

# A Compendium Of 2004 Federal Court Decisions And Treasury Department And Internal Revenue Service Decisions And Issuances On Taxation (General Business Edition)

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## **I. Organizational Structure-Related Issues:**

### **A. Corporations & Partnerships:**

IRS **Rev. Ruling 2004-59** explains the federal tax consequences when an entity classified as a partnership for federal tax purposes converts into a state law corporation under a state statute that does not require an actual transfer of the unincorporated entity's assets or interests. (See Internal Revenue Bulletin 2004-24 of June 14, 2004, page 1050).

IRS **Rev. Ruling 2004-43** describes the applications of § 704 (c) (1) (B) and 737 of the Internal Revenue Code to assets-over partnership mergers. (See Internal Revenue Bulletin 2004-18 of May 3, 2004, page 842).

IRS **Rev. Ruling 2004-77** concludes that, if an eligible entity has two owners under local law, but one of the owners is, for federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as entity separate from its owner or association taxable as a corporation. (See Internal Revenue Bulletin 2004-31 of August 2, 2004, page 119).

IRS **Rev. Ruling 2004-78** discusses the exchange of a debt security for a debt instrument in a reorganization. (See Internal Revenue Bulletin 2004-31 of August 2, 2004, page 108).

IRS **Rev. Ruling 2004-88** addresses whether a disregarded entity partner will disqualify a partnership from being a "small partnership" excluded from the TEFRA partnership provisions. The ruling also discusses whether a disregarded entity may be designated as the tax matters partner of a partnership. (See Internal Revenue Bulletin 2004-32 of August 9, 2004, page 165).

**Treasury Decision 9809** issues temporary regulations under § 1502 of the Code and amend proposed regulations (REG-132760-03, 2003-43 I.R.B. 933) and temporary regulations (T.D. 9089, 2003-43 I.R.B. 906). These regulations provide guidance concerning how a corporation that is a member of a consolidated group reduces its tax attributes when that member realizes discharge of indebtedness income that is excluded from gross income under § 108. (See Internal Revenue Bulletin 2004-52 of December 29, 2003, page 1256).

**Treasury Decision 9126** contains final regulations relating to the capital account maintenance rules under § 704 of the Internal Revenue Code. These regulations expand the rules regarding a partnership's rights to adjust capital accounts to reflect unrealized appreciation and depreciation in the value of partnership assets. (See Internal Revenue Bulletin 2004-23 of June 7, 2004, page 1023).

*Critical Initiatives:* The Tax Exempt and Government Entities Division of the IRS has announced that two of its four critical initiatives for FY 2005 will involve trade associations and other tax exempt organizations. These initiatives are: "abusive tax avoidance transactions" and "excessive compensation. The Division issued a comprehensive 28-page paper on these matters in November 2004 that can be found at the IRS web site: [http://www.irs.gov/pub/iretege/implementing\\_guidelines\\_1104.pdf](http://www.irs.gov/pub/iretege/implementing_guidelines_1104.pdf)

**Treasury Decision 9113** issues final, temporary, and proposed regulations under § 6038A of the Internal Revenue Code amend existing regulations to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. The regulations affect corporations subject to the reporting requirements in sections 6038A and 6038C that file Form 5472 electronically. (See *Internal Revenue Bulletin* 2004-9 of March 1, 2004, page 524).

IRS **Rev. Ruling 2003-125** discusses when a shareholder is, and is not, allowed a worthless security deduction under § section 165(g) (3) of the Internal Revenue Code when an election is made to change the federal tax classification of an entity from a corporation to a disregarded entity. **Rev. Rul. 70-489** superseded and **Rev. Rul. 59-296** amplified. (See *Internal Revenue Bulletin* 2004-52 of December 29, 2003, page 1243).

IRS **Announcement 2003-85** contains corrections to proposed regulations (**REG-128203-02, 2003-41 I.R.B. 828**) under § 460 of the Internal Revenue Code that provide guidance regarding the income tax consequences of certain partnership transactions involving contracts accounted for under a long term contract method of accounting. (See *Internal Revenue Bulletin* 2003-51 of December 22, 2003, page 1237).

**Treasury Decision 9101** and **IRS Temporary Regulation 156232-03** issue both temporary and proposed regulations under § 6043 of the Internal Revenue Code that provide information on reporting rules regarding corporations which are acquired, or which experience a recapitalization or other substantial change in capital structure. The proposed regulations also withdraw REG-143321-02. (See *Internal Revenue Bulletin* 2004-5 of February 2, 2004, page 399)

**Treasury Decision 9153** contains temporary regulations providing clarification of the definitions of a corporation and a domestic entity in circumstances where the business entity is considered to be created or organized in more than one jurisdiction. These regulations affect business entities that are created or organized under the laws of more than one jurisdiction. (See *Internal Revenue Bulletin* 2004-39 of September 27, 2004, page 517).

**Treasury Decision 9101** and **Temporary Regulation 156232-03** issue both temporary and proposed regulations under § 6043 of the Internal Revenue Code that provide information on reporting rules regarding corporations which are acquired, or which experience a recapitalization or other substantial change in capital structure. The proposed regulations also withdraw REG-143321-02. (See *Internal Revenue Bulletin* 2004-5 of February 2, 2004, page 399)

**IRS Rev. Ruling. 2004-47** deals with the application of § 265 of the Internal Revenue Code to affiliated corporate groups when one member of the group borrows from outside the group and makes funds available to another member of the group who is a dealer in tax-exempt securities. (See *Internal Revenue Bulletin* 2004-21 of May 24, 2004, page 941).

**IRS Notice 2004-71** provides that under § 1(h) (11) of the Internal Revenue Code certain dividends paid to an individual shareholder from either a domestic corporation nor a "qualified foreign corporation" are subject to tax at the reduced rates applicable to certain capital gains. This notice provides guidance for persons required to make returns and provide statements under section 6042 of the Internal Revenue Code (e.g. Form 1099-DIV) regarding distributions with respect to securities issued by a foreign corporation, and for individuals receiving such statements. The notice also describes when a security (or an American depository receipt in respect of such security) issued by a foreign corporation that is other than ordinary or common stock (such as preferred stock) will satisfy the readily tradable test. (See *Internal Revenue Bulletin* 2004-45 of November 8, 2004, page 793).

#### **B. Limited Liability Companies:**

IRS Rev. Ruling 2004-41 discusses the issue of whether the IRS can collect employment taxes owed by a multi-member domestic Limited Liability Company (LLC) from the members. (See *Internal Revenue Bulletin* 2004-41 of May 3, 2004, page 845).

#### **C. REITS, REMICS, & RICS:**

IRS Rev. Rule 2004-24 identifies the circumstances in which a Real Estate Investment Trust's (REIT'S) income from providing parking facilities at its rental real properties qualifies as rents from real property under § 856 (d) of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-10 of March 8, 2004, page 550).

**IRS Rev. Proc. 2004-28** describes conditions under which a taxpayer who has invested in a repurchase agreement (repo) may treat his position in the repo as a Government security for purposes as qualifying as a regulated investment company (RIC) under the asset diversification test of § 851 (b) (3) of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 984).

**Treasury Decision 9128** contains final regulations relating to the proper timing and source of income from fees received to induce taxpayers to become the holders of non-economic residual interests in Real Estate Mortgage Investment Conduits (REMICs). (See *Internal Revenue Bulletin* 2004-21 of May 24, 2004, page 941).

**IRS Rev. Proc. 2004-30** provides the procedures for taxpayers to change their methods of accounting for inducement fees received in connection with becoming holders of non-economic residual interests in Real Estate Mortgage Investment Conduits (REMICs) to a safe-harbor method provided under § 1.446 (e) (1) - (2) of the Income Tax Regulations. (See *Internal Revenue Bulletin* 2004-30 of May 24, 2004, page 950).

**IRS Notice 2004-39** provides guidance to RICs and REITs and their shareholders in applying § 1 (h) of the Internal Revenue Code to capital gain dividends of RICs and REITs. The notice explains how changes to § 1 (h) made by Public Law 108-27 (117 Stat. 752) apply to RIC and REIT capital gain dividends (or accounted for as if paid) in taxable years that end on or after May 6, 2003. (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 982).

#### **D. Subsidiaries:**

**IRS Notice 2004-58** sets forth a method that the IRS will accept for determining whether subsidiary stock loss is disallowed and subsidiary stock basis is reduced under § 1.337 (d) - 2T of the Income Tax Regulations. (See *Internal Revenue Bulletin* 2004-39 of September 27, 2004, page 520).

**IRS Rev. Ruling 2004-79** addresses the tax consequences of the distribution by a subsidiary to its parent of parent indebtedness that the subsidiary previously purchased from a party unrelated to the parent. (See *Internal Revenue Bulletin* 2004-31 of August 2, 2004, page 106).

**Treasury Decision 9154** contains temporary regulations under § 1502 of the Internal Revenue Code. These temporary regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss of subsidiary stock and permit consolidated groups to revoke such elections. They also affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. (See *Internal Revenue Bulletin* 2004-40 of October 4, 2004, page 560).

**Treasury Decision 9155** contains temporary regulations under § 1502 that provide guidance regarding the treatment of certain losses available to acquired subsidiaries as a result of an election made under the § 1502 regulations. (See *Internal Revenue Bulletin* 2004-40 of October 4, 2004, page 562).

#### **E. Non-Profit Trade Associations:**

**IRS Rev. Ruling 2004-112** provides that in one situation, the internet activities conducted by a trade association described in § 501 (c) (6) of the Code on a special supplementary section of its Internet website do not constitute unrelated trade or business under § 513 (a), because such activities meet the exception for qualified convention and trade show activity under § 513 (d) (3) (B). However, in a second situation, the internet activities of another trade association do not meet the § 513 (d) (3) (B) exception. (See *Internal Revenue Bulletin* 2004-51 of December 20, 2004, page 985).

*Compensation Practices and Procedures:* IRS news release IR- 2004-106 of August 10, 2004, announced that the IRS will contact nearly 2,000 charities and other non- profit organizations to see more information about their compensation practices and procedures for association executives. The Tax Exempt Compensation Enforcement Project will include examinations and other contacts. Because part of the project's objective is to gather information about current practices, an IRS contact should not necessarily imply improper activity by a non-profit organization.

*Critical Initiatives:* The Tax Exempt and Government Entities Division of the IRS has announced that two of its four critical initiatives for FY 2005 will involve trade associations and other tax exempt organizations. These initiatives are: "abusive tax avoidance transactions" and "excessive compensation. The Division issued a comprehensive 28-

page paper on these matters in November 2004 that can be found at the IRS web site:  
[http://www.irs.gov/pub/ire-tege/implementing\\_guidelines\\_1104.pdf](http://www.irs.gov/pub/ire-tege/implementing_guidelines_1104.pdf).

*Exempt Organizations Update:* The IRS has established a free e-mail service for tax professionals and representatives of tax-exempt organizations provides e-mail updates and alerts from the IRS about developments in exempt organizations tax law and regulations, upcoming IRS training and events, and other information at:  
<http://www.irs.gov/charities/article/0,,id=131153,00.html>. An Adobe Acrobat Reader (downloadable at no cost from the IRS site) is required to view, print, and search the file. (Note to Adobe Acrobat 4.0 and 5.0 Users: This file contains web links. Be sure that the "Open Web Links" option (for 4.0, under "File, Preferences, Web Capture"; for 5.0, under "Edit, Preferences, Web Capture") is set to "In Web Browser", otherwise Adobe will Convert the accessed web pages to "pdf" format and "add" them to the newsletter file.

*E-File Filing Program:* The IRS has designed a new electronic filing process for Form 990 / 990EZ under the IRS e-file program, which began in February, 2004. The National Association of State Charity Officials (NASCO) has partnered with the IRS to ensure that state requirements are considered. Currently, thirty-seven states/local governments accept Form 990/990EZ to satisfy their filing or registration requirements. The Form 990 series of returns is used by tax-exempt organizations, including the Association of State Charity Officials (NASCO), which has partnered with the IRS to ensure that state requirements are considered. Currently, thirty-seven states/local governments accept Form 990/990EZ to satisfy their filing or registration requirements. A series of returns is used by tax-exempt organizations including charities and non-profit organizations to provide disclosure of releasable data to the public as provided by law. Release I included Forms 990, 990EZ, 1120 POL and 8868. The remaining Form 990 types will be included in a later release. IRS advocates that non-profit organizations (and their tax professionals) utilize this system

#### **F. Federal Court Decisions:**

**Ct. D. (Court Decision) 2079** involves a holding by the U. S. Supreme Court (U. S. v. Galletti, No. 02-1389, March 23, 2004) that "the proper tax assessment against a Partnership suffices to extend the statute of limitations to collect the tax in a judicial proceeding from the general partners who are liable for the payment of the Partnership's debts." (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 978).

## **II. Special Programs:**

### **A. Low-Income Housing:**

**Treasury Decision 9112** contains regulations that facilitate the electronic filing of Form 8609, "Low-Income Housing Credit Allocation Certification." The regulation affects taxpayers who file Form 8609. (See *Internal Revenue Bulletin* 2004-9 of March 1, 2004, page 523).

**IRS Rev. Proc. 2004-38** informs owners of qualified low-income housing projects as how to obtain the waiver from the IRS of the annual recertification of tenant income provided for in § 42 (g) (8) (B) of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-27 of July 6, 2004, page 10).

**IRS Rev. Ruling 2004-87** provides rules for the application of § 280 G of the Internal Revenue Code with respect to "golden parachutes" in the context of a bankruptcy. (See *Internal Revenue Bulletin* 2004-32 of August 9, 2004, page 154).

**IRS Rev. Ruling 2004-82** answers twelve questions about the low-income housing tax credit under § 42 of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-35 of August 30, 2004, page 350).

**IRS Rev. Ruling 2004-100** announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through December 2004. (See *Internal Revenue Bulletin* 2004-44 of November 1, 2004, page 718).

IRS Notice 2004-74 suspends certain income limitation requirements under § 42 of the Internal Revenue Code for certain low-income housing credit properties in Alabama as a result of the devastation caused by Hurricane Ivan. (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, page 875).

IRS Notice 2004-75 suspends certain income limitation requirements under § 42 of the Internal Revenue Code for certain low-income housing credit properties in Ohio as a Result of the devastation caused by remnants of Hurricanes Ivan and Frances. (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, page 876).

IRS Notice 2004-76, (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, suspends income limitation requirements § 42 of the Internal Revenue Code for certain low-income housing credit properties in Florida as result of the devastation caused by Hurricanes Charley, Frances, Ivan, and Jeanne. Notice 2004-66 is amplified and superseded. (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, page 877).

#### **B. New Market Tax Credits:**

Treasury Decision 9116 contains amendments to temporary regulations for the New Market Tax Credits under § 45 D. These regulations revise and clarify certain aspects of those regulations and affect a taxpayer making a qualified investment in a qualified community development entity that has received a new markets tax credit allocation. (See *Internal Revenue Bulletin* 2004-14 of April 15, 2004, page 674).

#### **C. Residential Rental Bonds:**

IRS Rev. Proc. 2004-39 provides guidance to states and local governments that issue bonds to which § 142 (d) of the Internal Revenue Code applies and sets forth procedures for determining whether a residential rental project is in compliance with the applicable set-aside requirements contained in that section during the qualified project period as defined in § 142 (d) (2) (A). (See *Internal Revenue Bulletin* 2004-29 of July 19, 2004, page 49).

#### **D. Environmental Matters:**

IRS Rev. Ruling 2004-17 holds that amounts paid or incurred in the current taxable year to remediate environmental contamination that occurred in prior taxable years do not qualify for treatment under § 1341 of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-8 of February 23, 2004, page 516).

IRS Rev. Ruling 2004-18 holds that the amounts incurred to clean up land that a taxpayer contaminated with hazardous waste by the operation of a manufacturing plant must be included in inventory costs under § 263 A of the Internal revenue Code. This ruling clarifies Rev. Rulings 94-38 and 98-25 and modifies and amplifies Rev. Proc. 2002-9. (See *Internal Revenue Bulletin* 2004-8 of February 23, 2004, page 509).

IRS Notice 2004-41 informs taxpayers that the Internal Revenue Service will, in appropriate cases, reduce or disallow deductions claimed by taxpayers under § 170 of the Internal Revenue Code for transfers in connection with conservation easements. This notice also informs participant in these transactions that they may be subject to other adverse tax consequences, including penalties, excise taxes, and loss of tax-exempt status, as appropriate. (See *Internal Revenue Bulletin* 2004-28 of July 12, 2004, page 31).

#### **E. Multi-Family Accelerated Cost Recovery System (MACRS) Properties:**

Treasury Decision 9115 contains temporary regulations relating to the depreciation of property subject to § 168 of the Internal Revenue Code (MACRS property). These temporary regulations provide guidance on how to depreciate MACRS property acquired in a like-kind exchange under § 1031 or as a result of an involuntary conversion under § 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. (See *Internal Revenue Bulletin* 2004-14 of April 5, 2004, page 680).

Treasury Decision 9132 contains final and temporary regulations relating to the depreciation of property subject to the § 168 of the Internal Revenue Code (MACRS). These temporary regulations provide guidance on how to depreciate MACRS property for which the use changes in the hands of the same taxpayer. (See *Internal Revenue Bulletin* 2004-28 of July 12, 2004, page 16).

### **III. General Administrative Rules, Policies & Procedures:**

#### **A. Administrative, General:**

IRS **Notice 2004-9** announced the extension of certain 2004 deadlines under revised §§ 1.6043-4T and 1.6045-3T of the Income Tax Regulations for filing Form 8806 and furnishing Form 1099-CAP to clearing organizations. This notice also provides information to filers of Forms 1099-CAP and 1099-B to assist in complying with the reporting requirements set forth in those above revised regulations. (See *Internal Revenue Bulletin* 2004-4 of January 26, 2004, page 334).

IRS **Rev. Proc. 2004-58** provides requirements for reproducing paper substitutes and for furnishing substitute recipient statements for Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S, and will be reproduced in the next revision of Publication 1179. Rev. Proc. 2003-28 was superseded. (See *Internal Revenue Bulletin* 2004-41 of October 12, 2004, page 602).

IRS **Rev. Proc. 2004-62** sets forth requirements for privately designed and printed federal tax forms and conditions under which the Service will accept computer-prepared and computer-generated tax forms and schedules. Rev. Proc. 2003-73 is superseded. (See *Internal Revenue Bulletin* 2004-44 of November 1, 2004, page 728).

**Treasury Decision 9111** provides final regulations under § 6103 of the Internal Revenue Code related to the definition of agent for certain purposes. The regulations clarify that the term agent in certain provisions of § 6103 includes contractors. (See *Internal Revenue Bulletin* 2004-8 of February 23, 2004, page 518).

IRS **Rev. Ruling 2004-36** provides that for purposes of § 1.61-21(g) of the regulations, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2004 are set forth for determining the value of non-commercial flights on employer-provided aircraft. (See *Internal Revenue Bulletin* 2004-12 of March 22, 2004, page 620).

IRS **Rev. Proc. 2004-60** provides rules for deeming substantiated the amount of certain reimbursed traveling expenses (per diem) of an employee as well as optional rules for determining the amount of deductible meals and incidental expenses while traveling away from home. Rev. Proc. 2003-80 was superseded. (See *Internal Revenue Bulletin* 2004-42 of October 18, 2004, page 682).

IRS **Rev. Proc. 2004-64** announces 40.5 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 15 cents as the optional rate for use of an automobile as a medical or moving expense for 2005. It provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 2003-76 superseded. (See *Internal Revenue Bulletin* 2004-49 of December 6, 2004, page 898).

IRS **Rev. Ruling 2004-98** holds that certain amounts paid to an employee as "reimbursements" for a parking expense that the employee supposedly "paid" through a salary reduction are wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the collection of income tax at source of wages (federal income tax withholding). See *Internal Revenue Bulletin* 2004-42 of October 18, 2004, page 664).

**Treasury Decision 9109** provides final regulations under §§ 6662 and 6663 of the Internal Revenue Code limit the defenses available to the imposition of the accuracy-related penalty when taxpayers fail to disclose reportable transaction or fail to disclose they have taken a position based upon a regulation being invalid. The regulations also clarify the existing regulations with respect to the facts and circumstance that the IRS will consider in determining whether a taxpayer acted with reasonable cause and in good faith in relying on an opinion or advice. The regulations provide that failure to disclose a reportable transaction strongly indicates that the taxpayer did not act in good faith. (See *Internal Revenue Bulletin* 2004-8 of February 23, 2004, page 519).

**Treasury Decision 9161** issues final regulations under § 6038A of the Internal Revenue Code amending the existing regulations to provide that a Form 5472 that is timely filed electronically is treated as satisfying the requirement of timely filing a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania. The regulations affect corporations subject to the reporting requirements in §§ 6038A and 6038C that file Form 5472 electronically. (See *Internal Revenue Bulletin* 2004-43 of October 26, 2004, page 704).

IRS **REG-138176-02** proposes regulations under § 7502 of the Internal Revenue Code amending regulations § 301.7502-1 to provide that, other than direct proof of actual delivery, a registered or certified mail receipt is the only prima facie evidence of delivery of documents that have a filing deadline prescribed by the internal revenue laws. The regulations affect taxpayers who mail federal tax documents to the Internal Revenue Service or the U. S. Tax Court. (See *Internal Revenue Bulletin* 2004-43 of October 26, 2004, page 710).

IRS **Rev. Ruling 2004-103** modifies Rev. Ruling 95-63 with respect to countries described in § 901(j) § (2) (A) (as nations fostering terrorism) by providing that Iraq ceased to be described in that section on June 27, 2004. (See *Internal Revenue Bulletin* 2004-45 of November 8, 2004, page 783).

IRS **Announcement 2004-4** states the availability of new Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure". This form is used by a reporting corporation to report an acquisition of control or a substantial change in the capital structure of a domestic corporation. (See *Internal Revenue Bulletin* 2004-4 of January 26, 2004, page 362).

IRS **Announcement 2003-75** provides updated requirements relating to the composite substitute statement procedures, outlined in Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G and 1042-S. These procedures have been revised to allow composite substitute statements to be furnished for Form 1099-DIV and For 1099-MISC reporting substitute payments in lieu of dividends. All other rules and specifications for preparing substitute forms remain the same. Rev. Proc. 2003-28, 2003-16 I.R.B. 759, modified in part. (See *Internal Revenue Bulletin* 2003-49 of December 8, 2003, page 1195).

IRS **Announcement 2004-93** solicits applications from potential partners to participate in the 2005 IRS Individual e-file Partnership Program. The partnership opportunities are a result of RRA 98, which requires the IRS to receive 80 percent of all returns electronically by 2007. RRA 98 authorized the IRS Commissioner to promote the benefits and encourage the use of e-file services through partnerships with various entities that offer low cost tax preparation and electronic filing of individual income tax returns for qualified taxpayers. Those applicants that are accepted as partners will have a link(s) and description (s) of their services placed on the IRS website at [www.irs.gov](http://www.irs.gov) (Partners Page). (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, page 882).

#### **B. Accounting Methods:**

IRS **Announcement 2003-86**, page 1237 contains corrections to temporary regulations (T.D. 9090, 2003-43 I.R.B. 891) under § 448(d)(5) of the Internal Revenue Code that provide guidance regarding the use of a non-accrual experience method by taxpayers using an accrual method of accounting and performing services. (See *Internal Revenue Bulletin* 2003-51 of December 22, 2003, page 1237).

Rev. **Proc. 2004-11** provides an automatic consent procedure allowing a taxpayer to make a change in method of accounting for certain depreciable or amortizable property after its disposition, waives the two-year rule in Rev. Rule 90-38 with respect to certain changes in depreciation or amortization, and modifies other revenue procedures to conform with regulations § 1.446-1T (e) (2) (ii) (d). Rev. Procedures 2000-38, 2000-50, and 2002-9 were modified. (See *Internal Revenue Bulletin* 2004-3 of January 19, 2004, page 311).

**Treasury Decision 9131** issues final regulations amending the regulations under §§ 263A and 448 of the Internal Revenue Code to allow taxpayers changing a method of accounting under those sections to take any adjustment under § 481(a) resulting from the change into account over the same number of taxable years that applies to taxpayers changing a method of accounting under the general administrative procedures issued by the Service. (See *Internal Revenue Bulletin* 2004-27 of July 6, 2004, page 2).

**Treasury Decision 9137** contains final regulations relating to partnership transactions involving contracts accounted for under a long-term contract method of accounting. The regulations were necessary to resolve issues that were reserved under § 460 as published in the Federal Register of May 15, 2002 and addressing other mid-contract changes for taxpayers engaged in completing such contracts. The effect of the regulations is to explain the tax consequences of these partnership transactions. (See *Internal Revenue Bulletin* 2004-34 of August 23, 2004, page 308).

IRS **Announcement 2004-16** states that Form 3115, "Application for Change in Accounting Method," and its instructions were revised December 2003. This revision is the current version of Form 3115 used to request a change in accounting method. Rev. Procs. 2001-10, 2001-23, 2002-9, and 2002-28 are modified accordingly. (See *Internal Revenue Bulletin* 2004-13 of March 29, 2004, page 668).

IRS **Rev. Proc. 2004-34** provides a method of accounting under which taxpayers using an accrual method of accounting may defer including all or part of certain advance payments in gross income until the year after the year the payment is received. Rev. Proc. 71-21 was modified and superseded and Rev. Proc. 2002-9 is modified and amplified. (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 991).

IRS **Announcement 2004-48** provides background information relating to Rev. Proc. 2004-34 (above). (See *Internal Revenue Bulletin* 2002-22 of June 1, 2004, page 998).

IRS **Rev. Proc. 2004-69** prescribes the loss payment patterns and discount factors for the 2004 accident year. These factors will be used for computing discounted unpaid losses under § 846 of the Internal Revenue Code. See Rev. Proc. 2003-17, 2003-1 C.B. 427, for background concerning the loss payment patterns and application of the discount factors. (See *Internal Revenue Bulletin* 2004-49 of December 6, 2004, page).

#### **C. Advanced Payments for Services and Non-Services:**

IRS **Announcement 2004-48** discusses some of the more significant issues raised in connection with the finalization of Rev. Proc. 2004-34 (below). (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 998).

IRS **Rev. Proc. 2004-34** finalized, with modifications, the revenue procedure proposed in 2002 to modify and supersede Rev. Proc. 71-21, 1971-2 C. B. 549. The modified procedure affects certain advanced payments for services, certain non-services and combinations of services and non-services. (See *Internal Revenue Bulletin* 2004-22 of June 1, 2004, page 991).

#### **D. Advance Pricing Agreements:**

IRS **Rev. Proc. 2004-40** explains how taxpayers may request an advance pricing agreement (APA) from the APA Program within the Office of the Associate Chief Counsel (International), the manner that requests will be processed by the APA Program, and the effect and administration of APAs. Rev. Proc. 96-53 and Notice 98-65 were superseded. (See *Internal Revenue Bulletin* 2004-29 of July 19, 2004, page 50).

#### **E. Advance Rentals:**

**Treasury Decision 9135** issues final regulations under § 61 of the Code which amend § 1.61-8 (b) of the regulations to authorize the Commissioner of Internal Revenue to provide rules allowing for the inclusion of certain advance rentals in gross income in a year other than the year of receipt. (See *Internal Revenue Bulletin* 2004-30, of July 26, 2004, page 65).

#### **F. Delinquent Taxes:**

IRS **Notice 2004-81** provides tables that show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2005. (See *Internal Revenue Bulletin* 2004-51 of December 20, 2004, page 996).

## G. Depreciation/Amortization:

**Treasury Decision 9105** contains regulations relating to a change in computing depreciation or amortization as well as a change from a non-depreciable or non-amortizable asset to a depreciable or amortizable asset (or vice versa). These regulations offer specific guidance to any taxpayer who makes a change in depreciation under § 446 (e) of the Internal Revenue Code and on the application of amortization as to whether such a change is a change in method of accounting under § 10-126 (a) (2) in determining whether the change is a change in method of accounting. (See *Internal Revenue Bulletin* 2004-5 of February 2, 2004, page 376).

**IRS Rev. Proc. 2004-20** provides owners and lessees of passenger automobiles (including g trucks, vans, and electric automobiles) with tables detailing the limitations on depreciation deductions for passenger automobiles first placed in service during calendar year 2004 and the amounts to be included in income for passenger automobiles first leased during calendar year 2004. Separate tables are provided for passenger automobiles qualifying for additional first-year bonus depreciation under § 168 (k). In addition, this procedure provides the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 2004 for which the vehicle cents-per-mile valuation rule provided under § 1.61-21(e) of the regulations may be applicable. (See *Internal Revenue Bulletin* 2004-13 of March 29, 2004, page 642).

**Treasury Decision 9133** contains regulations relating to the definition of passenger automobile for purposes of the dollar limits on depreciation deductions for passenger automobiles. These regulations affect certain taxpayers whose use vans and light trucks in their trade or business. (See *Internal Revenue Bulletin* 2004-28 of July 12, 2004, page 25).

**IRS Rev. Ruling 2004-36** provides that for purposes of § 1.61-21(g) of the regulations, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2004 are set forth for determining the value of non-commercial flights on employer-provided aircraft. (See *Internal Revenue Bulletin* 2004-12 of March 22, 2004, page 620).

## H. Filters:

**IRS Rev. Proc. 2004-65** provides exceptions to the contractual protection filter, which is a reportable transaction under § 1.6011-4 (b) (4) of the regulations. (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 965).

**IRS Rev. Proc. 2004-66** provides exceptions to the loss transaction filter, which is a reportable transaction under § 1.6011-4 (b) (5) of the regulations. Rev. Proc. 2003-24 is modified and superseded. (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 966).

**IRS Rev. Proc. 2004-67** provides exceptions to the book-tax filter, which is a reportable transaction under § 1.6011-4 (b) (6) of the regulations. Rev. Proc. 2003-25 is modified and superseded. (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 967).

**IRS Rev. Proc. 2004-68** provides exceptions to the book-tax filter, which is a reportable transaction under § 1.6011-4 (b) (6) of the regulations. Rev. Proc. 2003-25 is modified and superseded. (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 969).

## I. Generation-Skipping Transfer Tax:

**IRS Rev. Proc. 2004-46** provides a simplified alternate method to obtain an extension of time under § 301.9100-3 of the IRS Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) exemption in accordance with § 2642 (b) (1) of the Internal Revenue Code. This alternate method may be used in lieu of the letter ruling process. (See *Internal Revenue Bulletin* 2004-31 of August 2, 2004, page 142).

## J. Income from Discharge of Indebtedness:

**Treasury Decision 9127** involves final and temporary regulations under § 108 of the Internal Revenue Code clarify that if a taxpayer realizes excluded COD income either during or after the taxable year in which the taxpayer is the distributor or transferor of assets for a transaction described in § 381(a), those attributes to which the acquiring corporation succeeds, including the basis of property, must reflect the reductions required by § 108(b). (See *Internal Revenue Bulletin* 2004-24 of June 14, 2004, page 1042).

## K. Income Tax

**IRS Rev. Proc. 2004-45** provides alternative disclosure procedures that are deemed to satisfy a taxpayer's disclosure obligations under § 1.6011-4 of the Income Tax Regulations for transactions with a significant book-tax difference under § 1.6022-4 (b) (6). Taxpayers may also continue to follow the disclosure procedures provided in § 1.6011-4 for disclosing transactions described in § 1.6011-4 (b) (6). (See *Internal Revenue Bulletin* 2004-31 of August 2, 2004, page 140).

**Treasury Decision 9147** contains temporary regulations relating to an election that may be made by non-corporate taxpayers to treat qualified dividend income as investment income for calculating the deduction for investment interest. (See *Internal Revenue Bulletin* 2004-37 of September 13, 2004, page 461).

**IRS Rev. Ruling 2004-107** provides the dollar amounts, increased by the 2005 inflation adjustment, for § 1274 A of the Internal Revenue Code. Rev. Ruling 2003-119 are supplemented and superseded. (See *Internal Revenue Bulletin* 2004-47 of November 22, 2004, page 852).

**IRS Notice 2004-79** provides guidance regarding the definition of dependent under § 106 of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-49 of December 6, 2004, page 898).

**IRS Notice 2004-80** alerts taxpayers to recent amendments to §§ 6111, 6112, and 6708 of the Internal Revenue Code and provides interim guidance until regulations or other guidance is published (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 963).

**IRS Rev. Ruling 2004-111** establishes that the rate of interest determined under section 6621 of the Internal Revenue Code for the calendar quarter beginning January 1, 2005, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent. (See *Internal Revenue Bulletin* 2004-51 of December 20, 2004, page 989).

**IRS Notice 2004-81** provides tables that show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2005. (See *Internal Revenue Bulletin* 2004-51 of December 20, 2004, page 996).

**IRS Rev. Proc. 2004-73** provides guidance concerning when information shown on a return in accordance with the applicable forms and instructions will be adequate disclosure for purposes of reducing an understatement of income tax under §§ 6662 (d) and 6694 (a) of the Internal Revenue Code. Rev. Proc. 2003-77 is updated. (See *Internal Revenue Bulletin* 2004-51 of December 20, 2004, page 999).

## L. Pre-Filing Agreements:

**IRS Announcement 2004-59** was issued in conformance with Conference Committee Report on The Community Renewal Tax Relief Act of 2000 which required the Secretary of the Treasury to make publicly available an annual report on the Pre-Filing Agreement program operations for the preceding calendar year. (See *Internal Revenue Bulletin* 2004-30 of July 26, 2004, page 94).

#### **M. Safe Harbor Sale and Leaseback Transactions:**

**Treasury Decision 9129** contains regulations relating to the capitalization of interest expense incurred in sale and leaseback transactions under the Economic Recovery Act of 1981 safe harbor provisions and affect taxpayers who provide purchase money obligations in connection with these transactions. (See *Internal Revenue Bulletin* 2002-24 of June 14, 2004, page 1046).

#### **N. Social Security, Employee Pension Plans, Medical Savings Accounts and Executive Compensation Plans:**

IRS Notice 2005-1 of December 20, 2004 provides guidance regarding transition rules under § 409A. § 885 of the recently enacted American Jobs Creation Act of 2004 added § 409A to the Internal Revenue Code providing new rules for nonqualified deferred compensation plans. § 409A provides that unless specified requirements are met, all amounts deferred under a nonqualified deferred [executive] compensation plan for all taxable years are currently includible in gross income, to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

Under §§ 885(e) and 885(f) of the legislation, Congress directed the Secretary of the Treasury to issue guidance regarding the termination and amendment of certain nonqualified deferred compensation arrangements and to define a change in ownership or control for purposes of § 409A, within 60 days and 90 days respectively of enactment of the legislation. Notice 2005-1 addresses these guidance items. In addition, this guidance defines the arrangements that will be considered deferred compensation subject to the new rules. Finally, this guidance outlines the new reporting and employment tax obligations of employers in connection with section 409A. § 409A applies to amounts deferred on or after January 1, 2005, subject to several special effective date rules. Under the new law, deferred compensation that does not meet certain standards will be immediately included in the employee's taxable income. The law exempts 401 (k) and other traditional retirement plans and fringe benefits, but it leaves to the Treasury and IRS to decide about others.

This guidance notice is the first of a series of such notices that will be issued throughout 2005 as a transition period during which companies and executives will not be penalized if their pay plans follow a good-faith interpretation of the new law. IRS Rev. Ruling 2004-10 provides covered compensation tables under § 401 of the Internal Revenue Code for the year 2005 are provided for use determining contributions to defined benefit plans and permitted disparity. (See *Internal Revenue Bulletin* 2004-46 of November 15, 2004, page 837).

**IRS Notice 2004-72** sets forth § 415 cost-of-living adjustments effective January 1, 2005, applicable to the dollar limit on benefits under qualified defined benefit pension plans and to other provisions affecting (1) certain plans of deferred compensation and (2) "control employees." (See *Internal Revenue Bulletin* 2004-46, of November 15, 2004, page 840).

**IRS Notice 2004-78** provides guidance in question and answer format on the use of actuarial assumptions in determining certain single sum distributions and the limitations of § 415(b)(2) of the Code as a result of § 415(b)(2)(E)(ii) as amended by § 101(b)(4) of The Pension Funding Equity Act of 2004. (See *Internal Revenue Bulletin* 2004-48 of November 29, 2004, page 879).

**IRS Notice 2004-73** announces (1) OASDI contribution and benefit base for remuneration paid in 2005,(2) self-employment income earned in taxable year beginning 2005, and (3) 2005 domestic employee coverage threshold amount (See *Internal Revenue Bulletin* 2004-46 of November 15, 2004, page 841).

**IRS Announcement 2004-96** advises employers about a new Code Y for use on the 2005 Form W-2. This code will be used to identify annual deferrals of income under a nonqualified deferred compensation plan. (See *Internal Revenue Bulletin* 2004-47 of November 22, 2004, page 872).

**IRS Announcement 2004-82** notifies Archer MSA trustees of their obligation to report the number of Archer MSAs established between January 1, 2004, and June 30, 2004. (See *Internal Revenue Bulletin* 2004-45 of November 8, 2004, page 834).

IRS **Notice 2004-79** provides guidance regarding the effect of the Working Families Tax Relief Act of 2004 on the exclusion from the gross income of an employee under § 106 of the Internal Revenue Code of employer-provided coverage under an accident or health plan. (See *Internal Revenue Bulletin* 2004-49 of December 6, 2004, page 957). Treasury Decision 9159 provides temporary regulations to define the term "salary reduction agreement" for purposes of § 3121(a) (5) (D) of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-49 of December 6, 2004, page 895).

IRS **Rev. Ruling 2004-110** holds that an amount paid to an employee as consideration for cancellation of an employment contract and relinquishment of contract rights is ordinary income and wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (federal income tax withholding). Rev. Rulings 55-520 and 58-301 are modified and superseded. Rev. Rulings 74-252 and 75-44 are modified. (See *Internal Revenue Bulletin* 2004-50 of December 13, 2004, page 960).

#### O. Tangible Property:

**Treasury Decision 9151** contains both final and temporary regulations replacing the use of the Standard Industrial Classification System (SIC) with the North American Industry Classification System (NAICS) for determining what properties are of a like-class for purposes of § 1031 of the Internal Revenue Code. (See *Internal Revenue Bulletin* 2004-38 of September 20, 2004, page 489).

**Treasury Decision 9146** provides guidance and temporary regulations relating to the election to deduct the cost of certain tangible property and computer software subject to § 179 of the Internal Revenue Code. The regulations reflect changes to federal law made by the Jobs and Growth Relief Reconciliation Act of 2003. The proposed and temporary regulations generally permit small businesses to elect to deduct up to \$100,000 of the cost of qualifying property purchased and placed in service in a taxable year beginning after 2002 and before 2006. Additionally, taxpayers are permitted to make or revoke an election on an amended return for those taxable years without the consent of the Commissioner of Internal Revenue. The temporary regulations are effective for taxable years beginning after 2002 and before 2006. (See *Internal Revenue Bulletin* 2004-36 of September 7, 2004, page 40).

#### P. Tax Avoidance; Frivolous Schemes:

IRS **Notice 2004-22** provides information to help taxpayers steer clear of fraudulent tax avoidance schemes by discussing the most common frivolous arguments used by taxpayers to attempt to avoid or evade taxes (see IRS Revenue Rulings 27 - 34 below). Also presented is information on civil and criminal penalties for tax avoidance. (See *Internal Revenue Bulletin* 2004-12 of March 22, 2004, page 632).

IRS **Rev. Ruling. 2004-27** emphasizes that; while a "corporation sole" is a legitimate corporate form that may be used by a religious leader to hold property and conduct business for the benefit of the religious entity, a taxpayer cannot avoid income tax by establishing a religious organization for tax avoidance purposes (page 625).

IRS **Rev. Ruling. 2004-28** emphasizes that there is no basis for excluding income earned in a State, Commonwealth, or Territory of the United States under § 911 of the Internal Revenue Code. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim tax benefits on their return based on frivolous claims under § 911 (page 624).

IRS **Rev. Ruling 2004-29** emphasizes that there is no "claim of right" doctrine that permits an individual to take the position that either the individual or the individual's income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous "claim of right" arguments to evade tax (page 627).

IRS **Rev. Ruling 2004-30** emphasizes that there is no authority in §§ 861 through 865 of the Code that permits an individual to take the position that either the individual or the individual's U.S. based income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who make frivolous § 861 arguments to evade tax (page 622).

IRS Rev. Ruling 2004-31 emphasizes that there is no law, court decision or other authority that permits a taxpayer to remove himself from the federal tax system in order to avoid otherwise applicable taxes. Arguments to the contrary are not only wrong, but frivolous (page 617).

IRS Rev. Ruling 2004-32 emphasizes that there is no basis for claiming personal, living, and family expenses as business deductions. This return position has no merit and is frivolous (page 621).

IRS Rev. Ruling 2004-33 emphasizes that there is no "reparations tax credit" that permits an individual to take the position that the individual, based on certain classifications, is entitled to a larger refund than the individual would not otherwise receive. The ruling also describes many of the possible civil and criminal penalties that apply to people who claim refunds of other tax benefit on their returns based on frivolous reparations tax credits (page 628).

IRS Rev. Ruling 2004-34 emphasizes that a "zero return" will not succeed in permitting an individual to take the position that the individual or the individual's income is not subject to federal income tax. The ruling also describes many of the possible civil and criminal penalties that apply to people who file frivolous "zero return" that requires the IRS to conduct a deficiency inquiry (page 619).

#### **Q. Taxpayer Transfer Payments:**

Treasury Decision 9095 & REG-136890-02 issue final, temporary, and proposed taxpayer's note of promise to provide property or services in the future is not a transfer for the satisfaction of a contested liability under § 461(f). A transfer of a taxpayer's stock or the stock or note of a related party also is not a transfer for the satisfaction of a contested liability under § 461(f). The temporary regulations further provide that, in general, economic performance does not occur when a taxpayer transfers money or other property to a trust, escrow account, or court to provide for the satisfaction of a contested workers compensation, tort, or other payment liability. See Internal Revenue Bulletin 2003-49 of December 8, 2003, page 1175).

## **IV. Some General Business Tax Changes for 2004**

**Business-related mileage.** For 2004, the standard mileage rate for the cost of operating a car, van, pickup, or panel truck increases from 36 cents a mile to 37 1/2 cents a mile for all business miles. Car expenses and use of the standard mileage rate are explained in chapter 4 of IRS Publication 463, "Travel, Entertainment, Gift, and Car Expenses."

**Meal Expenses When Subject to "Hours of Service" Limits.** Generally, a taxpayer can deduct only 50% of his/her business-related meal expenses while traveling away from his/her tax home for business purposes. Also, they can generally deduct only 50% of certain reimbursements they make to employees for meal expenses they incur while traveling away from home on business. Taxpayers can deduct a higher percentage if the meals take place during or incident to any period subject to the Department of Transportation's "hours of service" limits. (These limits apply to workers who are under certain federal regulations.) The percentage increases to 70% for 2004. Business meal expenses are covered in chapter 1 of IRS Publication 463, "Travel, Entertainment, Gift, and Car Expenses." Reimbursements for employee meal expenses are covered in chapter 13 of IRS Publication 535, "Business Expenses."

#### **Environmental Cleanup (Remediation) Costs.**

Beginning in 2004, environmental cleanup (remediation) costs must be capitalized. Taxpayers cannot choose to deduct environmental cleanup costs paid or incurred after December 31, 2003, as a current business expense. For more information on environmental cleanup costs, see chapter 8 in IRS Publication 535, "Business Expenses Depreciation" and "Section 179 Expenses."

#### **Extension of Acquisition date**

Property will meet the "acquisition date test" for purposes of qualifying for the 30% special depreciation allowance (see chapter 3 of IRS Publication 946, "How To Depreciate Property") if the property is acquired before January 1, 2005 (extended from September 11, 2004).

**Increased Section 179 Limits.** The maximum section 179 deduction a taxpayer can elect for property they place in service in 2004 is increased from \$100,000 to \$102,000 for qualified section 179 property (\$137,000 for qualified zone property, qualified renewal property, or qualified New York Liberty Zone property). This limit is reduced by the amount by which the cost of section 179 property placed in service during the tax year exceeds \$410,000 (increased from \$400,000). See chapter 2 of IRS Publication 946.

### **Work Opportunity Credit and Welfare-to-Work Credit Scheduled to Expire**

The work opportunity credit and the welfare-to-work credit are scheduled to expire for wages paid to individuals who began working for taxpayers after 2003.

### **Social Security and Medicare Taxes**

For 2004, the employer and employee will continue to pay 6.2% each for social security tax (old-age, survivors, and disability insurance), and 1.45% each for Medicare tax (hospital insurance).

**Wage Limits.** For social security tax, the maximum amount of 2004 wages subject to the tax increases to \$87,900. For Medicare tax, all covered 2004 wages are subject to the tax. For information about these taxes, see Circular E (IRS Publication 15), "Employer's Tax Guide."

### **Self-Employment Tax**

The self-employment tax rate on net earnings remains the same for 2004. This rate, 15.3%, is a total of 12.4% for social security (old-age, survivors, and disability insurance) and 2.9% for Medicare (hospital insurance). The maximum amount subject to the social security part for tax years beginning in 2004 increases to \$87,900. All net earnings of at least \$400 are subject to the Medicare part.

### **Extension of Time to Claim the 30% Special Depreciation Allowance.**

The taxpayer still may be eligible to claim the 30% special depreciation allowance for a tax year that included September 11, 2001, if he/she meets the following requirements.

- timely filed his/her tax return for that tax year.
- did not claim the 30% special depreciation allowance (or special Liberty Zone depreciation allowance) for qualified property (or qualified Liberty Zone property) placed in service during that tax year.
- did not make an election not to claim the special allowance.

If the taxpayer has not filed his/her tax return for the first tax year following his/her tax year that included September 11, 2001, and owned the property as of the first day of that tax year, file Form 3115, Application for Change in Accounting Method, with the timely filed tax return for that year.

If the taxpayer filed his/her tax return for the first tax year following the tax year that included September 11, 2001, before July 22, 2003, he/she owned the property as of the first day of that tax year, and the second succeeding tax year after his/her tax year that included September 11, 2001, ends before August 1, 2004, file Form 3115 with the timely filed tax return for that second succeeding tax year. Write "Automatic Change Filed Under IRS Rev. Proc. 2003-50" on the appropriate line of IRS Form 3115. For more information, see IRS Revenue Procedure 2003-50 in Internal Revenue Bulletin 2003-29.

### **Sales Tax Optional Deduction**

IRS IR-2004-153 of Dec. 17, 2004 provides notice that the Internal Revenue Service has made available on its Web site Publication 600, Optional State Sales Tax Tables, which taxpayers may use for their 2004 returns. The IRS also will send Pub. 600 to all taxpayers who get a Form 1040 tax package. The tax law authorizing this optional deduction for state and local sales tax instead of state and local income tax was enacted too late in the year to include the tables in the tax instruction books.

The American Jobs Creation Act of 2004 authorized the sales tax deduction as an option for those who itemize deductions, letting them choose between deductions for state and local income or sales taxes. Taxpayers will indicate by a checkbox on line 5 of Schedule A which type of tax they're claiming. The law provides this choice for

Tax Years 2004 and 2005 only. IRS Commissioner Mark W. Everson advised that “[t]axpayers should check these tables to see if they’re entitled to a larger sales tax deduction than a state income tax deduction.” The tables give taxpayers a sales tax deduction amount as an alternative to saving their receipts throughout the year and tabulating the amount actually paid. Taxpayers use their income level and number of exemptions to find the sales tax amount for their state. The table instructions explain how to add an amount for local sales taxes if appropriate. Taxpayers also may add to the table amount any sales taxes paid on:

- A motor vehicle, but only up to the amount of tax paid at the general sales tax rate; and
- An aircraft, boat, home (including mobile or prefabricated), or home building materials, if the tax rate is the same as the general tax rate.

While this deduction will mainly benefit taxpayers with a state or local sales tax but no income tax - Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming - it may give a larger deduction to any taxpayer who paid more in sales taxes than income taxes. For example, a person may have bought a new car, boosting the sales tax total, or claimed tax credits, lowering the state income tax paid. Taxpayers may download Pub. 600 from the IRS web site. A printed version is available for mailing by calling (toll-free) 1-800-TAX-FORM (1-800-829-3676).

### **Clean Fuel Vehicle Deduction**

The maximum amount of the deduction for Clean Fuel Vehicles was scheduled to drop this year and next, but has been retained at the \$2,000 level through 2005. Under the recently signed Working Families Tax Relief Act of 2004, the clean-burning fuel deduction is up to \$2,000 for certified vehicles first put into service in 2004 and 2005. The deduction will be limited to \$500 for vehicles placed in service in 2006 and no deduction will be allowed after that year.

The one-time deduction must be taken in the year the vehicle is originally used. The taxpayer must be the original owner. Individuals take this benefit as an adjustment to income on Form 1040. They do not have to itemize deductions on their tax returns to claim.

**IR-2004-125** of October 14, 2004 certifies the model year 2005 Toyota Prius as eligible for the clean-burning fuel deduction.

**IR-2004-147** of December 13, 2004 certifies the model year 2005 Ford Escape Hybrid as being eligible for the clean-burning fuel deduction

### **Sport Utility Vehicle Deduction**

A change has been made regarding the deduction for certain sport utility vehicles (SUVs) placed in service after Oct. 22, 2004. Under the American Jobs Creation Act of 2004, businesses cannot take first-year deduction of more than \$25,000 for an SUV. The business would depreciate the remaining cost. (The limit for vehicles placed in service before Oct. 23 was \$100,000.) The new limit does not affect other types of property where the taxpayer decides to expense the cost instead of depreciating the property.

### **Discrimination Suits; Deductions for Attorney Fees and Court Costs**

A new deduction is available for those who pay attorney’s fees and court costs in connection with discrimination suits. Taxpayers can take the new deduction whether they itemize or not. The deduction cannot exceed the amount includible in income for the year on account of a judgment or settlement resulting from the discrimination claim. Generally, personal legal expenses are not deductible, but an employee who incurs legal expenses related to doing or keeping his job could deduct these expenses on Schedule A as a miscellaneous itemized deduction. However, under The American Jobs Creation Act of 2004, an individual with legal fees and court costs arising from a discrimination suit may deduct the costs directly from income on the front of the tax return; this is known as an above-the-line deduction. Under this new deduction, amounts paid for attorney’s fees and court costs are deductible in computing alternative minimum tax, and are not subject to the 2 percent floor on miscellaneous itemized deductions or the overall limitation on itemized deductions. The Act, signed into law on Oct. 22, 2004,

describes the discrimination claims qualifying for this new deduction. Only costs paid after Oct. 22, 2004, for judgments or settlements occurring after that date qualify for this deduction.

**Deductions for Contributions to Domestic Charitable Organizations Assisting Individuals in Foreign Lands**  
Contributions to U. S. domestic, tax-exempt, charitable organizations that provide assistance to individuals in foreign lands (such as the recent Asian Tsunami disaster) may qualify as tax-deductible contributions for federal income tax purposes provided the U.S. organization has full control and discretion over the uses of such funds.

IRS Publication 3833, "Disaster Relief: Providing Assistance through Charitable Organizations" explains how the public can use charitable organizations to help victims of disasters.

## **V. Special Information for Tax Professionals**

### **IRS Expands Pre-Filing Agreement Program**

IR-2004-156—IRS expands Pre-Filing Agreement Program to resolve issues for the current taxable year and up to four future taxable year.

### **IRS Warns Businesses and Retirement Plans Against Abuses Involving ESOPs and S Corporations**

IR-2004-155—The IRS has issued letters to 1,700 businesses and retirement plan sponsors alerting them to new taxes and warning against participation in abusive schemes.

### **Industry Issue Resolution Program to Address Signature Requirements Regarding Employment Tax Returns**

IR-2004-154—The National Payroll Reporting Consortium presented the IIR submission requesting that the agency update procedures to recognize electronic filing and other changes.

### **IRS and the Treasury Department Amend Circular 230 to Promote Ethical Practice by Tax Professionals**

IR-2004-152—IRS and the Treasury Department amend standards of practice for tax professionals.

### **Treasury, IRS Issue Section 409(p) Regulations**

IR-2004-150—A wide variety of issues are addressed, targeting abusive schemes to skirt pension laws. To access the above listed information and any other late-breaking news from the IRS, please go to: <http://www.irs.gov/newsroom/index.html>.

## **VI. Appendices**

### **Definitions 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 an Internal Revenue Service study.

## Abbreviations

The following abbreviations in current use, and formerly used, will appear in material published in the Internal Revenue Bulletin:

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