provided in this notice is granted pursuant to authority under section 6081 of the Code.

SECTION 2. BACKGROUND

2.01. *In General*

Sections 302(a)(1) and 303(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296, 3302 (2010), amended section 2010(c) of the Code to allow the estate of a decedent who is survived by a spouse to make a portability election to permit the surviving spouse to apply the decedent's unused exclusion (the deceased spousal unused exclusion amount, or DSUE amount) to the surviving spouse's own transfers during life and at death. The portability election may be made only by the estates of decedents dying after December 31, 2010.

Section 2010(c)(2), as amended, defines the applicable exclusion amount used to determine the applicable credit amount as the sum of the basic exclusion amount and, in the case of a surviving spouse, the DSUE amount. Section 2010(c)(3) defines the basic exclusion amount as $5,000,000, to be adjusted for inflation in each year after calendar year 2011. Section 2010(c)(4) defines the DSUE amount as the lesser of (A) the basic exclusion amount or (B) the excess of the basic exclusion amount of the last deceased spouse of the surviving spouse over the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

Section 2010(c)(5)(A) provides certain requirements that the executor of a deceased spouse must satisfy to allow a surviving spouse to apply the DSUE amount of a deceased spouse. In particular, the executor of the estate of the deceased spouse must file a Form 706 that includes a computation of the DSUE amount and on which the executor elects portability of the DSUE amount. Under section 2010(c)(5)(A), a portability election is effective only if made on a Form 706 that is filed within the time prescribed by law (including extensions) for filing such return.

2.02. *Filing Dates and Availability of an Extension*

Under section 6075(a), the due date for filing an estate tax return is nine months after the date of the decedent's death. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return and that, except in the case of taxpayers who are abroad, no such extension may be for more than six months.

Section 20.6081–1(a) of the Estate Tax Regulations provides that a request for an extension of time to file Form 706 must be made by filing Form 4768 with the Internal Revenue Service (Service) office designated in the application's instructions and must include an estimate of the amounts of estate and generation-skipping transfer tax liabilities with respect to the estate.

Section 20.6081–1(b) grants an estate an automatic six-month extension of time to file Form 706 if Form 4768 is filed on or before the due date for filing Form 706 and in accordance with the procedures under § 20.6081–1(a).

Section 20.6081–1(c) provides that the Service, in its discretion and upon the showing of good and sufficient cause, may grant an extension of time to file Form 706 to an estate that did not request an automatic extension of time to file Form 706 prior to the due date for Form 4768 prescribed in § 20.6081–1(b). Such an extension cannot be for more than six months beyond the filing date prescribed in section 6075(a), unless the executor is abroad. Section 20.6081–1(c) further provides that, to obtain such an extension, Form 4768 must be filed in accordance with the procedures under § 20.6081–1(a) and must contain a detailed explanation of why it is impossible or impractical to file a reasonably complete Form 706 by the due date, and an explanation showing good cause for not requesting the automatic extension.

2.03. *Notice 2011–82*

Notice 2011–82, 2011–42 I.R.B. 516, issued on October 17, 2011, alerts taxpayers of the applicable requirements to elect portability of the decedent's DSUE

amount. In addition, Notice 2011–82 announces that the estate of a decedent who is survived by a spouse will be deemed to elect portability of the DSUE amount by the timely filing of a complete and properly-prepared Form 706. Furthermore, the notice provides that a timely-filed and complete Form 706 that is prepared in accordance with the instructions for that form will be deemed to contain the computation of the DSUE amount until such time as the Service revises Form 706 to expressly contain the computation of the DSUE amount. Notice 2011–82 also provides guidance to the estates of deceased spouses who choose not to make the portability election. Finally, Notice 2011–82 announces that the Treasury Department (Treasury) and the Service intend to issue regulations to implement the portability provisions included in section 2010(c) of the Code and, therefore, the notice invites public comment on a number of issues affecting portability for Treasury and the Service to consider.

SECTION 3. DISCUSSION

In response to the invitation for public comment on issues affecting portability in Notice 2011–82, Treasury and the Service have received comments on a variety of issues. Several commentators raised the issue of an extension of time to file Form 706 to make the portability election. These commentators noted that the executors of estates of decedents dying in 2011, particularly during the early part of 2011, did not have the benefit of guidance on electing portability of the decedent's DSUE amount and, further, that executors of estates having assets with a value not in excess of $5,000,000 might not have known about the requirement to file Form 706 to make the portability election at all.

In addition to the comments received in response to the invitation for public comment in Notice 2011–82, the Service has also received inquiries regarding the availability of an extension to file Form 706 from practitioners representing estates of decedents dying in early 2011 that had missed the due date for filing Form 706 and Form 4768.

Treasury and the Service agree that many executors of estates of decedents who died in the first half of 2011 that were not otherwise required to file Form 706 because of the value of the gross estate may have been unaware of the requirement to file Form 706 to make the portability election. Such an executor would not have filed Form 706 and, therefore, would not have made the portability election that is deemed made by the timely filing of a complete and properly-prepared Form 706. For the same reasons, such an executor would not have timely filed Form 4768 to obtain an automatic six-month extension of time to file Form 706. Accordingly, Treasury and the Service believe it is appropriate to offer to executors of qualifying estates a six-month extension of time to file Form 706 until 15 months after the decedent's date of death, provided that the executor of the estate files an application for a six-month extension on Form 4768 under the authority of this notice before the date that is 15 months from decedent's date of death.

SECTION 4. SCOPE AND APPLICATION

4.01. This notice applies to qualifying estates of decedents who are citizens or residents of the United States. For purposes of this notice, a qualifying estate is an estate in which:

a. The decedent is survived by a spouse;
b. The decedent's date of death is after December 31, 2010, and before July 1, 2011; and
c. The fair market value of the decedent's gross estate does not exceed $5,000,000.

4.02. For purposes of this notice, an estate is not a qualifying estate if the estate effectively requested an automatic six-month extension of time to file Form 706 under § 20.6081–1(b) by timely filing Form 4768 on or before the due date for filing Form 706.

4.03. If it is later determined that the estate does not meet the requirements of a qualifying estate, no extension will be treated as granted under this notice, and the Form 706, therefore, will not be timely.

SECTION 5. GUIDANCE

5.01. Treasury and the Service grant the executor of a qualifying estate a six-month extension of time until 15 months after the decedent's date of death to file Form 706 if the executor meets the following requirements:

a. The executor files Form 4768 with the Service office designated in the form's instructions;

b. The executor files Form 4768 no later than 15 months from the decedent's date of death; and

c. The executor enters at the top of Form 4768 the notation "Notice 2012–21, Extension for Good Cause Shown" or otherwise sufficiently notifies the Service on or with Form 4768 that Form 4768 is being filed pursuant to this notice.

5.02. The executor of a qualifying estate following the requirements of subsection 5.01 of this section will be deemed to have shown good and sufficient cause and to have provided all explanations required under § 20.6081–1(c) without the need for the executor to include any further explanations on Form 4768.

5.03. If, prior to the issuance of this notice, an executor of a qualifying estate filed a Form 706 after the due date for filing Form 706 had passed, but before 15 months from the decedent's date of death, without having timely requested an automatic six-month extension of time to file Form 706, the executor may file Form 4768 in accordance with the requirements of this section and the extension will relate back to the due date of Form 706.

5.04. An executor of a qualifying estate may file Form 4768 at the same time as the executor files Form 706, as long as both are filed on or before the date that is 15 months after decedent's date of death.

5.05. For purposes of section 6081, except in the case of an executor abroad, Treasury and the Service cannot grant additional extensions of time to file Form 706 beyond the six-month extension granted in this notice, regardless of whether an executor files a Form 4768 requesting an additional extension of time to file.

DRAFTING INFORMATION

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

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 25, 103, 143; 1.25–4T, 1.103–1, 6a.103A–2.)

Rev. Proc. 2012–16

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the housing cost/income ratio described in § 143(f)(5).

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a state or political subdivision thereof, but only if (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of $250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Section 25(c)(2)(A)(iii)(IV) provides that recipients of mortgage credit certificates must meet the income requirements of § 143(f). Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(6), the income limitation is reduced to 100 percent of the applicable median family income if there are fewer than three individuals in the family of the mortgagor.

.04 Section 143(f)(4) provides that the term "applicable median family income" means the greater of (A) the area median gross income for the area in which the residence is located, or (B) the statewide median gross income for the state in which the residence is located.

.05 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio by (b) the ratio that the area median gross income bears to the median gross income for the United States. The applicable housing price ratio is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average area purchase price divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1. This income adjustment applies only to bonds issued, and nonissued bond amounts elected, after December 31, 1988. *See* § 4005(h) of the Technical and Miscellaneous Revenue Act of 1988, 1988–3 C.B. 1, 311 (1988).

.06 The Department of Housing and Urban Development (HUD) has computed the median gross income for the United States, the states, and statistical areas within the states. The income information was released to the HUD regional offices on December 01, 2011, and may be obtained by calling the HUD reference service at 1–800–245–2691. The income information is also available at HUD's World Wide Web site, *http://www.huduser.org/portal/datasets/il.html*, which provides a menu from which you may select the year and type of data of interest. The Internal Revenue Service annually publishes the median gross income for the United States.

.07 The most recent nationwide average purchase prices and average area purchase price safe harbor limitations were published on April 11, 2011, in Rev. Proc. 2011–23, 2011–15 I.R.B. 626.

SECTION 3. APPLICATION

.01 When computing the income requirements of § 143(f), issuers of qualified mortgage bonds and mortgage credit certificates must use either (1) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, or (2) the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December 01, 2011.

.02 If an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on May 31, 2011, for all purposes under § 143(f). Likewise, if an issuer uses the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December 01, 2011, to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the median gross income for the United States, the states, and statistical areas within the states, as released to the HUD regional offices on December 01, 2011, for all purposes under § 143(f).

SECTION 4. EFFECT ON OTHER REVENUE PROCEDURES

.01 Rev. Proc. 2011–37, 2011–26 I.R.B. 931, is obsolete except as provided in §§ 3.01, 3.02, or 5.01 of this revenue procedure.

.02 This revenue procedure does not affect the effective date provisions of Rev. Rul. 86–124, 1986–2 C.B. 27. Those effective date provisions will remain operative at least until the Service publishes a new revenue ruling that conforms the approach to effective dates set forth in Rev. Rul. 86–124 to the general approach taken in this revenue procedure.

SECTION 5. EFFECTIVE DATES

.01 Issuers must use the United States and area median gross income figures specified in § 3.01 of this revenue procedure for commitments to provide financing that are made, or (if the purchase precedes the financing commitment) for residences that are purchased, in the period that begins on December 01, 2011, and ends on the date when these United States and area median gross income figures are rendered obsolete by a new revenue procedure.

DRAFTING INFORMATION

The principal authors of this revenue procedure are David White and Timothy Jones of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. White or Mr. Jones at (202) 622–3980 (not a toll-free call).

---

26 CFR 601.602: Tax forms and instructions. (Also Part 1, sections 6031, 1.6031(b)–1T.)

Rev. Proc. 2012–17

SECTION 1. PURPOSE

.01 This revenue procedure provides the requirements for furnishing substitute Schedule K–1, *Partner's Share of Income, Deductions, Credits, etc.*, in electronic format. A partnership (including an Electing Large Partnership, as defined in section 775 of the Internal Revenue Code) that follows the procedures set forth in this revenue procedure will satisfy the requirements of section 6031(b) of the Internal Revenue Code and section 1.6031(b)–1T(a)(1) of the Income Tax Regulations.

SECTION 2. BACKGROUND

.01 Section 6031(a) of the Code provides, in part, that every partnership shall make a return for each taxable year, stating specifically the items of its gross income and deductions, and such other information as the Secretary may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

.02 Section 6031(b) provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a copy of such information required to be shown on such return as may be required by regulations.

.03 Section 1.6031(b)–1T provides, in part, that each partnership required to file a return for any partnership taxable year shall (on or before the day on which the return for such taxable year is required to be filed) furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during such taxable year a written statement containing the information prescribed by section 1.6031(b)–1T(a)(3) and any additional information required by form or accompanying instructions. This information includes the partner's distributive share of any partnership income, gain, loss, deduction, or credit required to be shown on the partnership return.

.04 Rev. Proc. 2011–61, 2011–52 I.R.B. 990, provides guidance on the requirements for forms accepted as substitutes for official IRS forms. Section 7.1 of Rev. Proc. 2011–61 sets forth specific guidelines for substitute Schedule K–1s. Section 7.1.1 of Rev. Proc. 2011–61 provides, in part, that substitute Schedule K–1s should be as close as possible to exact replicas of copies of the official IRS schedules.

SECTION 3. ELECTRONIC FURNISHING OF SCHEDULE K–1

.01 A person required by section 6031(b) to furnish a written statement on Schedule K–1 (furnisher) to the person to whom it is required to be furnished (recipient) may furnish the Schedule K–1 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of Sections 4 through 10 of this revenue procedure will be treated as furnishing the Schedule K–1 in a timely manner and complying with the provisions of this revenue procedure.

SECTION 4. CONSENT

.01 *In general.* The recipient must have affirmatively consented to receive the Schedule K–1 in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the Schedule K–1 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if the consent is confirmed electronically by the recipient and that consent reasonably demonstrates that the recipient can access the Schedule K–1 in the electronic format in which it will be furnished to the recipient. A new consent is not required if a partnership undergoes a technical termination under section 708(b)(1)(B).

.02 *Withdrawal of consent.* The consent requirement of Section 4.01 will not be satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date determined by the furnisher and communicated to the recipient within a reasonable period of time after the furnisher receives the withdrawal. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

.03 *Change in hardware or software requirements.* If a change in hardware or software required to access the Schedule

K–1 creates a material risk that the recipient will not be able to access the Schedule K–1, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Schedule K–1 and inform the recipient that a new consent to receive the Schedule K–1 in the revised electronic format must be provided to the furnisher. After changing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in Section 4.01 of this revenue procedure, a new consent or confirmation of consent to receive the Schedule K–1 electronically.

.04 *Examples.* The following examples illustrate the rules of Section 4 of this revenue procedure:

(1). *Example 1.* Furnisher F sends Recipient R a letter stating that R may consent to receive Schedule K–1 electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive Schedule K–1 electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished Schedule K–1. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the Schedule K–1 electronically in the manner described in Section 4 of this revenue procedure.

(2). *Example 2.* Furnisher F sends Recipient R a secure e-mail stating that R may consent to receive Schedule K–1 electronically instead of in a paper format. The secure e-mail contains an attachment instructing R how to consent to receive Schedule K–1 electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished Schedule K–1. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Schedule K–1 electronically in the manner described in Section 4 of this revenue procedure.

(3). *Example 3.* Furnisher F posts a notice on its website stating that Recipient R may receive Schedule K–1 electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. R will receive the K–1 through the secure webpage in the same format as the consent documents. By accessing the secure webpage and giving consent in the manner provided in the instructions on the website, R has consented to receive Schedule K–1 electronically in the manner described in Section 4 of this revenue procedure.

SECTION 5. REQUIRED DISCLOSURES

.01 *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in Sections 5.02 through 5.08 of this revenue procedure. The statement may be electronic or on paper. The statement must provide instructions on how to access and print the statement.

.02 *Paper statement.* The furnisher must inform the recipient that the Schedule K–1 will be furnished on paper if the recipient does not consent to receive it electronically.

.03 *Scope and duration of consent.* The furnisher must inform the recipient of the scope and duration of the consent. For example, the furnisher must inform the recipient whether the consent applies to each Schedule K–1 required to be furnished after the consent is given until it is withdrawn in the manner described in Section 4.02 of this revenue procedure or only to the first Schedule K–1 required to be furnished after the consent is given.

.04 *Post-consent request for a paper statement.* The furnisher must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after providing the consent described in Section 4.01 of this revenue procedure and whether a request for a paper statement will be treated as a withdrawal of consent.

.05 *Withdrawal of consent.* The furnisher must inform the recipient that—

(1) The recipient may withdraw consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(2) The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date determined by the furnisher and communicated to the recipient within a reasonable period of time after the furnisher receives the withdrawal.

(3) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(4) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this revenue procedure before the date on which the withdrawal of consent takes effect.

.06 *Notice of termination.* The furnisher must inform the recipient of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, the recipient's withdrawal from the partnership).

.07 *Updating information.* The furnisher must inform the recipient of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

.08 *Hardware and software requirements.* The furnisher must describe to the recipient the hardware and software required to access, print, and retain the Schedule K–1, and the date when the Schedule K–1 will no longer be available on the website. The furnisher must inform the recipient that the Schedule K–1 may be required to be printed and attached to a Federal, State, or local income tax return.

SECTION 6. FORMAT

.01 The electronic version of the Schedule K–1 must contain all required information and comply with the instructions applicable to the Schedule K–1 and applicable revenue procedures and publications relating to substitute statements to recipients.

SECTION 7. NOTICE

.01 *In general.* The furnisher must notify the recipient if the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

.02 *Undeliverable electronic address.* If an electronic notice described in Section 7 of this revenue procedure is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, the

furnisher must furnish the notice by mail or in person within 30 calendar days after the electronic notice is returned.

SECTION 8. *AMENDED SCHEDULE K–1*

.01 If the furnisher has amended a recipient's Schedule K–1 that was furnished electronically, the furnisher must furnish the amended Schedule K–1 to the recipient electronically within 30 calendar days of the date that the Schedule K–1 has been amended. If the recipient's Schedule K–1 was furnished through a website posting and the furnisher has amended the Schedule K–1, the furnisher must notify the recipient that it has posted the amended Schedule K–1 on the website within 30 calendar days of such posting in the manner described in Section 7.01 of this revenue procedure. The furnisher must provide the amended Schedule K–1 or the notice by mail or in person if—

(1) An electronic notice of the website posting of an original Schedule K–1 or the amended Schedule K–1 was returned as undeliverable; and

(2) The recipient has not provided a new e-mail address.

SECTION 9. ACCESS PERIOD

.01 A Schedule K–1, or amended Schedule K–1, furnished on a website must be retained on the website for twelve months following the end of the partnership's tax year to which the Schedule K–1 relates, or six months after the date of issuance of the Schedule K–1, (or amended Schedule K–1), whichever is later.

SECTION 10. PAPER STATEMENTS AFTER WITHDRAWAL OF CONSENT

.01. If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. Notwithstanding Section 7.03, an amended Schedule K–1 shall be considered a new statement for purposes of determining whether a paper statement must be furnished following a withdrawal of consent under this section when the withdrawal occurs between the date the original Schedule K–1 was furnished and the date the amended Schedule K–1 is furnished. A paper statement furnished after the statement due date under this section will be considered timely if furnished within 30 calendar days after the date the withdrawal of consent is received by the furnisher.

SECTION 11. APPROVAL OF SUBSTITUTE SCHEDULE K–1

.01 The furnisher will not need IRS approval to use a substitute Schedule K–1 under the procedures described in Rev. Proc. 2011–61 if the electronic copy it furnishes is an exact copy of the official Schedule K–1.

SECTION 12. FAILURE TO FURNISH

.01 If a furnisher fails to comply with the requirements of this revenue procedure, the furnisher may be deemed to have failed to furnish the Schedule K–1 to the recipient. See section 6722 for penalties for failure to furnish correct payee statements.

SECTION 13. OTHER RELATED DOCUMENTS

.01. For rules regarding the electronic filing of the Form 1065, *U.S. Return of Partnership Income*, see section 6011(e)(2) and section 301.6011–3 of the Procedure and Administration Regulations. For rules regarding substitute Schedule K–1, see Rev. Proc. 2011–61, 2011–52 I.R.B. 990, and successor publications and instructions.

SECTION 14. EFFECTIVE DATE

This revenue procedure applies on and after Feb. 13, 2012.

SECTION 15. DRAFTING INFORMATION

.01 The principal author of this revenue procedure is Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration). Mr. Hara may be contacted at (202) 622–4910 (not a toll-free number).

---

26 CFR 601.106: Ex Parte communications between appeals and other Internal Revenue Service employees.

Rev. Proc. 2012–18

SECTION 1. BACKGROUND

Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 685 (RRA), required the Commissioner of Internal Revenue to develop and implement a plan to reorganize the Internal Revenue Service (IRS). In addition, the RRA specifically directed the Commissioner to "ensure an independent appeals function within the Internal Revenue Service, including the prohibition * * * of *ex parte* communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers." RRA section 1001(a)(4). In accordance with that directive, the Department of the Treasury and the IRS issued guidance in Rev. Proc. 2000–43, 2000–2 C.B. 404.

Since the issuance of Rev. Proc. 2000–43 in October 2000, the IRS has made changes to some of its business practices and adopted new ones that did not exist at the time that the revenue procedure was issued. Accordingly, Treasury and the IRS issued Notice 2011–62, 2011–32 I.R.B. 126 (Aug. 8, 2011), which set forth a proposed revenue procedure to revise Rev. Proc. 2000–43 by addressing these changed circumstances, as well as clarifying and modifying the rules in light of the IRS' experience working with that revenue procedure. Also, the revenue procedure was redesigned from a question and answer format to a narrative format to improve usability. In connection with that change, the material was rearranged and organized under appropriate headings to make it easier to find.

Notice 2011–62 invited public comment regarding the proposed revenue procedure. Treasury and the IRS considered all comments received and the proposed revenue procedure has been modified to take into account the concerns raised. For example, the remedies section has been modified to provide that Appeals employees shall ask the taxpayer/representative for input regarding what is an appropriate

remedy. The final agency decision maker regarding the appropriate remedy in each case will be a second-level manager. Also, the "opportunity to participate" section has been modified to clarify that if no agreement can be reached regarding a mutually acceptable date and time for the discussion or meeting, Appeals should notify the taxpayer/representative of the date and time that the discussion or meeting will take place. After having the discussion or meeting, Appeals should share with the taxpayer/representative the substance of the discussion or meeting, as appropriate, and give the taxpayer/representative a reasonable period of time within which to respond. Additionally, the discussion of the role of Appeals with respect to the development of settlement initiatives has been clarified. Lastly, consistent with the rule that the *ex parte* communication rules do not apply to communications between Appeals and Counsel with respect to cases docketed in the Tax Court, the section regarding remand memoranda in collection due process cases has been revised to remove the prohibition on including legal analysis or legal advice in remand memoranda.

In addition, the Internal Revenue Manual (IRM) will be revised to provide additional guidance, as appropriate, regarding the *ex parte* communication rules and training will be provided to all affected functions. Many of the comments will be addressed in the IRM or training rather than in the revenue procedure. Furthermore, although not adopted in this revenue procedure, Appeals will consider implementing some mechanism to track breaches of the *ex parte* communication rules. It is envisioned that this tracking mechanism will help Appeals executives monitor breaches of the *ex parte* communication rules and the steps taken by Appeals to rectify any breaches of those rules. Any tracking mechanism that is adopted will generically describe the breaches of the *ex parte* communication rules and will not be case or employee specific.

The procedures set forth in this revenue procedure are designed to accommodate the overall interests of tax administration, while preserving operational features that are vital to Appeals' case resolution processes within the structure of the IRS and ensuring open lines of communication between Appeals and the taxpayer/representative. Consistent with section 1001(a)(4), this revenue procedure does not adopt the formal *ex parte* procedures that would apply in a judicial proceeding. It is designed to ensure the independence of the Appeals organization, while preserving the role of Appeals as a flexible administrative settlement authority, operating within the IRS' overall framework of tax administration responsibilities.

.01 *Highlights.* As previously provided in Rev. Proc. 2000–43:

(1) Appeals will retain procedures for:

(a) Premature referrals.

(b) Raising certain new issues.

(c) Seeking review and comments from the originating function with respect to new information or evidence furnished by the taxpayer/representative.

(2) Appeals will continue to be able to obtain legal advice from the Office of Chief Counsel, subject to the limitations set forth in section 2.06(1), below.

(3) The Commissioner and other IRS officials responsible for overall IRS operations (including Appeals), as referenced in section 2.07(5), below, may continue to communicate *ex parte* with Appeals to fulfill their responsibilities.

.02 *Notable Differences.*

(1) Guiding principles have been added to aid in understanding the overall approach to applying the *ex parte* communication rules.

(2) Definitions for certain terms have been added or clarified.

(3) Transmittals and the permissible content of the administrative file have been clarified.

(4) The application of the *ex parte* communication rules to collection due process (CDP) cases, including those CDP cases that are remanded by the Tax Court, has been addressed.

(5) The discussion of Appeals' involvement in multifunctional meetings has been expanded.

(6) The application of the *ex parte* communication rules in the context of alternative dispute resolution proceedings has been addressed.

(7) The remedies available to taxpayers in the event of a breach of the *ex parte* communication rules have been clarified.

(8) A statement that the *ex parte* communication rules do not create substantive rights affecting a taxpayer's liability or the IRS' ability to determine, assess, or collect that tax liability has been added.

SECTION 2. GUIDANCE CONCERNING EX PARTE COMMUNICATIONS AND THE APPLICATION OF RRA SECTION 1001(a)(4)

.01 *Definitions.* For purposes of this revenue procedure and the application of RRA section 1001(a)(4), the terms set forth below are defined as follows:

(1) *Ex Parte Communication.* An "*ex parte* communication" is a communication that takes place between any Appeals employee (*e.g.*, Appeals Officers, Settlement Officers, Appeals Team Case Leaders, Appeals Tax Computation Specialists) and employees of other IRS functions, without the taxpayer/representative being given an opportunity to participate in the communication. The term includes all forms of communication, oral or written. Written communications include those that are manually or electronically generated.

(a) *Communications Outside the Scope of the Term "Ex Parte Communication.*" The term "*ex parte* communication" does not include the following (not an exhaustive list):

(i) *Database Inquiries.* Account inquiries, transcript requests, and other similar inquiries conducted in an electronic environment are not considered communications because they do not involve a dialogue or interaction between two or more individuals. This exception does not apply to the administrative file, which may be maintained electronically in whole or in part. For a discussion of the rules applicable to the administrative file, see section 2.03(4), below.

(ii) *Communications Solely Between or Among Appeals Employees.* These are not considered *ex parte* communications because they do not involve employees from IRS functions outside of Appeals.

(iii) *Communications with IRS Functions Other than Originating Functions.* Special rules apply to communications between Appeals employees and employees of certain IRS functions other than originating functions, as defined in section 2.01(2), below. Employees in other IRS functions include those in Counsel, Criminal Investigation, Competent Authority, Taxpayer Advocate Service, and

the Commissioner and other IRS officials with overall supervisory responsibilities. For a discussion of communications with those functions, see 2.06, 2.07(2), 2.07(3), 2.07(4), and 2.07(5), respectively.

(iv) *Communications with Other Governmental Entities.* These are not considered *ex parte* communications because RRA section 1001(a)(4) only applies to communications between Appeals and other IRS employees, and the persons with whom Appeals is communicating at other governmental entities do not fall into that category. See section 2.08, below, for examples.

(v) *Communications in Which the Taxpayer/Representative Is Given an Opportunity to Participate.* These are not considered *ex parte* communications because the taxpayer/representative is offered a chance to be involved in the communication. Even if the taxpayer/representative chooses not to participate in the communication, the *ex parte* communication rules do not apply.

(2) *Originating Function.* An "originating function" is an organization within the IRS that makes determinations that are subject to the Appeals process. For purposes of this revenue procedure, the term includes the Examination, Collection, and Service Center (Campus) functions, or their successor organizations. For a discussion of communications with Counsel or Criminal Investigation, see sections 2.06 and 2.07(2), respectively. For a discussion of communications with other IRS functions or other governmental entities, see sections 2.07 and 2.08, respectively. None of those functions are originating functions.

(3) *Opportunity to Participate.*

(a) *Oral communications.* The phrase "opportunity to participate" means that the taxpayer/representative will be given a reasonable opportunity to attend a meeting or be a participant in a conference call between Appeals and the originating function when the strengths and weaknesses of the facts, issues, or positions in the taxpayer's case are discussed. The taxpayer/representative will be notified of a scheduled meeting or conference call and invited to participate. If the taxpayer/representative is unable to participate in the meeting or conference call at the scheduled time, reasonable accommodations will be made to reschedule it. See also section 2.01(3)(d), below.

(b) *Written communications.* A taxpayer/representative is considered to have been given an "opportunity to participate" with respect to a written communication that is received by Appeals if the taxpayer/representative is furnished a copy of the written communication and given a chance to respond to it either orally or in writing.

(c) *Waiver.* If the taxpayer/representative is given an opportunity to participate in a discussion but declines to participate, Appeals should proceed with the discussion or meeting but should document the taxpayer's/representative's declination. A taxpayer/representative has the option of granting a waiver on a communication-by-communication basis or a waiver covering all communications that might occur during the course of Appeals' consideration of a specified case. If a taxpayer/representative provides a blanket waiver with respect to a particular case, the taxpayer/representative may revoke that waiver at any time, effective with respect to communications occurring subsequent to the revocation.

(d) *Unreasonable delay.* The IRS will not delay scheduling a meeting for a protracted period of time to accommodate the taxpayer/representative. Facts and circumstances will govern what constitutes a reasonable delay. If the taxpayer/representative seeks to unreasonably delay a meeting or conference call, Appeals should proceed with the discussion or meeting but should document the reason for proceeding without the taxpayer/representative. Additionally, if no agreement can be reached regarding a mutually acceptable date and time for the discussion or meeting, Appeals should notify the taxpayer/representative of the date and time that the discussion or meeting will take place. If the taxpayer/representative does not participate in the discussion or meeting, Appeals should share with the taxpayer/representative the substance of the discussion or meeting, as appropriate, and give the taxpayer/representative a reasonable period of time within which to respond.

.02 *Guiding Principles.* Except as specifically addressed in other provisions of this revenue procedure, the following guiding principles govern communications between Appeals and other IRS functions, including Counsel.

(1) *Principles of Tax Administration.* It is the role of the IRS, and those employees charged with the duty of interpreting the law, to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; to apply and administer the law in a reasonable and practical manner; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view. See Rev. Proc. 64–22, 1964–1 C.B. 689.

(2) *Appeals' Independence.* Appeals serves as the administrative dispute resolution forum for any taxpayer contesting an IRS compliance action. It has long been Appeals' mission "to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service." IRM 8.1.1.1(1). RRA section 1001(a)(4) established a statutory basis for Appeals' independence by requiring that the Commissioner "ensure an independent appeals function within the Internal Revenue Service . . . ." Rather than establish an external appeals function (as suggested in some legislative proposals), RRA maintained Appeals within the IRS while seeking to significantly reinforce its independence. Consequently, despite their distinct roles within tax administration and required adherence to policies set by the Commissioner, Appeals and other IRS functions, including Counsel, share a responsibility to interact — in all circumstances — in a manner that preserves and promotes Appeals' independence. To further this independence, Appeals must continue its practice of impartial decision making while coordinating with other IRS functions to carry out the Commissioner's policies on tax administration.

Independence, therefore, is one of Appeals' most important core values, and the RRA statutory prohibition on *ex parte* communications "to the extent that such communications appear to compromise the independence of the appeals officers" is a significant component of Appeals' independence. The guidance set forth in this revenue procedure is designed to accommodate the overall interests of tax ad-

ministration while ensuring that Appeals is adequately insulated from influence (or the appearance of influence) by other IRS functions, thereby providing Appeals with an unencumbered working environment within which to objectively and independently evaluate the facts and law that are relevant to each case and quantify the hazards of litigation based on that evaluation.

(3) *Legal Advice.*

(a) *In General.* The Chief Counsel is the legal adviser to the Commissioner and the IRS' officers and employees on all matters pertaining to the interpretation, administration, and enforcement of the internal revenue laws and related statutes. I.R.C. § 7803(b)(2)(A). As reflected in the Chief Counsel's mission statement, the IRS' mission statement, and section 2.02(1), above, attorneys in the Office of Chief Counsel are expected to provide legal advice based on an independent determination of the "correct and impartial interpretation of the internal revenue laws" and by applying "the [tax] law with integrity and fairness to all." The fact that various attorneys in the Office of Chief Counsel may be simultaneously engaged in multiple activities, including some activities involving an advocacy role, does not diminish the responsibility of each to exercise independent judgment in rendering legal advice.

(b) *Appeals.* Appeals employees generally are not bound by the legal advice that they receive from the Office of Chief Counsel with respect to their cases. Rather, the legal advice is but one factor that Appeals will take into account in its consideration of the case. Appeals employees remain ultimately responsible for independently evaluating the strengths and weaknesses of the issues in the cases assigned to them and making independent judgments concerning the overall strengths and weaknesses of the cases and the hazards of litigation. Accordingly, Appeals may obtain legal advice from the Office of Chief Counsel consistent with this revenue procedure without compromising Appeals' independence.

(4) *Opportunity to Participate.* As provided in section 2.01(1) and (3), above, by definition, if the taxpayer/representative is given an opportunity to participate with respect to a communication, that communication is not *ex parte*, and, thus, the communication is permissible under the *ex parte* communication rules.

(5) *Exceptions.* Not all communications between Appeals employees and employees of other IRS functions are prohibited, even if *ex parte*. For example, as described in more detail in section 2.03(2), below, communications regarding ministerial, administrative, or procedural matters are permissible. Similarly, as described in more detail in section 2.04, below, Appeals may listen to or be briefed on generic, noncase-specific discussions of issues without violating the *ex parte* communication rules.

(6) *Communications with Other IRS Functions.* To fulfill its role of providing an independent dispute resolution function within the IRS, Appeals must be able to make fully informed, independent judgments regarding the strengths and weaknesses of positions and to properly evaluate the hazards of litigation in cases within its jurisdiction. To accomplish these tasks, Appeals stays abreast of relevant legal and tax administration developments, including the views and analysis of stakeholders, as well as the Commissioner's policies and operational goals. One effective and efficient way of obtaining some of this information is for Appeals to participate in generic, noncase-specific discussions with other IRS functions, including Counsel, such as participation in multifunctional meetings. Hence, Appeals' participation in these discussions or meetings is permissible under the *ex parte* communication rules, as described in more detail in section 2.04, below.

In general, Appeals may not engage in discussions with the originating function regarding the strengths and weaknesses of the issues and positions in cases or with respect to matters other than ministerial, administrative, or procedural matters, without providing the taxpayer/representative an opportunity to participate. For a fuller discussion of these rules, see section 2.03, below.

(7) *Curing a Breach of the Ex Parte Communication Rules.* Most breaches of the *ex parte* communication rules may be cured by timely notifying the taxpayer/representative of the situation, sharing the communication or information in question, and affording the taxpayer/representative a reasonable period of time within which to respond. The specific administrative remedy that may be made available in any particular case is within the sole discretion of Appeals. For a fuller discussion of remedies, see section 2.10, below.

(8) *No Substantive Rights.* The *ex parte* communication rules set forth in this revenue procedure do not create substantive rights affecting the taxpayer's tax liability or the IRS' ability to determine, assess, or collect that tax liability, including statutory interest and any penalties, if applicable.

.03 *Communications with Originating Function.*

(1) *General Rule. Ex parte* communications between Appeals employees and employees of originating functions are prohibited to the extent the communications appear to compromise Appeals' independence. See RRA section 1001(a)(4). As discussed more fully below, not all *ex parte* communications are prohibited.

(2) *Ministerial, Administrative, or Procedural Matters.* Communications between Appeals and an originating function regarding ministerial, administrative, or procedural matters during any stage of a case are permissible without involving the taxpayer/representative. If communications with the originating function extend beyond ministerial, administrative, or procedural matters in that the substance of the issues in the case is addressed, those communications are prohibited unless the taxpayer/representative is given an opportunity to participate.

(a) *Examples.* Communications regarding ministerial, administrative, or procedural matters include, but are not limited to, the following:

(i) Communications about whether certain information was requested and whether it was received.

(ii) Communications about the availability of a document referred to in the workpapers that the Appeals Officer cannot locate in the file.

(iii) Communications to clarify the content of illegible documents or writings.

(iv) Communications regarding case controls on the IRS' management information systems.

(v) Communications relating to tax calculations that are solely mathematical in nature.

(vi) Communications about whether any closed cases exist that involve or affect the taxpayer or a related party, or other

information about a closed case (including the terms on which a closed case was resolved), that do not extend beyond what is in the public or administrative record. Examples of these closed cases include, but are not limited to, cases involving bankruptcy, innocent spouse, TEFRA partnership, or criminal investigation issues. Any discussion about the substance of a closed case extending beyond what is in the public or administrative record is prohibited unless the taxpayer/representative is given an opportunity to participate. For purposes of the preceding sentence, any information contained in the administrative file for the closed case or any of the IRS' databases is considered to be part of the administrative record. Moreover, the public or administrative record limitation described in this paragraph does not apply to discussions between Appeals and the originating function in connection with a post-settlement conference or equivalent communication. For a discussion of post-settlement conferences, see section 2.03(11), below. Additionally, this paragraph is limited to closed cases and does not apply to communications with respect to the case that Appeals is reviewing. For a discussion of communications relating to other pending cases that involve or affect the taxpayer or a related party, see section 2.03(13), below.

(vii) Communications regarding general information about related cases, such as the number of other pending cases involving the same or substantially similar type of transaction or issue, *e.g.*, tax shelter transactions or industry-wide issues, and the aggregate amount of money in dispute in those cases. This paragraph also includes communications about the existence or status of related cases, such as cases involving a promoter, material advisor, or tax return preparer. For a discussion of communications with respect to closed cases that involve or affect the taxpayer or a related party, see section 2.03(2)(a)(vi), above. For a discussion of communications relating to other pending cases that involve or affect the taxpayer or a related party, see section 2.03(13), below.

(viii) Communications regarding the status of the case that Appeals is reviewing, such as whether the case or an issue in the case has been resolved or when a case is expected to be closed. This does not include any discussion of the terms of the resolution of an issue prior to the case being closed or the issue resolved with finality, such as by the parties entering into a closing agreement. Permitted communications concerning the status of the case should be limited to a direct, narrow exchange of information without any surrounding discussion. They are not intended to provide the originating function or other IRS function a chance to discuss the strengths and weaknesses of the case or position in the case, advocate for a particular result, object to a potential resolution, or otherwise attempt to influence Appeals' decision in any way.

(ix) Communications regarding mathematical errors affecting the proposed tax liability discovered upon computational review. These errors should be discussed with both the taxpayer/representative and the originating function before the correction is made, but the discussions may be held separately. If the error involves the interpretation of a legal principle or application of the law to a particular set of facts, however, the taxpayer/representative should be given an opportunity to participate in any scheduled meetings with the originating function to discuss this type of discrepancy. In some cases, Appeals may choose to return the case to the originating function for further development and correction.

(x) Communications referring a refund claim filed during the Appeals process to the originating function for consideration. See section 2.03(9), below.

(xi) Communications in connection with a CDP hearing to verify compliance with legal or administrative requirements; communications with respect to verification of assets/liabilities involving a collection alternative during a CDP hearing; or communications regarding deadlines relating to a remanded CDP case. See sections 2.03(10)(b) and (c)(i)(B), below.

(3) *Prohibited Communications.* Examples of communications between Appeals and an originating function that are prohibited unless the taxpayer/representative is given an opportunity to participate include, but are not limited to, the following:

(a) Discussions about the accuracy of the facts presented by the taxpayer and the relative importance of the facts to the determination.

(b) Discussions of the relative merits or alternative legal interpretations of authorities cited in a protest or in a report prepared by the originating function.

(c) Discussions of the originating function's perception of the demeanor or credibility of the taxpayer or taxpayer's representative.

(d) Discussions of the originating function's views concerning the level of cooperation (or lack thereof) of the taxpayer/representative during the originating function's consideration of the case.

(e) Discussions regarding the originating function's views concerning the strengths and weaknesses of the case or the parties' positions in the case.

(f) Communications from the originating function to advocate for a particular result or to object to a potential resolution of the case or an issue in the case.

(4) *Administrative File.*

(a) *In General.* The administrative file transmitted to Appeals by the originating function is not considered to be an *ex parte* communication within the context of this revenue procedure. The administrative file, which contains, among other things, the proposed determination and the taxpayer's protest or other approved means of communicating disagreement with the proposed determination, sets forth the boundaries of the dispute between the taxpayer and the IRS and forms the basis for Appeals to assume jurisdiction.

(b) *Transmittal.* The transmittal memorandum, a T-Letter, or any similar document that the originating function uses to transmit the administrative file (transmittal) should not include statements or comments intended to influence Appeals' decision-making process. This includes recommendations concerning what Appeals should consider and how Appeals should resolve the case. In contrast, it is permissible to include in the transmittal a neutral list of unagreed issues, without discussion, and to indicate which ones, if any, are coordinated issues. If the transmittal includes the type of statements or comments described in the second sentence of this paragraph, or includes other prohibited communications in a document that is either placed on top of the administrative file as a transmittal or inserted into the administrative file in conjunction with preparing the case for transmission to Appeals, the document must be shared by the originat-

ing function with the taxpayer/representative at the time that the administrative file is sent to Appeals.

(c) *Rebuttal to Protest.* If a rebuttal to the taxpayer's protest is prepared by the originating function, it must be shared with the taxpayer/representative by the originating function at the time that it is sent to Appeals.

(d) *Contents of Administrative File.* The administrative file shall be compiled and maintained by the originating function in accordance with the established procedures within that function or as otherwise directed by the reviewer(s) assigned to the case. The originating function, however, shall refrain from placing in the administrative file any notes, memoranda, or other documents that normally would not be included in the administrative file in the ordinary course of developing the case if the reason for including this material in the administrative file is to attempt to influence Appeals' decision-making process. For example, the originating function should not include gratuitous comments in the case history, a memo to the file, or a transmittal document, such as a T-Letter, if the substance of the comments would be prohibited if they were communicated to Appeals separate and apart from the administrative file. In contrast, it is permissible to contemporaneously include statements or documents that are pertinent to the originating function's consideration of the case in the administrative file even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file.

(5) *Preconference Meetings.* Preconference meetings between Appeals and the originating function without providing the taxpayer/representative an opportunity to participate are an example of the type of communications that the *ex parte* communication rules were designed to prohibit. These meetings should not be held unless the taxpayer/representative is given an opportunity to participate.

(6) *Premature Referrals.* Appeals is the administrative settlement arm of the IRS. If a case is not ready for Appeals' consideration, Appeals may return it for further development or for other reasons described in IRM 8.2.1.6. Appeals may communicate with the originating function regarding the anticipated return of the case, including an explanation of the additional development that Appeals is requesting or other reasons why the case is being returned, but generally may not engage in a discussion of matters beyond the types of ministerial, administrative, or procedural matters set forth in section 2.03(2), above, as part of a discussion of whether the premature referral guidelines require further activity by the originating function. When the case is returned to the originating function, Appeals must timely notify the taxpayer/representative that the case has been returned to the originating function, in whole or in part, for further development. In addition, the supplemental report prepared by the originating function reflecting the additional development that was done must be shared with the taxpayer/representative.

(7) *Submission of New Information.* If new information or evidence is submitted to Appeals by the taxpayer/representative, the principles set forth in IRM 8.2.1.9.3 should be followed. In general, the originating function should be given the opportunity to timely review and comment on significant new information presented by the taxpayer. "Significant new information" is information of a nonroutine nature that, in the judgment of Appeals, may have had an impact on the originating function's findings or that may impact Appeals' independent evaluation of the strengths and weaknesses of the issues, including the litigating hazards relating to those issues. Normally, the review can be accomplished by sending the material to the originating function while Appeals retains jurisdiction of the case and proceeds with resolution of other issues. Alternatively, Appeals may return the entire case to the originating function and relinquish jurisdiction, in its sole discretion, in accordance with the IRM. The taxpayer/representative must be timely notified when a case is returned to the originating function or new material not available during initial consideration has been sent to the originating function. The results of the originating function's review of the new information must be communicated to the taxpayer/representative.

(8) *New Issues Raised in Appeals.* Appeals will continue to follow the principles of Policy Statement 8–2 and the "General Guidelines" outlined in IRM 8.6.1.6.2 in deciding whether to raise a new issue. Under Appeals' new issue policy, new issues must continue to meet the "material" and "substantial" tests set forth in the IRM. Communications will be in accordance with the guiding principles in section 2.02(6), above.

(9) *Refund Claims Filed During the Appeals Process.* Refund claims filed during the Appeals process generally are referred to the originating function with a request for expedited review. Referrals of these refund claims to the originating function involves no discussion about the strengths and weaknesses of the issue, and thus, fall within the ministerial, administrative, or procedural matters exception set forth in section 2.03(2), above. The taxpayer/representative must be timely notified when the refund claim is referred to the originating function. The results of the originating function's review of the refund claim must be communicated to the taxpayer/representative.

(10) *Collection Due Process.*

(a) *Collection Cases In General.* The principles applicable to discussions between Appeals employees and officials in originating functions apply to cases that originate in the Collection function, such as CDP appeals, collection appeals program cases, offers in compromise, and trust fund recovery penalty cases. These discussions must be held in accordance with the guiding principles in section 2.02(6), above.

(b) *Ministerial, Administrative, or Procedural Matters.* Sections 6320 and 6330 of the Internal Revenue Code provide that, as part of a CDP hearing, the Appeals officer must obtain verification that the requirements of any applicable law or administrative procedure have been met. Communications seeking to verify compliance with legal and administrative requirements fall within the ministerial, administrative, or procedural matters exception set forth in section 2.03(2), above. Similarly, communications with respect to verification of assets/liabilities involving a collection alternative during a CDP hearing fall within the ministerial, administrative, or procedural matters exception. Therefore, those communications are permissible without providing the taxpayer/representative an opportunity to participate.

(c) *Remand By Tax Court.* As provided in section 2.06(2)(a), below, the *ex parte*

communication rules do not apply to communications between Appeals and Counsel with respect to cases docketed in the Tax Court. CDP cases that are remanded by the Tax Court for further consideration (or reconsideration) by Appeals fall into a different category, however. Although remanded CDP cases remain under the Tax Court's jurisdiction, the Appeals employee assigned to the remanded CDP case must be impartial in the review of the remanded case within the meaning of section 6320(b)(3) or 6330(b)(3), as applicable, requiring the application of similar considerations to those underlying the *ex parte* communication rules. Therefore, the following guidelines apply to remanded CDP cases.

(i) *Instructions Regarding the Remand.*

(A) The Counsel attorney who handled the CDP case in the Tax Court should prepare a written memorandum to Appeals explaining the reasons why the court remanded the case to Appeals, any special requirements in the court's Order (*e.g.*, whether and to what extent a new conference should be held; whether the case must be reassigned to a different Appeals employee than the Appeals employee who handled the original CDP case; and what material Appeals is prohibited from reviewing, if any), and what issues the court has ordered Appeals to address on remand. The memorandum should not discuss the credibility of the taxpayer or the accuracy of the facts presented by the taxpayer. A copy of the memorandum will be provided by the Counsel attorney to the taxpayer/representative.

(B) Communications to Appeals from the Counsel attorney handling the Tax Court case regarding deadlines relating to the remanded CDP case fall within the ministerial, administrative, or procedural matters exception, and thus, are permissible communications that may take place without providing the taxpayer/representative an opportunity to participate.

(ii) *Legal Advice.*

A request by Appeals for legal advice in connection with a remanded CDP case may be handled by the same Counsel attorney who is handling the Tax Court case.

(iii) *Review of Supplemental Notice By Counsel.* The Counsel attorney handling the Tax Court case should review the supplemental notice of determination before it is issued to the taxpayer. This review is for the limited purpose of ensuring compliance with the Tax Court's remand Order.

(11) *Post-Settlement Conference.* The post-settlement conference with Examination is held after the case has been closed by Appeals. The purpose of the conference is to inform Examination about the settlement of issues to ensure that Examination fully understands the settlement and the rationale for the resolution. The conference provides an opportunity for Appeals to discuss with Examination the application of Delegation Order 236, or subsequent delegation orders (*i.e.*, settlement by Examination consistent with a prior Appeals' settlement with the same or related taxpayer). The tax periods that are the subject of the post-settlement conference have been finalized and the participants are cautioned to limit discussion to the results in the closed cycle. Any discussion of the resolution of issues present in the closed periods does not compromise the independence of Appeals, and, thus, post-settlement conferences between Appeals and Examination are permissible without giving the taxpayer/representative an opportunity to participate. In contrast, any discussion that addresses open cycles in either Examination or Appeals with respect to the same or a related taxpayer is subject to the guidance provided in this revenue procedure relating to communications with the originating function contained in section 2.03, above.

(12) *Review of Coordinated Issues.*

(a) *Cases in Compliance's Jurisdiction.* Delegation Order 4–25 provides the Compliance function with limited authority to settle certain issues with Appeals' review and approval. Specifically, this limited settlement authority applies with respect to issues that are coordinated, for example, in the Technical Advisor Program (or any successor program), and are the subject of either an Appeals Settlement Guideline (ASG) or an Appeals Settlement Position (ASP). Under existing procedures, the proposed settlement generally must be approved by the Examination Technical Advisor and the Appeals Technical Guidance Coordinator (TGC) for the issue in question. The purpose of the required coordination is to ensure that the resolution by Examination is consistent with the analysis set forth in the ASG or ASP. Communications between Compliance employees and the TGC in connection with satisfying this coordination requirement are permissible without giving the taxpayer/representative an opportunity to participate.

(b) *Cases in Appeals' Jurisdiction.* Under existing procedures, Appeals' settlements involving coordinated issues, including but not limited to issues that are the subject of either an ASG or an ASP, must be reviewed and concurred by the TGC for that issue. The TGC serves as a resource person for the Appeals organization. The purpose of the required coordination is to ensure that resolutions of coordinated issues are consistent nationwide. Communications between Appeals employees and the TGC are entirely internal within Appeals, and, consequently, the *ex parte* communication rules do not apply to those communications. See section 2.01(1)(a)(ii).

(13) *Taxpayers with Multiple Open Cases.* Special considerations are required when a taxpayer has multiple open cases. This situation may arise, for example, when the taxpayer has cases involving the same issue pending with different IRS functions, including Counsel, which is common with respect to large corporate taxpayers, or the taxpayer has multiple cases involving the same issue pending with Appeals in both docketed and non-docketed status. The IRS has an interest in coordinating the handling of open cases regarding the same taxpayer to ensure that the responsible offices have complete information to make informed decisions about the cases within their respective jurisdictions.

Discussions held with respect to open cases must be in accordance with the guiding principles in section 2.02(6) and the operative rules set forth in section 2.03, above, as well as sections 2.06, 2.07, and 2.08, below. The *ex parte* communication rules may not apply to some of the open cases, such as those docketed in the Tax Court or under the jurisdiction of the Department of Justice, see sections 2.06(2) and 2.08(2), below, but may apply to one or more other open cases of the taxpayer.

.04 *Participation in Multifunctional Meetings.*

(1) *General Rule.* Multifunctional meetings are meetings that include representatives from various IRS components, usually Compliance and Counsel. A meeting of the members of an Issue Management Team (IMT), or its successor

type function, is an example of this type of meeting. These multifunctional meetings usually involve general discussions of how to handle technical issues or procedural matters. Appeals does not participate on IMTs but can be briefed by IMTs, as long as the discussion remains generic rather than case-specific. Similarly, all participants in any type of multifunctional meeting need to be cognizant of the *ex parte* communication rules and ensure that taxpayer-specific discussions do not take place while Appeals is present.

As provided in sections 2.02(2) and (6), above, Appeals must have access to the views and analysis of stakeholders so that they can make fully-informed, independent judgments. Listening to generic, non-case-specific discussions involving other IRS functions, including Counsel, in the context of a multifunctional meeting provides Appeals with an important forum in which to meet, in part, these needs, and enables Appeals to effectively serve as the administrative settlement arm of the IRS. Accordingly, Appeals may attend multifunctional meetings subject to the restrictions in section 2.04(2), below, regarding case-specific discussions.

(a) *Settlement Initiatives.* To address particular issues or types of transactions, the IRS sometimes develops settlement initiatives. Appeals' perspective in the formulation of the terms contained in these settlement initiatives is essential to the IRS' ability to resolve cases without litigation. Therefore, Appeals is permitted to work collaboratively with Compliance and Counsel to assist with the development of these settlement initiatives by providing input to other IRS functions, including originating functions and Counsel, in generic discussions of issues and transactions. Any case-specific discussions continue to be prohibited, unless the taxpayer/representative is given an opportunity to participate.

(2) *Case-Specific Discussions.* Any discussion of a specific taxpayer's case in connection with a multifunctional meeting should be postponed until such time as it can be conducted outside of Appeals' presence. The preceding sentence does not apply with respect to post-settlement conferences, as discussed in more detail in section 2.03(11), above.

.05 *Alternative Dispute Resolution.*

(1) *Cases Not in Appeals' Jurisdiction.* Certain alternative dispute resolution (ADR) programs, such as fast track settlement, involve the use of Appeals employees to facilitate settlement while the case is still in Examination's jurisdiction. See, *e.g.*, Rev. Proc. 2003–40, 2003–1 C.B. 1044 (Large and Mid-Size Business Fast Track Settlement Program); Announcement 2011–5, 2011–4 I.R.B. 430 (Small Business/Self Employed Fast Track Settlement Program); Announcement 2008–105, 2008–2 C.B. 1219 (Tax Exempt and Government Entities Fast Track Settlement Program); and subsequent published guidance regarding these or similar programs. Private caucuses between the mediator and individual parties are often a key element in the process. The prohibition against *ex parte* communications between Appeals employees and other IRS employees does not apply because Appeals employees are not acting in their traditional Appeals' settlement role. Consequently, Appeals employees may have *ex parte* communications with an originating function in connection with any Fast Track or similar ADR proceedings. For a discussion of communications between Appeals and Counsel, see section 2.06, below. In contrast, the *ex parte* communication rules apply in the context of Appeals' consideration of an issue under the Early Referral to Appeals process, Rev. Proc. 99–28, 1999–2 C.B. 109, or the Accelerated Issue Resolution program, Rev. Proc. 94–67, 1994–2 C.B. 800 (or subsequent published guidance regarding these programs). *Ex parte* communications are not an integral part of those types of ADR procedures because jurisdiction has shifted to Appeals in those cases.

(2) *Post-Appeals Mediation.* The *ex parte* communication rules do not apply to communications in connection with Post-Appeals Mediation proceedings. Revenue Procedure 2009–44, 2009–2 C.B. 462, describes an optional Appeals' mediation procedure that is available after Appeals' settlement discussions are unsuccessful and when all other issues are resolved except for the issue(s) for which mediation is being requested. See also Announcement 2011–6, 2011–4 I.R.B. 433. The Appeals employee who serves as the mediator in these proceedings to promote settlement negotiations between the parties, who are the taxpayer and Appeals, will not have been a member of the Appeals' team that considered the case. Section 6.02 of Rev. Proc. 2009–44 states that "the parties are encouraged to include, in addition to the required decision-makers, those persons with information and expertise that will be useful to the decision-makers and the mediator." 2009–2 C.B. at 463. Section 6.02 further provides that "Appeals has the discretion to communicate *ex parte* with the IRS Office of Chief Counsel, the originating function, *e.g.*, Compliance, or both, in preparation for or during the mediation session. Appeals also has the discretion to have Counsel, the originating function, or both, participate in the mediation proceeding." *Id.*

.06 *Communications with Counsel.*

(1) *General Rule.* As provided in section 2.02(3), above, the Chief Counsel is the legal adviser to the Commissioner and his or her officers and employees (including employees of Appeals) on all matters pertaining to the interpretation, administration, and enforcement of the internal revenue laws and related statutes. As part of the legal advice process, attorneys in the Office of Chief Counsel exercise independent judgment in addressing the strengths and weaknesses of the parties' respective positions, the hazards of litigation, the quality and admissibility of the evidence, and how a judge might react to the evidence or particular arguments.

Appeals employees are entitled to obtain legal advice from attorneys in the Office of Chief Counsel and, except as provided below, are permitted to do so under the *ex parte* communication rules. Appeals employees generally are not bound by the legal advice that they receive from the Office of Chief Counsel. The legal advice is but one factor that Appeals will take into account in its consideration of the case. Appeals employees independently evaluate the strengths and weaknesses of the specific issues in the cases assigned to them and make an independent judgment concerning the overall strengths and weaknesses of the cases they are reviewing and the hazards of litigation. See IRM 8.6.2.6.4 and 8.6.4.1.

Appeals employees should not communicate *ex parte* regarding an issue in a case pending before them with a field attorney if the field attorney personally provided le-

gal advice regarding the same issue in the same case to the originating function or personally served as an advocate for the originating function regarding the same issue in the same case. This restriction only applies while Appeals is performing its duties of evaluating the strengths and weaknesses of the specific issues in specific cases and the overall hazards of litigation for those cases. If an Appeals employee is not functioning in that capacity, for example, if an Appeals employee is preparing a statutory notice of deficiency, this restriction does not apply.

(2) *Docketed Cases.*

(a) *In General.* The *ex parte* communication rules do not apply to communications between Appeals and Counsel in connection with cases docketed in the United States Tax Court. Communications between Appeals and the originating function in docketed cases are still subject to the *ex parte* communication rules if the case is within Appeals' settlement jurisdiction.

(b) *Collection Due Process Cases.* For a discussion of the application of the *ex parte* communication rules to CDP cases remanded by the Tax Court, see section 2.03(10)(c).

.07 *Communications with Other IRS Functions*.

(1) *Outside Consultants and Experts.* Outside consultants or experts under contract with the IRS, other than those hired directly by Appeals, are treated as IRS employees for purposes of this revenue procedure. Consequently, communications between Appeals and these outside consultants or experts are subject to the *ex parte* communication rules. See section 2.02(6). In contrast, communications between Appeals and outside consultants or experts hired by Counsel in docketed cases are not subject to the *ex parte* communication rules. See section 2.06(2).

(2) *Criminal Investigation.* Criminal Investigation (CI) is not an originating function as defined in section 2.01(2), above, because Appeals does not review CI's determinations. Communications between Appeals and CI are generally ministerial in nature. For example, Appeals and CI may confirm the existence of a CI investigation, which would freeze Appeals' action, or Appeals may review a CI closed case to find information relevant to the case that Appeals is reviewing. Similarly, CI may communicate *ex parte* with Appeals to obtain information or documents in Appeals' possession that may be relevant to the activities of CI or to ensure that Appeals' actions will not interfere with any ongoing criminal investigation or be inconsistent with any prior criminal investigations. Since these types of communications do not address the strengths or weaknesses of an open case, they are permissible under section 2.02(6), above. For a discussion of communications between Appeals and CI that go beyond the above matters, see section 2.03(13), above.

(3) *Competent Authority.* The United States Competent Authority is responsible for the timely and effective implementation of tax treaties and tax information exchange agreements. Communications between Appeals and IRS employees at the request or on behalf of the competent authority relating to a taxpayer's request for relief under competent authority procedures, see Rev. Proc. 2006–54, 2006–2 C.B. 1035, are permissible. It is presumed that the competent authority is acting at the request and with the consent of the taxpayer. Communications between Appeals and IRS employees that are unrelated to the taxpayer's request for relief under competent authority procedures, however, continue to be subject to the *ex parte* communication rules.

(4) *Taxpayer Advocate Service.* Communications with Appeals that are initiated by the Taxpayer Advocate Service (TAS) are permissible. It is presumed that the TAS employees are acting at the request and with the consent of the taxpayer. Due to the nature of their role within the IRS and their relationship with the taxpayer, TAS employees may discuss with Appeals the strengths and weaknesses of the parties' respective positions and may advocate for a particular result in the case.

(5) *Commissioner and Other IRS Officials with Overall Supervisory Responsibilities.* The Commissioner is responsible for administering, managing, conducting, directing, and supervising the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party. I.R.C. § 7803(a)(2)(A). In the course of exercising that statutory responsibility, the Commissioner and those officials, such as the Deputy Commissioners, who have overall supervisory responsibility for IRS operations, may communicate with Appeals about specific cases or issues and may direct that other IRS officials, including Counsel officials, participate in meetings or discussions about cases or issues without providing the taxpayer/representative an opportunity to participate.

.08 *Communications with Other Governmental Entities.*

(1) *Joint Committee on Taxation.* Section 6405 requires the IRS to submit a report to the Joint Committee on Taxation concerning any refund or credit in excess of the statutory amount, and the IRS must wait at least 30 days after submitting the report before making the refund or credit that is the subject of the report. The Joint Committee or its staff will occasionally question a settlement or raise a new issue. Communications between Appeals and the Joint Committee or its staff are permissible without providing the taxpayer/representative an opportunity to participate. The *ex parte* communication rules only apply to communications between Appeals and other IRS employees. Since the Joint Committee is part of the Legislative Branch, not the IRS, the *ex parte* communication rules do not apply to communications with the Joint Committee or its staff.

(2) *Department of Justice.* Appeals may communicate with employees of the Department of Justice, including the U.S. Attorneys' offices, without giving the taxpayer/representative an opportunity to participate. The *ex parte* communication rules only apply to communications between Appeals and other IRS employees. Since the Department of Justice is not part of the IRS, the *ex parte* communication rules do not apply to communications with the Department of Justice.

.09 *Monitoring Compliance.* It is the responsibility of all IRS employees to ensure compliance with the *ex parte* communication rules. All IRS employees will make every effort to promptly terminate any communications not permitted by the *ex parte* communication rules. To improve understanding of the *ex parte* communication rules, Appeals and other impacted IRS employees, including Counsel, will receive training on the contents of this revenue procedure and will be encouraged to seek managerial guidance whenever they have questions about the propriety of an *ex*

parte communication. Additionally, managers will consider feedback from other functions and will be responsible for monitoring compliance during their day-to-day interaction with employees, as well as during workload reviews and closed case reviews. Breaches will be addressed in accordance with existing administrative and personnel processes on a case-by-case basis.

.10 *Remedies Available to Taxpayers.*

(1) *General Rule.* The *ex parte* communication rules set forth in this revenue procedure do not create substantive rights affecting the taxpayer's tax liability or the IRS' ability to determine, assess, or collect that tax liability, including statutory interest and any penalties, if applicable. The IRS takes the *ex parte* communication rules seriously and will continue its efforts to ensure compliance through training and oversight. Most breaches of the *ex parte* communication rules may be cured by timely notifying the taxpayer/representative of the situation, sharing the communication or information in question, and affording the taxpayer/representative an opportunity to respond. Consequently, Appeals shall notify the taxpayer/representative of the breach and request input from the taxpayer/representative regarding the appropriate remedy for a breach of the *ex parte* communication rules. After considering the specific facts and discussing the matter with the taxpayer/representative, as appropriate, Appeals may determine that an additional remedy is warranted, including reassigning the case to a different Appeals/Settlement Officer who has had no prior involvement in the case. The specific administrative remedy, however, that may be made available in any particular case is within the sole discretion of Appeals. The deciding official for the determination of the appropriate remedy for a breach of the *ex parte* communication rules will be a second-level manager. For a discussion of court directed cures for breaches of the *ex parte* communication rules, see section 2.10(2), below.

(2) *Collection Due Process Cases.* If the Tax Court determines that a breach of the *ex parte* communication rules occurred during the course of a CDP hearing in Appeals, the Tax Court may remand the case to Appeals for either a new or a supplemental hearing, depending upon what steps the court concludes are necessary to rectify the breach. See section 2.03(10)(c), above.

SECTION 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000–43, 2000–2 C.B. 404, is amplified, modified, and superseded.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for communications between Appeals employees and other IRS employees, including Counsel, that take place after May 15, 2012.

SECTION 5. DRAFTING INFORMATION

The principal authors of this revenue procedure are Henry S. Schneiderman, Office of the Associate Chief Counsel (Procedure and Administration) and April Adams-Johnson, Office of Appeals. For further information regarding this revenue procedure, contact Mr. Schneiderman at (202) 622–3400 (not a toll-free number) or Ms. Adams-Johnson at (203) 781–3143 (not a toll-free number).

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

Bulletins 2012–1 through 2012–10

Announcements:

2012-1, 2012-1 I.R.B. *249*
2012-2, 2012-2 I.R.B. *285*
2012-3, 2012-4 I.R.B. *335*
2012-4, 2012-4 I.R.B. *335*
2012-5, 2012-5 I.R.B. *348*
2012-6, 2012-6 I.R.B. *366*
2012-7, 2012-6 I.R.B. *367*
2012-8, 2012-7 I.R.B. *373*
2012-9, 2012-7 I.R.B. *377*

Notices:

2012-1, 2012-2 I.R.B. *260*
2012-3, 2012-3 I.R.B. *289*
2012-4, 2012-3 I.R.B. *290*
2012-5, 2012-3 I.R.B. *291*
2012-6, 2012-3 I.R.B. *293*
2012-7, 2012-4 I.R.B. *308*
2012-8, 2012-4 I.R.B. *309*
2012-9, 2012-4 I.R.B. *315*
2012-10, 2012-5 I.R.B. *343*
2012-11, 2012-5 I.R.B. *346*
2012-12, 2012-6 I.R.B. *365*
2012-13, 2012-9 I.R.B. *421*
2012-14, 2012-8 I.R.B. *411*
2012-15, 2012-9 I.R.B. *424*
2012-16, 2012-9 I.R.B. *427*
2012-17, 2012-9 I.R.B. *430*
2012-18, 2012-10 I.R.B. *438*
2012-19, 2012-10 I.R.B. *440*
2012-21, 2012-10 I.R.B. *450*

Proposed Regulations:

REG-109369-10, 2012-9 I.R.B. *434*
REG-130302-10, 2012-8 I.R.B. *412*
REG-149625-10, 2012-2 I.R.B. *279*
REG-102988-11, 2012-4 I.R.B. *326*
REG-124627-11, 2012-8 I.R.B. *417*
REG-130777-11, 2012-5 I.R.B. *347*

Revenue Procedures:

2012-1, 2012-1 I.R.B. *1*
2012-2, 2012-1 I.R.B. *92*
2012-3, 2012-1 I.R.B. *113*
2012-4, 2012-1 I.R.B. *125*
2012-5, 2012-1 I.R.B. *169*
2012-6, 2012-1 I.R.B. *197*
2012-7, 2012-1 I.R.B. *232*
2012-8, 2012-1 I.R.B. *235*
2012-9, 2012-2 I.R.B. *261*
2012-10, 2012-2 I.R.B. *273*
2012-11, 2012-7 I.R.B. *368*

Revenue Procedures— Continued:

2012-12, 2012-2 I.R.B. *275*
2012-13, 2012-3 I.R.B. *295*
2012-14, 2012-3 I.R.B. *296*
2012-15, 2012-7 I.R.B. *369*
2012-16, 2012-10 I.R.B. *452*
2012-17, 2012-10 I.R.B. *453*
2012-18, 2012-10 I.R.B. *455*

Revenue Rulings:

2012-1, 2012-2 I.R.B. *255*
2012-2, 2012-3 I.R.B. *286*
2012-3, 2012-8 I.R.B. *383*
2012-4, 2012-8 I.R.B. *386*
2012-5, 2012-5 I.R.B. *337*
2012-6, 2012-6 I.R.B. *349*
2012-7, 2012-6 I.R.B. *362*

Treasury Decisions:

9559, 2012-2 I.R.B. *252*
9560, 2012-4 I.R.B. *299*
9561, 2012-5 I.R.B. *341*
9562, 2012-5 I.R.B. *339*
9563, 2012-6 I.R.B. *354*
9565, 2012-8 I.R.B. *378*
9566, 2012-8 I.R.B. *389*
9567, 2012-8 I.R.B. *395*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2012–1 through 2012–10

Announcements:

2002-44
Supplemented by
Notice 2012-13, 2012-9 I.R.B. *421*

2011-63
Corrected by
Ann. 2012-9, 2012-7 I.R.B. *377*

Notices:

2006-87
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2007-25
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2007-77
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2008-107
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2010-27
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2010-88
As modified by Ann. 2011-40, is superseded by
Notice 2012-1, 2012-2 I.R.B. *260*

2011-8
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2011-28
Superseded by
Notice 2012-9, 2012-4 I.R.B. *315*

Revenue Procedures:

2000-43
Amplified, modified and superseded by
Rev. Proc. 2012-18, 2012-10 I.R.B. *455*

2003-61
Superseded by
Notice 2012-8, 2012-4 I.R.B. *309*

2007-44
Modified by
Ann. 2012-3, 2012-4 I.R.B. *335*

2011-1
Superseded by
Rev. Proc. 2012-1, 2012-1 I.R.B. *1*

Revenue Procedures— Continued:

2011-2
Superseded by
Rev. Proc. 2012-2, 2012-1 I.R.B. *92*

2011-3
Superseded by
Rev. Proc. 2012-3, 2012-1 I.R.B. *113*

2011-4
Superseded by
Rev. Proc. 2012-4, 2012-1 I.R.B. *125*

2011-5
Superseded by
Rev. Proc. 2012-5, 2012-1 I.R.B. *169*

2011-6
Superseded by
Rev. Proc. 2012-6, 2012-1 I.R.B. *197*

2011-7
Superseded by
Rev. Proc. 2012-7, 2012-1 I.R.B. *232*

2011-8
Superseded by
Rev. Proc. 2012-8, 2012-1 I.R.B. *235*

2011-9
Superseded by
Rev. Proc. 2012-9, 2012-2 I.R.B. *261*

2011-10
Superseded by
Rev. Proc. 2012-10, 2012-2 I.R.B. *273*

2011-37
Obsoleted in part by
Rev. Proc. 2012-16, 2012-10 I.R.B. *452*

2011-40
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2011-49
Modified by
Ann. 2012-3, 2012-4 I.R.B. *335*

2011-50
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2011-51
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2012-8
Corrected by
Ann. 2012-7, 2012-6 I.R.B. *367*

Revenue Rulings:

92-19
Supplemented in part by
Rev. Rul. 2012-6, 2012-6 I.R.B. *349*

Revenue Rulings— Continued:

2008-40
Modified by
Notice 2012-6, 2012-3 I.R.B. *293*

2011-1
Modified by
Notice 2012-6, 2012-3 I.R.B. *293*

Treasury Decision:

9517
Corrected by
Ann. 2012-4, 2012-4 I.R.B. *335*
Ann. 2012-5, 2012-5 I.R.B. *348*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

U.S. GOVERNMENT PRINTING OFFICE
KEEPING AMERICA INFORMED

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Order Processing Code: 3465

Easy Secure Internet: bookstore.gpo.gov

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 979050
St. Louis, MO 63197-9000

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048–004–02467–5	Cum. Bulletin 1999–3	20.40	
	048–004–02462–4	Cum. Bulletin 2001–2 (Jul-Dec)	24.00	
	048–004–02480–2	Cum. Bulletin 2001–3	71.00	
	048–004–02470–5	Cum. Bulletin 2002–2 (Jul-Dec)	28.80	
	048–004–02486–1	Cum. Bulletin 2002–3	54.00	
	048–004–02483–7	Cum. Bulletin 2004–2 (July–Dec)	54.00	
	048–004–02488–8	Cum. Bulletin 2005–2	56.00	
			Total for Publications	

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	$247	
		Optional – Add $50 to open Deposit Account		
			Total for Subscriptions	
			Total for Publications and Subscriptions	

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

❑ VISA ❑ MasterCard ❑ Discover/NOVUS ❑ American Express

❑ Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

_____

Please print or type your name.

Daytime phone number (_____) _____

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of $50 you can establish your Superintendent of Documents Deposit Account.

❑ **YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the $50 initial deposit.

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ SOD Deposit Account ☐☐☐☐☐☐☐ – ☐

❑ VISA ❑ MasterCard ❑ Discover/Novus ❑ American Express

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (expiration date)

Thank you for your Order!

_____
Authorizing signature 06/06

_____
Company or personal name (Please type or print)

_____
Additional address/attention line

_____
Street address

_____
City, State, Zip Code

_____
E-mail address

_____
Daytime phone including area code

_____
Purchase order number (optional)

---

*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of $50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197–9000. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300