INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2016–39
September 26, 2016

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

Rev. Rul. 2016–23, page 382

Interest rates: underpayments and overpayments. The rates for interest determined under section 6621 of the code for the calendar quarter beginning October 1, 2016, will be 4 percent for overpayments (3 percent in the case of a corporation), 4 percent for underpayments, and 6 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 1.5 percent.

Rev. Rul. 2016–24, page 395.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2016 are set forth.

Announcement 2016–33, page 422.

Announcement of Certification Resulting from the 2012–2013 Phase III Allocation Round of the Qualifying Advanced Coal Project Program. The announcement discloses the certification resulting from the 2012–13 Phase III allocation round of the qualifying advanced coal project program of § 48A of the Internal Revenue Code.

Announcement 2016–34, page 422.

Announcement of the Results of the Phase III Allocation Round of the Qualifying Gasification Project Program. The proposed announcement discloses the results of the Phase III allocation round under the qualifying gasification project program of § 48B of the Internal Revenue Code. This announcement also serves as notice to applicants that no additional allocation rounds will be conducted under the qualifying gasification project program.

Notice 2016–53, page 421.

Section 2016 Section 45Q Inflation Adjustment Factor. This notice publishes the inflation adjustment factor for the carbon dioxide (CO2) sequestration credit under § 45Q for calendar year 2016.

T.D. 9784, page 402.

Real estate investment trusts (REITs) have certain REIT qualification requirements. At least 75 percent of a REIT's assets must be in real estate assets, cash and cash items, and government securities. A real estate asset includes real property and interests in real property. These regulations define real property for REIT purposes.

EMPLOYEE PLANS

T.D. 9783, page 396.

These final regulations change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form.

(Continued on the next page)

Finding Lists begin on page ii.

EXEMPT ORGANIZATIONS

Announcement 2016–35, page 423.
Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

Announcement 2016–36, page 423.
Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

Announcement 2016–37, page 423.
Serves notice to potential donors of a stipulated decision by the United States Tax Court in declaratory judgment proceedings under Section 7428.

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.

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.

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

Section 6621.— Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Rev. Rul. 2016–23

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during July 2016 is the rate published in Revenue Ruling 2016–18, 2016–31 IRB 194, to take effect beginning August 1, 2016. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of July 2016 is 1 percent. Accordingly, an overpayment rate of 4 percent (3 percent in the case of a corporation) and an underpayment rate of 4 percent are established for the calendar quarter beginning October 1, 2016. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning October 1, 2016 is 1.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 2016, is 6 percent. These rates apply to amounts bearing interest during that calendar quarter.

Pursuant to section 6654(a)(1), the 4 percent rate also applies to estimated tax underpayments for the fourth calendar quarter in 2016. In addition, pursuant to section 6603(d)(4), the rate of interest on section 6603 deposits is 1 percent for the fourth calendar quarter in 2016.

Interest factors for daily compound interest for annual rates of 1.5 percent, 3 percent, 4 percent and 6 percent are published in Tables 56, 59, 61 and 65 of Rev. Proc. 95–17, 1995–1 C.B. 610, 613, 615 and 619.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sarah McLemore of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. McLemore at (202) 317-6844 (not a toll-free number).

APPENDIX A

365 Day Year 0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119

365 Day Year
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851

365 Day Year
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715

366 Day Year
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975—PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975—PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987—Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987—Dec. 31, 1998

	OVERPAYMENTS 1995–1 C.B.			UNDERPAYMENTS 1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999—PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999—PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	3%	11	565
Apr. 1, 2015—Jun. 30, 2015	3%	11	565

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999—PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jul. 1, 2015—Sep. 30, 2015	3%	11	565
Oct. 1, 2015—Dec. 31, 2015	3%	11	565
Jan. 1, 2016—Mar. 31, 2016	3%	59	613
Apr. 1, 2016—Jun. 30, 2016	4%	61	615
Jul. 1, 2016—Sep. 30, 2016	4%	61	615
Oct. 1, 2016—Dec. 31, 2016	4%	61	615

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999—PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS 1995–1 C.B.			UNDERPAYMENTS 1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999—PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014—Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014—Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014—Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014—Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015—Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015—Jun. 30, 2015	2%	9	563	3%	11	565
Jul. 1, 2015—Sep. 30, 2015	2%	9	563	3%	11	565
Oct. 1, 2015—Dec. 31, 2015	2%	9	563	3%	11	565
Jan. 1, 2016—Mar. 31, 2016	2%	57	611	3%	59	613
Apr. 1, 2016—Jun. 30, 2016	3%	59	613	4%	61	615
Jul. 1, 2016—Sep. 30, 2016	3%	59	613	4%	61	615
Oct. 1, 2016—Dec. 31, 2016	3%	59	613	4%	61	615

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 31, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569
Apr. 1, 2011—Jun. 30, 2011	6%	17	571
Jul. 1, 2011—Sep. 30, 2011	6%	17	571
Oct. 1, 2011—Dec. 31, 2011	5%	15	569
Jan. 1, 2012—Mar. 31, 2012	5%	63	617
Apr. 1, 2012—Jun. 30, 2012	5%	63	617
Jul. 1, 2012—Sep. 30, 2012	5%	63	617
Oct. 1, 2012—Dec. 31, 2012	5%	63	617

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 2013—Mar. 31, 2013	5%	15	569
Apr. 1, 2013—Jun. 30, 2013	5%	15	569
Jul. 1, 2013—Sep. 30, 2013	5%	15	569
Oct. 1, 2013—Dec. 31, 2013	5%	15	569
Jan. 1, 2014—Mar. 31, 2014	5%	15	569
Apr. 1, 2014—Jun. 30, 2014	5%	15	569
Jul. 1, 2014—Sep. 30, 2014	5%	15	569
Oct. 1, 2014—Dec. 31, 2014	5%	15	569
Jan. 1, 2015—Mar. 31, 2015	5%	15	569
Apr. 1, 2015—Jun. 30, 2015	5%	15	569
Jul. 1, 2015—Sep. 30, 2015	5%	15	569
Oct. 1, 2015—Dec. 31, 2015	5%	15	569
Jan. 1, 2016—Mar. 31, 2016	5%	63	617
Apr. 1, 2016—Jun. 30, 2016	6%	65	619
Jul. 1, 2016—Sep. 30, 2016	6%	65	619
Oct. 1, 2016—Dec. 31, 2016	6%	65	619

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		
Apr. 1, 2011—Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—Dec. 31, 2011	0.5%*		

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995—PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 2012—Mar. 31, 2012	0.5%*		
Apr. 1, 2012—Jun. 30, 2012	0.5%*		
Jul. 1, 2012—Sep. 30, 2012	0.5%*		
Oct. 1, 2012—Dec. 31, 2012	0.5%*		
Jan. 1, 2013—Mar. 31, 2013	0.5%*		
Apr. 1, 2013—Jun. 30, 2013	0.5%*		
Jul. 1, 2013—Sep. 30, 2013	0.5%*		
Oct. 1, 2013—Dec. 31, 2013	0.5%*		
Jan. 1, 2014—Mar. 31, 2014	0.5%*		
Apr. 1, 2014—Jun. 30, 2014	0.5%*		
Jul. 1, 2014—Sep. 30, 2014	0.5%*		
Oct. 1, 2014—Dec. 31, 2014	0.5%*		
Jan. 1, 2015—Mar. 31, 2015	0.5%*		
Apr. 1, 2015—Jun. 30, 2015	0.5%*		
Jul. 1, 2015—Sep. 30, 2015	0.5%*		
Oct. 1, 2015—Dec. 31, 2015	0.5%*		
Jan. 1, 2016—Mar. 31, 2016	0.5%*		
Apr. 1, 2016—Jun. 30, 2016	1.5%	56	610
Jul. 1, 2016—Sep. 30, 2016	1.5%	56	610
Oct. 1, 2016—Dec. 31, 2016	1.5%	56	610

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling.

Section 61 Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Rev. Rul. 2016–24

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61–21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61–21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61–21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charge and SIFL mileage rates:

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
7/1/16–12/31/16	$37.68	Up to 500 miles = $.2061 per mile 501–1500 miles = $.1572 per mile Over 1500 miles = $.1511 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Associate Chief Counsel (Tax Exempt/Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 317-6798 (not a toll-free number).

26 CFR 1.417(e)–1: Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417

T.D. 9783

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Modifications to Minimum Present Value Requirements for Partial Annuity Distribution Options under Defined Benefit Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These regulations change the regulations regarding the minimum present value requirements for defined benefit plan distributions to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a single sum or other more accelerated form. These regulations affect participants, beneficiaries, sponsors, and administrators of defined benefit pension plans.

DATES: *Effective date*: These regulations are effective on September 9, 2016.

Applicability date: These regulations apply to distributions with annuity starting dates in plan years beginning on or after on or after January 1, 2017. In addition, a taxpayer can elect to apply these regulations with respect to any earlier period.

FOR FURTHER INFORMATION CONTACT: Neil S. Sandhu or Linda S. F. Marshall at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 417(e) of the Internal Revenue Code (Code). These final regulations amend §1.417(e)–1 of the Treasury regulations.

Section 401(a)(11) of the Code provides that, in order for a defined benefit plan to qualify under section 401(a), and except as provided under section 417, in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant must be provided in the form of a qualified joint and survivor annuity (QJSA), as defined in section 417(b).

Section 417(e)(1) provides that a plan may provide that the present value of a QJSA or a qualified preretirement survivor annuity (QPSA), as defined in 417(c), will be immediately distributed if that present value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). Section 417(e)(2) provides that, if the present value of the QJSA or QPSA exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), then a plan may immediately distribute the present value of that annuity only if the participant and the spouse of the participant (or if the participant has died, the surviving spouse) consent in writing to the distribution.

Section 417(e)(3)(A) provides that the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.[1] Section 417(e)(3)(B) and (C) define the terms "applicable mortality table" and "applicable interest rate," respectively.

Section 411(a)(13) of the Code, as added by section 701(b) of PPA '06, provides that an "applicable defined benefit plan," as defined by section 411(a)(13)(C), is not treated as failing to meet the requirements of section 417(e) with respect to accrued benefits derived from employer contributions solely because the present value of a participant's accrued benefit (or any portion thereof) may be, under the terms of the plan, equal to the amount expressed as the hypothetical account balance or as an accumulated percentage of such participant's final average compensation.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. However, the last sentence of section 411(d)(6)(B) provides that the Secretary may by regulations provide that section 411(d)(6)(B) does not apply to a plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Final regulations under section 417 relating to the QJSA and QPSA requirements were issued on August 22, 1988. The final regulations were amended on April 3, 1998, to reflect changes enacted by the Uruguay Round Agreements Act, Public Law 103–465 (108 Stat. 4809 (1994)).

Section 1.417(e)–1(d)(1) provides that a defined benefit plan generally must provide that the present value of any accrued benefit and the amount of any distribution, including a single sum, must not be less than the amount calculated using the specified applicable interest rate and the specified applicable mortality table. The present value of any optional form of benefit cannot be less than the present value of the accrued benefit determined in accordance with the preceding sentence.

Section 1.417(e)–1(d)(6) provides an exception from the minimum present value requirements of section 417(e) and § 1.417(e)–1(d). This exception applies to the amount of a distribution paid in the form of an annual benefit that either does not decrease during the life of the participant (or, in the case of a QPSA, the life of the participant's spouse), or that decreases during the life of the participant merely because of the death of the survivor annu-

[1]Under section 411(a)(11)(B), the same applicable mortality table and applicable interest rate are used for purposes of determining whether the present value of a participant's nonforfeitable accrued benefit exceeds the maximum amount that can be immediately distributed without the participant's consent.

itant (but only if the reduction is to a level not below 50 percent of the annual benefit payable before the death of such survivor annuitant) or the cessation or reduction of Social Security supplements or qualified disability benefits.

Sections 204(g) and 205(g) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), contain rules that are parallel to Code sections 411(d)(6) and 417(e), respectively. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these regulations apply for purposes of the Code and the corresponding provisions of ERISA.

In the case of a defined benefit plan that offers a single-sum distribution or other form of accelerated distribution as an optional form of benefit in addition to the required QJSA, many participants have been reluctant to elect lifetime payments to insure against unexpected longevity, choosing instead an accelerated distribution form in order to maximize their liquidity. However, participants who elect a single sum or other accelerated form of distribution may face greater challenges in protecting against the risk of outliving their retirement savings. The Treasury Department and the IRS believe that many participants are better served by having the opportunity to elect to receive a portion of their retirement benefits in annuity form (which provides financial protection against unexpected longevity) while receiving accelerated payments for the remainder of their benefits to provide increased liquidity during retirement.

In order to permit plans to simplify the treatment of certain optional forms of benefit that are paid partly in the form of an annuity and partly in a more accelerated form, the IRS issued proposed regulations under section 417(e)(3) (77 FR 5454) on February 3, 2012, that would have modified existing final regulations regarding the minimum present value requirements for defined benefit plan distributions. A number of comments were received on the proposed regulations, and a public hearing was held on June 1, 2012. After consideration of the comments received, the Treasury Department and the IRS are issuing these final regulations to adopt the rules set forth in the proposed regulations with modifications in response to the comments received.

Explanation of Provisions

Treatment of bifurcated accrued benefits

In order to facilitate the payment of benefits partly in the form of an annuity and partly as a single sum (or other accelerated form), this document amends the regulations under section 417(e) to permit plans to simplify the treatment of certain optional forms of benefit that are paid to a participant partly in the form of an annuity that is excepted from the minimum present value requirements of section 417(e)(3) pursuant to § 1.417(e)–1(d)(6) and partly in a more accelerated form. Like the proposed regulations, these final regulations provide rules under which the participant's accrued benefit can be bifurcated so that the minimum present value requirements of section 417(e)(3) and § 1.417(e)–1(d) apply to only the portion of the participant's accrued benefit that is paid in an accelerated form.

The proposed regulations would have provided for three different approaches to bifurcating the accrued benefit so that the minimum present value requirements apply to only a portion of the accrued benefit. Under the first approach in the proposed regulations, a plan could have provided for two separate portions of the accrued benefit that were determined without regard to any election of optional form of benefit and permitted a participant to select different distribution options with respect to each of those portions of the accrued benefit. Under the second approach, a plan could have provided for proportionate benefits with respect to each distribution option equal to the pro rata portion of the amount of the distribution that would be determined if that distribution option had been applied to the entire accrued benefit. Finally, under the third approach, a plan could have provided for a specified amount to be distributed as a single sum, but only if the plan satisfied a minimum benefit requirement with respect to the distribution that was not paid in a single sum.

Commenters generally supported the adoption of the rules in the proposed regulations, but raised several specific issues. Several commenters stated that it was sometimes difficult to determine which approach for bifurcating the accrued benefit applied to a particular plan design. These commenters suggested that certain plan designs appeared to fit within more than one approach, while other plan designs that were consistent with the intent of the proposed regulations did not seem to fit within any approach. In response to comments received, the rules providing for the bifurcation of the accrued benefit have been simplified and clarified in these final regulations.

The final regulations combine the first two bifurcation approaches from the proposed regulations into a single, more broadly applicable rule. Under the rule in these final regulations, a plan is permitted to explicitly bifurcate the accrued benefit so that the plan provides that the requirements of § 1.417(e)–1(d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. This rule does not impose any requirements with respect to the distribution options for the remaining portion of the accrued benefit.

An alternative rule is provided in the final regulations under which a plan that distributes a specified single-sum amount to a participant satisfies the requirements of § 1.417(e)–1(d) with respect to that payment, provided the remaining portion of the participant's accrued benefit satisfies a minimum requirement. This rule is essentially the same as the third bifurcation approach from the proposed regulations. Under this alternative rule, the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the single-sum payment must be no less than the excess of: (1) the participant's total accrued benefit expressed in that form; over (2) the annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table. Thus, the portion of the participant's accrued benefit that is settled by the payment of a specified single-sum amount

is implicitly determined as the actuarial equivalent of that single-sum amount.

The regulations provide a number of rules of operation that apply to one or both of the rules for bifurcating the accrued benefit. In particular, the regulations provide that if a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined under the rules in these regulations, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and § 1.417(e)–1(d), even if the distribution options have the same annuity starting date. Thus, if one of those separate optional forms of benefit is exempt from the requirement to use the section 417(e)(3) assumptions, the plan is required to apply the section 417(e)(3) assumptions only to the other optional form of benefit. This would permit a plan to use its usual annuity equivalence factors for the annuity portion (rather than being required to make a special calculation of the annuity portion using the section 417(e)(3) assumptions). The approach set forth in these regulations is simpler than applying the section 417(e)(3) assumptions to the entire optional form of benefit, and yields an intuitive result that is consistent with plan sponsor and participant expectations.

The regulations provide that explicit bifurcation must be used in specified cases. One such case is the situation in which a plan has been amended to eliminate an optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date). Commenters indicated that it was unclear which bifurcation approach would apply to this situation under the proposed regulations. In response to these comments, the final regulations specify that if the amount of a distribution in an optional form of benefit to which § 1.417(e)–1(d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date, then the plan is not permitted to use the alternative rule under which the amount of the benefit that is settled by the single-sum payment is implicitly determined but could use the explicit bifurcation rule in order to avoid application of section 417(e) to both optional forms of benefit. The implicit bifurcation rule also is not available in a situation in which a single-sum distribution is available to settle a participant's entire accrued benefit and the plan permits a portion of the benefit to be paid as a lump sum.

Under the regulations, if a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for an accelerated form of distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. This is necessary in order to determine the extent to which the early retirement benefit, retirement-type subsidy, optional form of benefit, or ancillary benefit applies with respect to the remaining portion of the accrued benefit. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

The regulations provide for limited section 411(d)(6) relief in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to these final regulations, the requirements of section 417(e)(3) need not apply to the distribution. In such a case, section 411(d)(6) is not violated solely because, in accordance with these final regulations, the plan is amended on or before December 31, 2017, to provide that the amount of the distribution described in the preceding sentence to which the requirements of section 417(e)(3) need not apply is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)–3(g)(4)) using the same actuarial assumptions that would apply to calculate the amount of a distribution in that same form of benefit if the participant elected to receive the entire accrued benefit in that form.

The final regulations include a number of examples in order to illustrate the bifurcation rules of the regulations and the rules of operation with respect to these rules.

Effective/Applicability Date

These regulations are effective on September 9, 2016.

The changes under these regulations apply to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may apply these rules to earlier periods.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Neil S. Sandhu and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.417(e)–1 is amended by:

1. Redesignating paragraph (d)(1) as paragraph (d)(1)(i) and revising the heading of the newly redesignated paragraph (d)(1)(i).

2. Adding a heading for paragraph (d)(1).

3. In the first sentence of newly redesignated paragraph (d)(1)(i), removing "A defined benefit plan" and adding "Except as provided in section 411(a)(13) and the regulations thereunder, a defined benefit plan" in its place.

4. Adding paragraph (d)(1)(ii).

5. Revising paragraph (d)(7), the heading for paragraph (d)(8), and paragraph (d)(8)(i).

6. Adding paragraph (d)(8)(v).

The additions and revisions read as follows:

§ 1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(d) *Present value requirement*—(1) *General rule*—(i) *Defined benefit plans*. * * *

(ii) *Defined contribution plans*. Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

* * * * *

(7) *Application to portion of a participant's benefit*—(i) *In general*. This paragraph (d)(7) provides rules under which the requirements of this paragraph (d) apply to the distribution of only a portion of a participant's accrued benefit. Paragraph (d)(7)(ii) of this section provides rules for how a participant's accrued benefit may be bifurcated into separate components for purposes of applying this paragraph (d). Paragraph (d)(7)(iii) of this section provides rules of application. Paragraph (d)(7)(iv) of this section provides certain limited section 411(d)(6) relief, and paragraph (d)(7)(v) of this section provides examples of the application of the rules of this paragraph (d)(7).

(ii) *Bifurcation of accrued benefit*—(A) *Explicit plan-specified bifurcation*. A plan is permitted to provide that the requirements of this paragraph (d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. For example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle a specified percentage of the participant's accrued benefit. As another example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle the accrued benefit derived from contributions made by an employee. In both examples, the distribution must satisfy the requirements of this paragraph (d) with respect to the specified portion of the accrued benefit, and the remaining portion of the accrued benefit (the participant's total accrued benefit less the portion of the accrued benefit settled by the single-sum payment) can be paid in some other form of distribution that is available under the plan.

(B) *Distribution of specified amount*. A plan that provides for a distribution of a single-sum payment that is not described in paragraph (d)(7)(ii)(A) of this section satisfies the requirements of this paragraph (d) with respect to that distribution if the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the distribution is no less than the excess of—

(*1*) The participant's total accrued benefit expressed in that form; over

(*2*) The annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table.

(iii) *Rules of operation*—(A) *Multiple distribution options*. If a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined in accordance with paragraph (d)(7)(ii) of this section, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d), even if the distribution options have the same annuity starting date. Thus, if the exception from the requirements of section 417(e)(3) and this paragraph (d) that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the other optional form of benefit.

(B) *Repeated application of rule*. If a participant's accrued benefit has been bifurcated in accordance with paragraph (d)(7)(ii) of this section, then the provisions of paragraph (d)(7)(ii) of this section may be applied again to bifurcate the remaining accrued benefit.

(C) *Requirement to use explicit plan-specified bifurcation in certain cases*—(*1*) *Section 411(d)(6)-protected optional form*. If the amount of a distribution in an optional form of benefit to which this paragraph (d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date for an amendment that eliminates that optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date), then the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(*2*) *Single-sum available with respect to entire accrued benefit*. If a plan provides that a single-sum distribution is available to settle a participant's entire accrued benefit, then, in order to also provide for a distribution in the form of a single-sum payment that settles only a portion of a participant's accrued benefit, the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(D) *Application of different factors to different portions of the accrued benefit*. If

a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for a distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

(iv) *Limited section 411(d)(6) anticutback relief*. This paragraph (d)(7)(iv) applies in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to this paragraph (d)(7), the requirements of section 417(e)(3) and this paragraph (d) need not apply to the distribution. In such a case, section 411(d)(6) is not violated merely because, in accordance with this paragraph (d)(7), the plan is amended on or before December 31, 2017, to provide that the amount of a distribution described in the preceding sentence is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)–3(g)(4)) using the same actuarial assumptions that apply to calculate the amount of a distribution in the same form of benefit that is made to settle the participant's entire accrued benefit.

(v) *Examples*. The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: The taxpayers elect to apply the rules of this paragraph (d)(7) in 2016; each plan is a noncontributory defined benefit plan with a calendar-year plan year and a normal retirement age of age 65; a one-year stability period coinciding with the calendar year and a two-month lookback are used for determining the applicable interest rate; and all participant elections are made with proper spousal consent. The November 2015 segment rates are 1.76%, 4.15% and 5.13%.

Example 1. (i) Plan A offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but not less than the present value of the participant's accrued benefit payable at normal retirement age) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan A permits a participant to elect to receive a percentage of the accrued benefit as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire benefit were paid as a single sum by the percentage of the accrued benefit settled by the single-sum payment.

(ii) Participant S retires at age 62 in 2016, with an accrued benefit of $1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of $1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of $168,516 (based on the applicable interest and mortality rates under section 417(e), which are the November 2015 segment rates and the 2016 applicable mortality table), or a 100% joint and survivor annuity of $850 per month (based on the plan's actuarial equivalence factors). Participant S elects to receive 25% of the accrued benefit in the form of a single-sum payment and the remaining 75% of the accrued benefit as a 100% joint and survivor annuity.

(iii) Participant S receives a single-sum payment with respect to 25% of the accrued benefit. Accordingly, this single-sum payment is equal to 25% of the full single-sum amount, or $42,129. The remaining portion of the accrued benefit is 75% of the total accrued benefit, or $750 per month payable as a straight life annuity at normal retirement age.

(iv) To settle the remaining portion of the accrued benefit, in addition to the single-sum payment of $42,129, Participant S receives a 100% joint and survivor annuity in the amount of $637.50 per month, which is determined by applying the plan's unreduced early retirement and actuarial equivalence factors to the remaining portion of the accrued benefit of $750 per month payable as a straight life annuity at normal retirement age. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 2. (i) Plan B is a contributory defined benefit plan that permits a participant to elect a single sum distribution equal to the participant's employee contributions, accumulated with interest, with the remainder payable as an annuity. Plan B provides that the probability of death before normal retirement age is not taken into account for purposes of determining actuarial equivalence between the single-sum payment and an annuity at normal retirement age. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 (determined without taking mortality before age 65 into account) is 10.209.

(ii) Participant T retires at age 60 in 2016 with an accrued benefit of $1,500 per month payable as a straight life annuity commencing at normal retirement age. For benefits commencing at age 60, Plan B provides for an early retirement reduction factor of 75% and an actuarial equivalence factor of 98% for adjusting a straight life annuity to a 10-year certain and life annuity, neither of which is based on the applicable interest and mortality rates under section 417(e)(3). Participant T's benefit commencing at age 60 in the form of a 10-year certain and life annuity would be $1,500 x 75% x 98% = $1,102.50 per month. Participant T elects to receive a single sum payment of $32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and life annuity.

(iii) The single-sum payment elected by Participant T is a distribution that is determined by reference to Participant T's contributions and interest, and not by reference to a specified portion of the participant's accrued benefit. Therefore, the single-sum payment is not described in paragraph (d)(7)(ii)(A) of this section. In order to satisfy paragraph (d)(7)(ii)(B) of this section, the portion of the participant's accrued benefit that is not settled by the single-sum payment must be no less than the excess of (A) the participant's total accrued benefit over (B) the annuity that is actuarially equivalent to the single-sum payment, (determined using the applicable interest and mortality rates under section 417(e)(3) as applicable), both expressed in the normal form of benefit commencing at normal retirement age. The amount of that actuarially equivalent annuity is determined by dividing Participant T's single-sum payment of $32,000 by the deferred annuity factor for lifetime payments commencing at age 65 under the terms of Plan B (10.209, not considering mortality for the deferral period) and dividing by 12 for an actuarially equivalent monthly benefit commencing at age 65 of $261.21. Thus, in order to satisfy paragraph (d)(7)(ii)(B) of this section, the remaining portion of T's accrued benefit must be at least $1,238.79 per month ($1,500.00 – $261.21) payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 cannot be less than $910.51 per month ($1,238.79 x 75% x 98%). Participant T receives this in addition to the single-sum payment of $32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

(v) If, instead, Plan B's terms had provided for a single-sum payment equal to the present value of the

participant's employee-provided accrued benefit as determined under section 411(c)(3), then the plan is determining the single-sum payment as the present value of a specified portion of the accrued benefit. In such a case, the plan is using explicit bifurcation as described in paragraph (d)(7)(ii)(A) of this section and the single-sum payment would have to be set equal to the present value, determined under Plan B's terms, of T's employee-provided accrued benefit (which may or may not be equal to T's accumulated contributions and interest, depending on the plan's terms). The remaining annuity benefit payable to Participant T would have been based on an accrued benefit equal to $1,500 per month minus the amount of T's employee-provided accrued benefit.

Example 3. (i) The facts are the same as in *Example 2* of this paragraph (d)(7)(v), except that Plan B also offers a single-sum payment option with respect to a participant's entire benefit. The single-sum payment is determined as the present value of the participant's early retirement benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632. Under the terms of the plan, the early retirement benefit payable as a straight life annuity to Participant T at age 60 with respect to T's full accrued benefit is $1,125 ($1,500 x 75%), and the corresponding single-sum amount payable to T is $1,125 x 14.632 x 12 = $197,532. (Note that this amount is larger than the age-60 present value of T's accrued benefit without taking mortality before age 65 into account, $1,500 x 10.209 x 12 = $183,762.) Participant T elects to receive a partial single-sum payment of $32,000, equal to T's accumulated contributions with interest and to take the remaining accrued benefit in the form of a 10-year certain and life annuity commencing at age 60.

(ii) Because the plan also provides for a single-sum payment option with respect to a participant's entire benefit, pursuant to paragraph (d)(7)(iii)(C)(*2*) of this section the partial single-sum payment must be determined pursuant to the explicit bifurcation rules of paragraph (d)(7)(ii)(A) of this section.

(iii) The portion of the participant's accrued benefit that is settled by the single-sum payment of $32,000 is determined as the amount that bears the same ratio to the total accrued benefit as that single-sum payment bears to the single-sum payment with respect to the entire accrued benefit (($32,000 ÷ $197,532) x $1,500), which is $243 per month payable as a straight life annuity at normal retirement age. Thus, the remaining portion of the accrued benefit is $1,257.00 per month payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 is $923.90 per month ($1,257 x 75% x 98%). Participant T receives this benefit in addition to the single sum payment of $32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 4. (i) Plan C was amended to freeze benefits under a traditional defined benefit formula as of December 31, 2016, and to provide benefits under a cash balance formula beginning January 1, 2017. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2016, and the portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula.

(ii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C provides for an explicitly bifurcated accrued benefit because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Therefore, whether a participant elects to receive a single-sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2016, is subject to the minimum present value requirements of section 417(e)(3).

Example 5. (i) The facts are the same as in *Example 4* of this paragraph (d)(7)(v), except that Plan C also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of that portion as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire cash balance portion were paid as a single sum by the percentage of the cash balance portion settled by the single-sum payment. Participant W retires at age 65, with an accrued benefit under the traditional defined benefit formula (earned as of December 31, 2016) of $500 per month payable as a straight life annuity at normal retirement age and a cash balance hypothetical account balance of $45,000. Based on Plan C's actuarial equivalence factors, Participant W's accrued benefit derived from the cash balance hypothetical account is $320 per month, payable as a straight life annuity at normal retirement age. Participant W elects to receive 1/3 or $15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a straight life annuity.

(ii) Under the analysis set forth in *Example 4* of this paragraph (d)(7)(v), Plan C provides for an explicitly bifurcated accrued benefit with respect to the traditional defined benefit portion and the cash balance portion because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii) In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C also provides for an explicitly bifurcated accrued benefit with respect to the cash balance benefit because the plan provides that a distribution in the form of a single-sum payment is made to settle a specified percentage of the cash balance benefit. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the annuity selected by Participant W with respect to the cash balance benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, in accordance with paragraph (d)(7)(ii)(A) of this section, 1/3 of the cash balance hypothetical account is settled by the distribution paid out as a single sum (that is, $15,000 ÷ $45,000). After the single-sum payment, the remaining portion of the accrued benefit derived from the cash balance account is 2/3 of the initial accrued benefit derived from the cash balance account, or a straight life annuity at normal retirement age of $213.33 per month (2/3 x $320).

(iv) To settle the remaining portion of the entire accrued benefit (the portion of the benefit attributable to service as of December 31, 2016 plus the remaining portion of the cash balance benefit), Participant W receives a monthly life annuity of $713.33 per month payable as a straight life annuity at normal retirement age (equal to the $500 straight life annuity at normal retirement age earned as of December 31, 2016 plus the remaining benefit derived from the cash balance portion of a straight life annuity payable at normal retirement age of $213.33 per month). Participant W's election to receive a single-sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant W's distribution is subject to the minimum present value requirements of section 417(e)(3).

Example 6. (i) Plan D permits participants to elect a single-sum payment of up to $10,000 with the remaining benefit payable in the form of an annuity. Participant X retires in 2016 at age 55 with an accrued benefit of $1,000 per month payable as a straight life annuity at normal retirement age. Participant X is eligible for an unreduced early retirement benefit of $1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant X can receive an immediate benefit in the form of a 100% joint and survivor annuity of $800 per month. Participant X elects to receive a single-sum payment of $10,000, with the balance of the benefit payable as a 100% joint and survivor annuity beginning at age 55. Based on the applicable mortality table for 2016 and

the November 2015 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 7.602.

(ii) Plan D provides for a single-sum distribution of a portion of the participant's accrued benefit but, because the plan initially specifies the amount of the single-sum distribution (rather than the portion of the accrued benefit that is being settled by that distribution), Plan D is described in paragraph (d)(7)(ii)(B) of this section. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the joint-and-survivor annuity selected by Participant X are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d).

(iii) A straight life annuity of $109.62 per month payable at normal retirement age is actuarially equivalent to the $10,000 single-sum payment, determined using the applicable mortality table for 2016 and the November 2015 segment rates ($10,000 ÷ 12 ÷ 7.602). Therefore, pursuant to paragraph (d)(7)(ii)(B) of this section, in order to satisfy this paragraph (d) the remaining portion of the accrued benefit after the single-sum payment of $10,000 must be no less than $890.38 per month payable as a straight life annuity at normal retirement age ($1,000.00 – $109.62).

(iv) Based on Plan D's early retirement and optional form factors, in order to satisfy this paragraph (d), the annuity benefit payable to Participant X in the form of a 100% joint-and-survivor annuity beginning at age 55 must be no less than $712.30 per month ($890.38 x .8). Participant X receives this benefit in addition to the single sum payment of $10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 7. (i) Plan E provides for an unreduced early retirement benefit for participants who have met certain age and service requirements. Prior to amendment, Plan E permitted participants to elect a single-sum payment equal to the present value of the participant's unreduced early retirement benefit, determined using the applicable interest rate and applicable mortality table under section 417(e)(3). Plan E did not permit participants to elect a single-sum payment with respect to only a portion of their benefits. Effective December 31, 2012, Plan E was amended to eliminate the single-sum payment with respect to benefits accrued after that date.

(ii) Participant Y retires on December 31, 2016, at age 60, after meeting Plan E's age and service requirements for an unreduced early retirement benefit. Participant Y's accrued benefit is $1,000 per month payable as a straight life annuity commencing at normal retirement age, of which $800 per month was accrued as of December 31, 2012. Participant Y elects to take a single-sum payment based on the benefit accrued as of December 31, 2012, with the remainder paid as a lifetime annuity commencing at age 60. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632, so Y's single-sum payment is $800 x 12 x 14.632 = $140,467.20.

(iii) In accordance with paragraph (d)(7)(iii)(C)(*1*) of this section, Plan E provides for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section. Therefore, Participant Y must receive an annuity of $200 earned after December 31, 2012 in addition to the single-sum payment of $140,467. Plan E is not permitted to use the approach described in paragraph (d)(7)(ii)(B) of this section to reduce or eliminate the $200 annuity earned after December 31, 2012.

(8) *Effective/applicability date*—(i) *In general*. Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 1995.

* * * * *

(v) *Effective date for special rules applicable to the payment of a portion of a participant's benefit*. Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may elect to apply the rules of paragraph (d)(7) of this section to earlier periods.

* * * * *

John M. Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: August 3, 2016.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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26 CFR 1.856–10: Definition of real property;
26 CFR 1.856–3: Definitions

T.D. 9784

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Definition of Real Estate Investment Trust Real Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that clarify the definition of real property for purposes of the real estate investment trust provisions of the Internal Revenue Code (Code). These final regulations provide guidance to real estate investment trusts and their shareholders.

DATES: *Effective date*: These regulations are effective on August 31, 2016.

Applicability date: For dates of applicability, see §1.856–10(h).

FOR FURTHER INFORMATION CONTACT: Julanne Allen of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 317-6945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to real estate investment trusts (REITs). Section 856 of the Code defines a REIT by setting forth various requirements. One of the requirements for a taxpayer to qualify as a REIT is that at the close of each quarter of the taxable year at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities. See section 856(c)(4). Section 856(c)(5)(B) defines *real estate assets* to include real property (including interests in real property and interests in mortgages on real property). Section 856(c)(5)(C) defines *interests in real property* to include fee ownership and co-ownership of "land or improvements thereon." Prior to these final regulations, § 1.856–3(d) of the Income Tax Regulations, promulgated in 1962 in TD 6598 (the 1962 Regulations), defined real property for purposes of the regulations under sections 856 through 859. Under § 1.856–3(d) of the 1962 Regulations, the term *real property* means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real

property. Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as used in section 856 and the regulations thereunder. The term includes, for example, the wiring in a building, plumbing systems, central heating, or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in the building, or other items which are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment which is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc., even though such items may be termed fixtures under local law.

The IRS issued revenue rulings between 1969 and 1975 addressing whether certain assets qualify as real property for purposes of section 856. Specifically, the published rulings address whether assets such as railroad properties,[1] mobile home units permanently installed in a planned community,[2] air rights over real property,[3] interests in mortgage loans secured by total energy systems,[4] and mortgage loans secured by microwave transmission property[5] qualify as either real property or interests in real property under section 856. After these published rulings were issued, REITs invested in various types of assets that are not directly addressed by the regulations or the published rulings, and some of these REITs received letter rulings from the IRS concluding that certain of these various assets qualified as real property. A letter ruling, however, may not be relied upon by taxpayers other than the taxpayer that received the letter ruling[6] and is limited to its particular facts. The Treasury Department and the IRS recognized the need to provide updated published guidance on the definition of real property under sections 856 through 859. On May 14, 2014, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–150760–13 at 79 FR 27508) (NPRM) to define "real property" solely for purposes of sections 856 through 859 and provisions that reference the definition of real property in section 856 and the regulations thereunder.

Written and electronic comments responding to the NPRM were received. The written comments are available for public inspection at http://www.regulations.gov or upon request. A public hearing was held on September 18, 2014.

After consideration of all the comments, these final regulations adopt the proposed regulations as revised by this Treasury decision.[7] The comments and revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

I. The Definition of Land

The proposed regulations defined the term "land" to include water and air space superjacent to land and natural products and deposits that are unsevered from the land. A commenter requested clarification that land includes water space and air space above ground that the taxpayer does not own. For example, a taxpayer may own a building and purchase air rights superjacent to one or more neighboring buildings to enhance the value of the building the taxpayer owns, or a taxpayer may purchase air rights in anticipation of using those rights to facilitate the future acquisition or development of property. The Treasury Department and the IRS agree that air space or water space superjacent to land each qualify as land even if the taxpayer owns only the air space or water space and does not own an interest in the underlying land. The proposed regulations stated that superjacent water and air space qualify as land, and these final regulations retain the language of the proposed regulations.

II. The Definition of Improvements to Land

The proposed regulations generally defined the term "improvements to land" to mean inherently permanent structures (IPSs) and their structural components. A commenter recommended that these final regulations clarify that clearing, grading, landscaping, and earthen dams should be treated as improvements to land. The Treasury Department and the IRS believe that, to the extent these assets are distinct assets that have value apart from the land, the REIT must analyze these assets separately under these final regulations. For example, if landscaping includes shrubs planted in the ground, the shrubs are within the definition of land in these final regulations so long as the shrubs remain unsevered natural products of the land. If, however, landscaping includes a bench that is a distinct asset, the bench is analyzed under the factors for an IPS in these final regulations to determine whether the bench is real property.

III. The Definition of IPS

A. Passive function requirement and active function prohibition

1. In General

Under the proposed regulations, IPSs include buildings and other inherently permanent structures (OIPSs). To qualify as an OIPS under the proposed regulations, a structure must serve a passive

[1]Rev. Rul. 69–94 (1969–1 CB 189).

[2]Rev. Rul. 71–220 (1971–1 CB 210).

[3]Rev. Rul. 71–286 (1971–2 CB 263).

[4]Rev. Rul. 73–425 (1973–2 CB 222).

[5]Rev. Rul. 75–424 (1975–2 CB 269).

[6]Rev. Proc. 2016–1 (2016–1 IRB 1), section 11.02; see section 6110(k)(3) of the Code.

[7]Under section 856(c)(2) and (3), in order for an entity to qualify as a REIT, certain prescribed percentages of that entity's gross income must be derived from certain types of income (which include "rents from real property" and "interest on obligations secured by mortgages on real property or on interests in real property"). The definition of real property in these final regulations applies for purposes of section 856(c)(2) and (3), but these final regulations provide neither explicit nor implicit guidance regarding whether various types of income are described in section 856(c)(2) and (3).

function, such as contain, support, shelter, cover, or protect, and not serve an active function, such as manufacture, create, produce, convert, or transport. Commenters suggested that use of the terms active and passive may cause confusion because, for example, REITs may be engaged in the active conduct of a trade or business within the meaning of section 355(b) solely by virtue of functions with respect to rental activity that produce income qualifying as rents from real property within the meaning of section 856(d).[8]

During the hearing, a commenter stated that REITs may perform certain services and that the requirement that an IPS serve a passive function may be at odds with this permissible activity. This commenter suggested that the requirement be revised to: (1) State that OIPSs serve a real estate-related function; (2) require that the asset not primarily contribute to the production of income other than for the use, occupancy, or financing of space; or (3) not include the terms passive and active when describing permissible and prohibited functions. Other commenters suggested that the function of a distinct asset not be considered in determining whether the distinct asset is an OIPS. These commenters maintained that inherent permanence should be the only requirement for a distinct asset to qualify as an OIPS.

These final regulations do not adopt these suggestions. These final regulations address whether the asset itself has a passive function, not whether the asset is used in an active trade or business or whether income from the asset is income from an active trade or business. The requirement in the proposed regulations and in these final regulations that an asset serve a passive function is intended to be a more precise statement of the distinction previously set forth in § 1.856–3(d) of the 1962 Regulations, which treated as real property certain passive assets but not assets accessory to the operation of a business, including machinery. The Treasury Department and the IRS believe that the terms passive and active, when taken together with the examples in these final regulations, appropriately clarify and illustrate the permissible functions of an OIPS. The passive function requirement neither prohibits a tenant from using a passive asset, such as an office building, in the tenant's active business nor limits a REIT's ability to perform either the services excepted under section 856(d)(7)(C)(ii) or the trustee or director functions permitted by § 1.856–4(b)(5)(ii).

The Treasury Department and the IRS believe that the commenters' suggested real estate-related standard is circular and might support real property treatment for assets that serve active functions. Further, the Treasury Department and the IRS do not agree that inherent permanence alone is a sufficient basis for a distinct asset to be treated as an IPS. For example, the Treasury Department and the IRS continue to believe that some inherently permanent assets, such as large, heavy machinery, do not qualify as real property for purposes of section 856.

A commenter suggested replacing the passive function requirement with a test that focuses on an asset's human factor, which the commenter defined as whether, and the extent to which, human involvement is needed for an asset to function. This commenter contended that human involvement is a characteristic of an active function and, therefore, should be taken into account in determining whether a particular asset is active or passive. The Treasury Department and the IRS disagree and continue to believe that machinery, including automated machinery that functions with little or no human involvement, does not qualify as real property for purposes of section 856.

2. Transport as a Prohibited Active Function

The proposed regulations listed transport as an active function. Commenters noted that this active function differs from the other four active functions (manufacture, create, produce, and convert) that involve changing the physical nature or character of a commodity or good. Commenters also suggested that some of the assets on the list of types of OIPSs in the proposed regulations, such as railroad tracks and tunnels, help to transport a good or a commodity.[9]

The Treasury Department and the IRS agree that the term transport could be interpreted to describe functions of both passive conduits used for transportation and machines that push or pull items through or along a conduit. The Treasury Department and the IRS intend the term transport to mean to cause to move, and these final regulations retain transport as a prohibited active function of an OIPS. To provide clarity, these final regulations include providing a conduit (such as in the case of a pipeline or electrical wire) or route (as in the case of a road or railroad track) as a permitted passive function of an OIPS.

3. Assets with Both Active and Passive Functions

In addition to other requirements, §1.856–10(d)(2)(i) of the proposed regulations stated that a distinct asset that serves an active function, such as machinery or equipment, is not a building or OIPS.

Commenters suggested that solar panels can perform dual functions, including a passive function (that is, to shelter) and an active function (that is, to convert (energy)). Commenters stated that solar panels may be used to protect pastures, parking lots, buildings, and other structures from the detrimental effects of solar radiation and to manage temperature through shading. The structures to which solar panels are attached—or even into which they are integrated—may qualify as IPSs under the proposed regulations.

The Treasury Department and the IRS note that the example given by the commenters presumes that the solar panel structure is a single distinct asset that serves a passive function of sheltering and an active function of converting energy for sale to third parties. If this were the case, the solar panel structure would fail to qualify as an IPS under § 1.856–10(d)(2)(i) of the proposed regulations as a result of the structure's active function. If, however, a solar panel structure is

[8]See Rev. Rul. 2001–29 (2001–1 CB 1348).

[9]Commenters also noted that several assets listed as structural components, such as elevators and escalators, transport objects or occupants of a building. A structural component may have an active function if the structural component serves the passive function of the IPS of which it is constituent.

composed of multiple distinct assets, then each of those distinct assets would be analyzed under the proposed regulations to determine whether it qualifies as an IPS or as a structural component of an IPS.[10] Because these final regulations retain the requirement that an IPS not serve an active function, machinery and equipment that may serve both passive and active functions are excluded from the definition of an IPS.

B. Definition of building

Section 1.856–10(d)(2)(ii)(A) of the proposed regulations stated that a building encloses a space within its walls and is covered by a roof. Examples given in § 1.856–10(d)(2)(ii)(B) of the proposed regulations were permanently affixed houses, apartments, hotels, factory and office buildings, warehouses, barns, enclosed garages, enclosed transportation stations and terminals, and stores.

During the hearing, a commenter stated that for appraisal purposes, buildings are considered to be buildings regardless of their permanence. This commenter suggested that these final regulations should adopt standards published by an appraisal organization to define real property.

Section 1.856–3(d) of the 1962 Regulations indicates that inherent permanence is important in determining whether a structure qualifies as real property. A tent, for example, may satisfy the portion of the definition of a building in the proposed regulations that referenced enclosing within its walls a space that is covered by a roof, but the impermanent nature of the tent would prevent it from qualifying as a building for purposes of section 856. The purposes of definitions used by appraisal organizations, which focus on valuation, differ from the purposes of definitions used for REIT qualification purposes. For example, although both permanent and impermanent property may be appraised, permanence is of crucial importance in defining real property for REIT qualification purposes. Therefore, these final regulations do not adopt standards published by an appraisal organization.

Another commenter urged the Treasury Department and the IRS to change the definition of building in these final regulations so that the definition does not depend on whether a space is completely enclosed by its walls and covered by a roof. The commenter stated that even an outdoor sports stadium or amphitheater and an unenclosed parking garage that are permanently affixed to land or another IPS may fail to qualify as buildings under the proposed regulations.

The Treasury Department and the IRS agree that these structures may fail to meet the definition of building under the proposed regulations. The Treasury Department and the IRS believe, however, that many outdoor sports stadiums, amphitheaters, and unenclosed parking garages would satisfy the definition of an OIPS in § 1.856–10(d)(2)(iii) of the proposed regulations and that this definition is more appropriate for these structures. Therefore, the definition of building in the proposed regulations is retained in these final regulations.

C. Clarification of the term indefinitely

The proposed regulations stated that, to qualify as an IPS, a distinct asset must be permanently affixed and that if the affixation is reasonably expected to last indefinitely based on all the facts and circumstances, the affixation is considered permanent.

Commenters indicated that the term indefinitely as used in determining whether an asset is an IPS was unclear. A commenter suggested using an asset's useful life as an alternate to indefinitely. The Treasury Department and the IRS have concluded that relying on the useful life of an asset as the measure for permanence would have the effect of treating certain impermanent assets as real property. For example, if an asset has a useful life of two years, it would be inappropriate for the asset to be treated as permanently affixed solely because the asset was reasonably expected to remain in place for two years.

Another commenter provided the example of a REIT that constructs a building on land on which the REIT holds a 99-year ground lease. Upon expiration of the lease, the building is subject to removal. In this case, the building may not be on the land in 100 years. Another commenter provided the example of a building that is subject to condemnation and that will be torn down in the future.

Another commenter suggested that whether an asset is inherently permanent should be based upon an objective analysis of the physical nature of the manner of affixation, rather than on a particular taxpayer's subjective intent. This commenter recommended that if the manner of affixation is of a permanent nature and is consistent with the distinct asset remaining in place indefinitely based on all the facts and circumstances, the affixation is considered permanent. Commenters also urged the Treasury Department and the IRS to provide a statement in the preamble to these final regulations that indefinitely does not mean forever but rather means for the foreseeable future.

The Treasury Department and the IRS do not intend the term indefinitely to mean forever. The proposed regulations stated that whether affixation is reasonably expected to last indefinitely is based on all the facts and circumstances. Section 1.856–10(d)(2)(iv) provides factors that must be taken into account to determine whether a distinct asset is an IPS if that distinct asset is not included in the lists of types of buildings in § 1.856–10(d)(2)(ii)(B) or types of OIPSs in § 1.856–10(d)(2)(iii)(B). These factors provide additional guidance on the meaning of permanent affixation. The primary focus of these factors is on the nature of the distinct asset and the affixation, including the manner in which the distinct asset is affixed, whether the distinct asset is designed to be removed, the damage that removal would cause, and the time and expense required to move the distinct asset. Although one factor includes any circumstances that suggest the expected period of affixation is not indefinite and provides as an example a lease that requires or permits removal of the distinct asset upon the expiration of the lease, the determination of whether a distinct asset is an IPS is based on all of the facts and circumstances.

[10] A similar analysis was applied to the solar energy site assets in §1.856–10(g), *Example 8*, of the proposed regulations.

These final regulations do not adopt these suggestions and, because the Treasury Department and the IRS do not believe additional guidance regarding inherent permanence is necessary, retain the definition of IPS as proposed.

D. Suggested presumption for structures with a certificate of occupancy or similar license

A commenter agreed that state or local definitions of property should not control for purposes of the definition of real property under section 856, but suggested that when a certificate of occupancy or similar license or certification is granted with respect to a structure, the structure be presumed to constitute real property for purposes of section 856 unless the facts and circumstances clearly indicate that the structure is not permanent.

Local law standards for a certificate of occupancy or similar license or certification might be inconsistent with the definition of real property for purposes of section 856. For example, local law might permit issuance of a certificate of occupancy for a tent that is not inherently permanent. In addition, this presumption might lead to inconsistent results. For example, two identical assets located in localities that use different standards for licensing might be treated differently for purposes of section 856 because a certificate of occupancy has been granted to one of the assets and not to the other. For these reasons, we believe the suggested presumption would create confusion and administrative difficulty, and, therefore, these final regulations do not adopt this comment.

IV. The Definition of Structural Component

A. Income produced by a structural component

In generally defining the term structural component, §1.856–10(d)(3)(i) of the proposed regulations stated, in part, that a structural component is any distinct asset that is a constituent part of and integrated into an IPS, serves the IPS in its passive function, and, even if capable of producing income other than consideration for the use or occupancy of space, does not produce or contribute to the production of such income.

A commenter requested that the words "and related services" be added to the language of § 1.856–10(d)(3)(i). If that request were adopted, structural components would include assets that serve the IPS and even if capable of producing income other than consideration for the use or occupancy of space *and related services*, do not produce or contribute to the production of such income (emphasis added to indicate commenter's suggested language). The commenter stated that REITs use property such as the systems that supply utilities to a building to provide services to tenants. The commenter explained that a REIT may receive additional compensation to cover utilities that the REIT provides to the tenant when the tenant uses space in the building outside of specified business hours.

The Treasury Department and the IRS have concluded that the definition of structural component in the proposed regulations adequately accounts for the concerns raised by the commenter, and accordingly these final regulations do not incorporate the commenter's suggested revision.

B. Proposed utility safe harbor for structural components

A commenter recommended that these final regulations adopt a safe harbor for distinct assets that provide utilities to IPSs. The commenter recognized that the utility-like function aspect of the definition in the proposed regulations underscores the importance of that type of structural component and suggested that a distinct asset that serves a utility-like function with respect to an IPS should be conclusively presumed to be a structural component of that IPS.

The Treasury Department and the IRS note that the list of types of structural components in the proposed regulations included several utility-like systems, such as plumbing systems, central heating and air-conditioning systems, fire suppression systems, central refrigeration systems, and humidity control systems. The Treasury Department and the IRS may add other systems that satisfy the factors in §1.856–10(d)(3)(iii) to the structural component list through future guidance published in the Internal Revenue Bulletin. The proposed regulations differentiated systems that perform utility-like functions from other distinct assets to permit analysis of these systems as a whole. Under the proposed regulations, once it has been determined that an asset or assets function as a utility-like system, the system is analyzed as a distinct asset basing the determination of whether the system is real property on all of the facts and circumstances and using the factors listed under § 1.856–10(d)(3)(iii) for structural components. A system or asset that provides a utility but that does not qualify as a structural component under the facts and circumstances test under § 1.856–10(d)(3)(iii) (for example, a window air-conditioning unit) is not a structural component.

Because the Treasury Department and the IRS believe that the factors listed under § 1.856–10(d)(3)(iii) for structural components are important to the analysis of systems that provide a utility-like function these final regulations decline to adopt the blanket rule suggested by the commenter.

C. The equivalent interest requirement for structural components

Section 1.856–10(d)(3)(i) of the proposed regulations stated that a distinct asset is a structural component if the interest held therein is included with an equivalent interest held by the taxpayer in the IPS to which the structural component is functionally related. Commenters suggested that the equivalent interest requirement for structural components be deleted or amended because the requirement: (1) Is inconsistent with industry practices and an asset should qualify as a structural component even if the REIT owns the asset but leases from another party the building served by the structural component; (2) may negatively affect investment in energy efficient and renewable energy assets; (3) was not explained in the proposed regulations and seemingly serves no tax policy purpose; and (4) is contrary to congressional intent, case law, and the treatment of structural components by the IRS in other contexts.

The Treasury Department and the IRS intended that the equivalent interest re-

quirement in the proposed regulations ensure that an asset did not qualify as a structural component unless that asset served real property in which the REIT also had an interest. The Treasury Department and the IRS set forth a similar requirement in Rev. Rul. 73–425, which addresses notes secured by a total energy system. Rev. Rul. 73–425 holds that obligations secured by a mortgage covering a total energy system and the building that the system served qualify as real estate assets. The revenue ruling also holds that an obligation secured only by the total energy system does not qualify as a real estate asset.

The Treasury Department and the IRS believe that, to treat an asset as a structural component, a REIT must hold its interest in the structural component together with a real property interest with respect to the space in the IPS that the structural component serves. For example, a central air-conditioning system is a machine that does not separately qualify as an IPS. A central air-conditioning system that is wholly owned by a REIT may, however, qualify as a structural component if the REIT also holds a real property interest, such as a leasehold interest, with respect to the space in the IPS served by the central air-conditioning system. Limiting the definition of structural component to assets that serve an IPS in which the REIT has a real property interest is consistent with the statutory requirement that REITs invest in real property or interests in real property.

For these reasons, these final regulations provide that a distinct asset qualifies as a structural component only if the REIT holds its interest in the distinct asset together with a real property interest with respect to the space in the IPS that the distinct asset serves. In addition, as illustrated by Rev. Rul. 73–425, for a mortgage that is secured by a structural component to qualify as a real estate asset under these final regulations, the mortgage also must be secured by the IPS served by the structural component.

D. Suggested standard for structural components

Section 1.856–10(3)(i) of the proposed regulations defined a structural component to include a distinct asset that serves the IPS in its passive function, and, even if capable of producing income other than consideration for the use or occupancy of space, does not produce or contribute to the production of such income. Section 1.856–10(d)(3)(ii) of the proposed regulations furnished a list of distinct assets that are structural components. The proposed regulations also stated that a distinct asset that was not on this list might still be a structural component based on all of the facts and circumstances. In particular, the proposed regulations required the factors listed under § 1.856–10(d)(3)(iii) to be taken into account.

A commenter suggested that the standard for a structural component should be revised so that a structural component is defined as a distinct asset that is intended to protect, preserve, secure, or support the safe operation of the IPS. The commenter suggested that satisfying this standard should be sufficient to determine if a distinct asset is a structural component and, therefore, the structural component factor test under § 1.856–10(d)(3)(iii) of the proposed regulations is unnecessary.

These final regulations do not adopt the commenter's suggestion because the standard suggested would in some circumstances unduly limit the functions a structural component may serve and in other circumstances unduly expand the functions a structural component may serve. The Treasury Department and the IRS do not believe this modification is necessary given these final regulations' requirement that a structural component serve the IPS to which the structural component is constituent in the IPS's passive function. In addition, the Treasury Department and the IRS have concluded that adopting a standard that takes into account a taxpayer's intent regarding an asset may lead to inconsistent results because different taxpayers may have different intentions regarding the same type of distinct asset.

V. Requested Additions to the Lists of Qualifying Assets

A. General suggestions

Sections 1.856–10(d)(2)(ii)(B), 1.856–10(d)(2)(iii)(B), and 1.856–10(d)(3)(ii) of the proposed regulations furnished lists of types of distinct assets that would qualify as buildings, OIPSs, and structural components, respectively. A commenter requested that certain other distinct assets be included on these lists. These other distinct assets included car charging stations, healthcare facilities, storage facilities, timber, electrical distribution and redundancy systems, telecommunication systems, and equipment comprising a building management system.

The Treasury Department and the IRS have considered the proposed additions to the lists of qualifying assets and believe that the proposed regulations already addressed the tax treatment of certain of these assets, such as storage facilities and timber. In addition, the Treasury Department and the IRS are not persuaded that the other assets will in all cases satisfy the relevant definition. Therefore, these final regulations do not include these suggested additions to the lists of qualifying assets.

B. Additions to the lists for types of IPSs

1. Additions to the List for Types of Buildings

Commenters suggested adding motels, casinos, health care facilities, storage facilities, greenhouses, enclosed stadiums, enclosed shopping malls, museums, municipal buildings, other housing (such as assisted living), parking garages (whether or not fully enclosed), and mixed-use properties combining one or more of the foregoing to the list for buildings under § 1.856–10(d)(2)(ii)(B) of the proposed regulations.

These assets would not always qualify as buildings as defined under the proposed regulations and in these final regulations. For example, casinos may be on an unaffixed barge or riverboat, health care facilities may be in tents, storage facilities may include movable pods, and greenhouses may be structures that are not permanently affixed. Unenclosed parking garages were not within the definition of a building under the proposed regulations but were included in the list of types of OIPSs in § 1.856–10(d)(2)(iii)(B) of the proposed regulations (which included permanently affixed parking facilities). Museums may exist on unaffixed boats, in a room inside a building, or in the open air.

A mixed-use building would still qualify as a building because it encloses space within its walls and is covered by a roof. On the other hand, a mixed-use property comprised of several structures would require a separate analysis of each structure. The suggestions to include municipal buildings and assisted-living facilities focus on the use, rather than the type, of structure. In addition, office buildings, apartments, and houses were already included on the proposed regulations' list.

A distinct asset not on the list may nevertheless qualify as a building, because the list for types of buildings in the proposed regulations is not exclusive. Moreover, many of the requested assets are already included in that list. For these reasons, these final regulations do not include all the requested assets on the list for types of buildings. However, these final regulations include as types of buildings permanently affixed motels, enclosed stadiums and arenas, and enclosed shopping malls.

2. Additions to the List for Types of OIPSs

Some commenters requested certain assets be added to the list under § 1.856–10(d)(2)(iii)(B) of the proposed regulations for types of OIPSs, including energy storage components, solar photovoltaic (PV) panels, related wiring and functionally related transformers, power conditioning equipment, and electrical power inverters and related wiring.

The Treasury Department and the IRS have determined that adding these assets to the list for types of OIPSs is not warranted. Inclusion of these assets would be inconsistent with the requirements that OIPSs serve a passive function and do not serve an active function.[11] Therefore, these final regulations do not include these assets on the list for types of OIPSs.

C. Additions to the list for types of structural components

One commenter suggested that the list under § 1.856–10(d)(3)(ii) of the proposed regulations for types of structural components should include special flooring for data centers. The proposed regulations stated that customization of a distinct asset in connection with the rental of space in or on an IPS to which the distinct asset relates does not affect whether the distinct asset qualifies as a structural component. The list of types of structural components in § 1.856–10(d)(3)(ii) of the proposed regulations included permanent coverings of floors. The commenter's suggestion of specifically including special flooring in a data center is an example of customization of a distinct asset in connection with the rental of space in an IPS. These final regulations, like the proposed regulations, permit the customization of distinct assets in connection with the rental of space in or on an IPS, provided that the customized asset is integrated into the IPS and is held together with a real property interest in the space in the IPS that is served by the asset. Accordingly, these final regulations do not include special flooring in a data center on the list of types of structural components.

Another commenter recommended that the list for types of structural components be expanded to include solar energy generating and heating systems and related energy storage equipment. The Treasury Department and the IRS do not believe that solar energy generating and heating systems and related energy storage equipment necessarily satisfy the definition of structural components in § 1.856–10(d)(3) of the proposed regulations but rather believe these assets should be analyzed using all the facts and circumstances and taking into account the factors provided in § 1.856–10(d)(3)(iii) of these final regulations. For these reasons, these final regulations do not adopt the recommendation.

VI. Recommended Changes to the Factor Lists in § 1.856–10(d)(2)(iii) and (3)(iv) of the Proposed Regulations

A. Recommended change to the factors used to determine whether a distinct asset is an IPS

The proposed regulations listed factors to be considered in determining whether a distinct asset (other than a type of building or type of OIPS listed in § 1.856–10(d)(2)(ii)(B) of the proposed regulations or §1.856–10(d)(2)(iii)(B) of the proposed regulations, respectively) is an IPS. One factor is whether there are any circumstances that suggest the expected period of affixation is not indefinite (for example, a lease that requires or permits removal of the distinct asset upon the expiration of the lease).

One commenter stated that buildings constructed on land subject to a long-term ground lease arguably would not satisfy this factor. Another commenter stated that removal provisions are common in commercial leases and, as a practical matter, such provisions may not be determinative as to whether the asset is ultimately removed by the lessee at the expiration of the lease. This commenter recommended that the factor be changed to any circumstance that suggests the manner of affixation is temporary in nature rather than permanent.

As previously discussed in this preamble, for purposes of section 856, the Treasury Department and the IRS do not intend the term indefinitely to mean forever. Whether a distinct asset qualifies as an IPS depends on all the facts and circumstances including an analysis of the factors in § 1.856–10(d)(2)(iv). For these reasons, this factor is not modified in these final regulations.

B. Recommended change to the factors used to determine whether a distinct asset is a structural component

For distinct assets other than those listed in § 1.856–10(d)(3)(ii) of the proposed regulations as structural components, the proposed regulations listed factors under § 1.856–10(d)(3)(iii) that must be taken into account in determining whether the distinct asset qualifies as a structural component of an IPS. One of those factors was whether the owner of the property was also the legal owner of the distinct asset. A commenter noted that a REIT may have a leasehold interest in real property and may own a structural component that it installs as part of the real property. An example provided by the commenter is a REIT that leases the shell of a building and then engages indepen-

[11]Depending on all the facts and circumstances, however, some or all of these assets may qualify as structural components of an IPS.

dent contractors to complete internal build-outs to customize the shell of the building into a shopping mall.

The Treasury Department and the IRS have considered this comment, along with the comments received regarding the equivalent interest requirement, as discussed in this preamble. Accordingly, these final regulations require that, for a distinct asset to be a structural component, a REIT must hold a legally enforceable real property interest in the space in the IPS that the structural component serves.

VII. Intangible Assets

A. Intangibles derived from the trade or business of earning revenues for the use of real property or related services

Under §1.856–10(f) of the proposed regulations, an intangible asset is real property or an interest in real property if the asset derives its value from real property or an interest in real property, is inseparable from that real property or interest in real property, and does not produce or contribute to the production of income other than consideration for the use or occupancy of space. Commenters requested inclusion of intangible assets derived from services that produce income other than consideration for the use or occupancy of space, which would include workforce-in-place and customer-based intangibles. The Treasury Department and the IRS believe that intangible assets that are separable from real property or an interest in real property should not qualify as real property. The final regulations clarify that intangible assets that are related to services and that are separable from the real property do not qualify as real property.

B. In-place above and below-market leases

Commenters requested that intangible assets related to in-place above-market leases in which the REIT is the lessor and below-market leases in which the REIT is the lessee be treated as qualifying real property. Under section 856(c)(5)(C), a lease of land or improvements thereon is an interest in real property and, therefore, a lease of land or improvements thereon is a real estate asset under section 856(c)(5)(B). A lease of real property that produces both rents from real property under section 856(d)(1) and other income that does not so qualify is, in part, an interest in real property under section 856(c)(5)(C) and, in part, an asset other than an interest in real property. To the extent the portion of the lease that is an interest in real property has value, that portion is a real estate asset under section 856(c)(5)(B). These final regulations have been modified to clarify that an intangible asset may be, in part, an interest in real property and, in part, an asset other than an interest in real property. In addition, these final regulations include an example illustrating the application of these final regulations to an in-place above-market lease that produces both income that qualifies as rents from real property under section 856(d)(1) and other income that does not so qualify.

C. Intangible assets that result from mergers, certain business combinations, and stock or asset acquisitions

Section 1.856–10(f)(1) of the proposed regulations generally defined an intangible asset to include certain intangible assets established under generally accepted accounting principles (GAAP) as a result of an acquisition of real property or an interest in real property. Commenters noted that intangible assets may result from mergers, certain business combinations, and stock or asset acquisitions. The commenters urged that the final regulations acknowledge that REITs may acquire intangible assets in both asset and stock transactions.

The proposed regulations used the acquisition of real property or an interest in real property as an example of a type of transaction in which an intangible asset may be established under GAAP. Under § 1.856–2(d)(3), the term total assets means the gross assets of the REIT determined in accordance with GAAP. Thus, an intangible asset that, in accordance with GAAP, results from a merger, business combination, or stock or asset acquisition may qualify as real property. Because the proposed regulations did not preclude real property treatment of intangible assets resulting from mergers, certain business combinations, or stock or asset acquisitions, the Treasury Department and the IRS have concluded that no change is necessary to the final regulations to accommodate the commenter's concern.

D. Use permits and leases requiring property to be operated for a specific use

Section 856(c)(5)(C) defines interests in real property to include leaseholds of land or improvements thereon. Section 1.856–10(f)(2) of the proposed regulations stated that, if a license, permit, or other similar right solely for the use, enjoyment, or occupation of land or an IPS is in the nature of a leasehold or easement, that right generally is an interest in real property. However, a license or permit to engage in or operate a business generally is not real property or an interest in real property because the license or permit produces or contributes to the production of income other than consideration for the use or occupancy of space.

Section 1.856–10(g), *Example 12*, of the proposed regulations concluded that a special use permit from a government that, under governmental regulations, was not a lease of the land but was a permit to use the land for a cell tower was an interest in real property. Section 1.856–10(g), *Example 13*, of the proposed regulations illustrated that a license from a government to operate a casino in a specific building is a license to engage in the business of operating a casino and is not real property.

A commenter noted that many leases require property to be operated for a specific use. A property owner has an interest in requiring its property to be operated for its intended purpose. The commenter suggested that a specific-purpose lease should not be excluded from the definition of real property as an operating license.

The Treasury Department and the IRS generally agree that a requirement in a lease agreement that property be operated for a specific use does not cause the lease to fail to be treated as an interest in real property. A specific use requirement in a lease is distinguishable from a license or permit to operate a business. Such a requirement is generally a term or condition of a lease requiring that real property be used in the manner permitted by the property owner or landlord and does not constitute a separate grant by a governmental

entity of the right to operate a business. *Example 12* concludes that a special use permit to use land for a specific purpose, a cell tower, is an interest in real property. Consistent with *Example 13*, if the special use permit in *Example 12* included a governmental authorization required to conduct a business that would produce income other than consideration for the use or occupancy of space, that portion of the special use permit would not be real property for purposes of these rules. Therefore, the Treasury Department and the IRS do not believe that any change in the proposed regulations is needed to address the commenter's concern.

E. Treatment of intangible assets in another context

A commenter noted that goodwill is not considered real property for appraisal purposes. The commenter recommended that goodwill be characterized as something other than real property, but nevertheless be provided the same tax treatment as real property. The Treasury Department and the IRS do not agree with this recommendation. Section 856 governs the determination of whether an asset is real property for REIT qualification purposes. Under §1.856–2(d)(3), the gross assets of the REIT are determined in accordance with GAAP. Therefore an asset determined in accordance with GAAP, such as GAAP goodwill, must for purposes of sections 856 through 859 be accounted for either as real property or as property that is not real property. Although section 856(c)(5)(J)(ii) permits the Secretary to determine that an item of income that is not otherwise qualifying REIT income is considered as gross income that is qualifying REIT income, section 856 does not include a similar provision to permit an asset that is not otherwise real property to be treated as real property.

VIII. Procedural and Administrative Matters

A. Previously issued letter rulings

A commenter requested that the final regulations provide that taxpayers may continue to rely on previously issued letter rulings. Section 11.04 of Rev. Proc. 2016–1[12] states that a letter ruling may be revoked or modified by the issuance of temporary or final regulations that are inconsistent with that letter ruling. Accordingly, to the extent a previously issued letter ruling is inconsistent with these final regulations, the letter ruling is revoked prospectively from the applicability date of these final regulations.

B. Revised applicability date and election to apply these final regulations to earlier quarters

The proposed regulations' applicability date was for calendar quarters beginning after the date that the proposed regulations are published as final regulations in the Federal Register. Commenters requested that the final regulations apply to taxable years beginning after the date that final regulations are published in the Federal Register and that taxpayers be permitted to apply the final regulations to earlier taxable years and quarters.

The Treasury Department and the IRS understand that an applicability date based on a calendar quarter may have unintended consequences in applying the gross income tests in section 856(c)(2) and (3) because those tests apply on an annual basis. For example, for rents to qualify as rents from interests in real property, the asset from which the rents are derived must qualify as real property. An asset that qualifies as real property before the applicability date, but not on or after the applicability date, would generate rents from real property only during quarters before the applicability date. These final regulations adopt this suggestion and apply to taxable years that begin after the date that the final regulations are published as final regulations in the Federal Register. In addition, because the Treasury Department and the IRS intend these final regulations generally to be a clarification of current law, taxpayers are permitted to rely on the final regulations for periods beginning on or before the applicability date. The applicability date for these final regulations is discussed further in this preamble in the "Effective/Applicability Date" section.

IX. Interaction of the Definition of Real Property for Purposes of Sections 856 through 859 with Other Code Provisions

A. Interaction of the final regulations with other provisions that cross-reference the definition of real property for REIT purposes

A commenter noted that §1.860G–2(a)(4) references the definition of real property found in § 1.856–3(d) of the 1962 Regulations for purposes of determining whether an obligation is "principally secured by an interest in real property" for regulated mortgage investment conduit qualification purposes. The proposed regulations were proposed to revise § 1.856–3(d) to read as follows: "See § 1.856–10 for the definition of real property." To the extent other Treasury regulations reference the definition of real property in §1.856–3(d), § 1.856–3(d), as proposed in the NPRM and as amended by these final regulations, directs taxpayers to apply the definition found in § 1.856–10.

B. Reconciling definitions of real property

The preamble to the proposed regulations discussed various Code provisions in which the term real property appears. Noting the diverse contexts and varying legislative purposes of the Code provisions in which the term real property appears, the Treasury Department and the IRS requested comments on the extent to which the various meanings of real property that appear in the Treasury regulations should be reconciled.

Several commenters were concerned that the term real property has different meanings as the term is applied for purposes of different Code provisions, which could lead to confusion and inconsistent treatment of taxpayers. A commenter noted that there is no Federal definition of real property and suggested that another Code provision's restrictions on the use of real property should not preclude a REIT from investing in or financing such real

[12]Rev. Proc. 2016–1 (2016–1 IRB at 59).

property so long as the property is otherwise inherently permanent. Another commenter noted that under section 197, certain intangible assets are amortized as separate assets not associated with another asset. A third commenter requested clarification that the final regulations apply only to the definition of real property for purposes of sections 856 through 859, so that there is no conflict between the REIT provisions and other provisions of the Code that govern the investment tax credit and depreciation.

As discussed in the preamble to the proposed regulations, in drafting the proposed regulations, the Treasury Department and the IRS sought to balance (1) the general principle that common terms used in different provisions should have common meanings with (2) the particular policies underlying the definition used in the REIT provisions. These final regulations retain the language in § 1.856–10(a) of the proposed regulations stating that § 1.856–10 provides definitions for purposes of part II, subchapter M, chapter 1 of the Code. This language addresses the commenters' concerns by limiting the application of the definition of real property under these final regulations to sections 856 through 859.

X. Environmental Concerns

Some commenters suggested that the proposed regulations would encourage building in, on, or above water, which these commenters suggested is dangerous to water ecosystems and fish habitats. The commenters also suggested that the aftermath of hurricanes such as Katrina and Sandy should have demonstrated to the Government that development near or on water is dangerous to humans and extremely costly.

Neither section 856 nor the regulations thereunder override any environmental rules or regulations that may restrict development in these areas. In defining land, the Treasury Department and the IRS have concluded that it is important to include water space superjacent to land because rights to this water space are analytically indistinguishable from rights to air space superjacent to land, which, as discussed in this preamble, are treated as real property. See Rev. Rul. 71–286.

XI. Renewable Energy

A. Consequence of net metering on an asset's qualification as real property

Under § 1.856–10(d)(3)(i) of the proposed regulations, to qualify as real property, a structural component must serve an IPS and, even if capable of producing income other than consideration for the use or occupancy of space, must not produce or contribute to the production of such income. The preamble to the proposed regulations indicated that the Treasury Department and the IRS are considering guidance to address the treatment of any income earned when a system that provides electricity to an IPS held by a REIT also transfers excess electricity to a utility company. Commenters questioned whether a structural component would maintain its qualification as real property if the structural component served an IPS in its passive function but also produced a product, such as electricity, that was provided to third parties. One commenter suggested that the relevant test should be whether or not the property has net sales of electricity to the grid. Another commenter noted that the amount of electricity a building may net meter is regulated by the marketplace because utility companies often limit the percentage or amount of electricity that a building may net meter.

The Treasury Department and the IRS are considering whether additional guidance is necessary to address the circumstances under which a distinct asset that serves an IPS may produce electricity that is also sold to third parties and qualify as a structural component of the IPS for REIT purposes. Until additional guidance is published in the Internal Revenue Bulletin, in any taxable year in which (1) the quantity of excess electricity transferred to the utility company during the taxable year from such distinct assets does not exceed (2) the quantity of electricity purchased from the utility company during the taxable year to serve the IPS, the IRS (x) will not treat the transfer of such excess electricity as affecting the qualification of such distinct assets as structural components of the IPS for REIT purposes, (y) will exercise its authority under section 856(c)(5)(J)(i) to treat any income resulting from the transfer of such excess electricity as not constituting gross income for purposes of section 856(c)(2) and (3), and (z) will not treat any net income resulting from the transfer of such excess electricity as constituting net income derived from a prohibited transaction under section 857(b)(6).

B. Qualification of renewable energy credits as real property for purposes of sections 856 though 859

Commenters requested that the final regulations address the qualification of renewable energy credits (RECs) as real property. Renewable energy credits are credits issued to a provider of renewable energy and may be freely bought and sold. The owner of a system that produces renewable energy may sell RECs without selling the system or the electricity produced by the system.

Because RECs are intangible assets, the Treasury Department and the IRS have determined that RECs should be analyzed as such under § 1.856–10(f) of these final regulations. Thus, RECs do not qualify as intangible real property assets under these final regulations because RECs may be sold separately from any real property to which they relate.

C. Treatment of renewable energy assets as real property as a matter of public policy

Commenters urged the Treasury Department and the IRS to allow REITs to invest in solar energy sites as a means of furthering clean energy objectives. These commenters requested that investors in solar energy have the same access to REIT financing as investors in conventional energy sources such as natural gas, oil, and other fossil and electric energy property. Other commenters noted that private investment would be encouraged by treating certain electricity generating assets as real property.

Congress has not provided for solar energy assets to be treated differently from other assets for purposes of determining whether the assets qualify as real property under the REIT provisions. For this reason, the final regulations do not adopt this suggestion.

D. Treatment of sunlight and wind rights as interests in land

Commenters suggested that sunlight used to power a solar energy site should be considered either real property or an interest in real property. One commenter analogized sunlight and wind to rights to air space, suggested that a REIT should be allowed to sell the rights to the sunlight or wind enjoyed on its property to third parties, and further suggested that a REIT should be able to treat income from the sale of such rights as qualifying income. This commenter posited that the process used to convert sunlight into electricity is analogous to the process inherent in fruit-bearing plants, which are discussed in § 1.856–10(g), *Example 1*, of the proposed regulations, and that the sunlight, like the plants in *Example 1*, should be treated as real property. Another commenter characterized sunlight as a resource analogous to oil, gas, and mineral resources inherent in land.

The Treasury Department and the IRS agree that a REIT may lease the air space superjacent to its land, which is an interest in its land, and may allow its tenants access to sunlight and wind. The Treasury Department and the IRS, however, are not aware of an approach that could be used to enable a REIT to rent or grant an interest in sunlight or wind separate from its interest in the land or the air space superjacent to the land. Therefore, these final regulations do not adopt these suggestions.

E. Qualification of a concentrating solar power system and its associated assets as real property for purposes of sections 856 through 859

A commenter suggested that a concentrating solar power system uses assets that differ from PV panels to harvest solar energy. This commenter suggested that a concentrating solar power system, including, for example, a parabolic trough system, should be considered real property under these final regulations.

The Treasury Department and the IRS have concluded that this type of system is comprised of many distinct assets that may serve different functions. As illustrated in § 1.856–10(g), *Examples 8* and *9*, these distinct assets may be analyzed using the standards provided in the final regulations for OIPSs and structural components. Accordingly, concentrating solar power systems and their associated assets are not added to the lists of qualifying assets in these final regulations.

XII. Examples

Section 1.856–10(g) of the proposed regulations provided thirteen examples illustrating the application of the proposed regulations in a variety of factual scenarios.

A. References to net leases

Each of § 1.856–10(g), *Examples 1, 5, 6, 7, 8,* and *10*, of the proposed regulations stated that the REIT enters into a long term, triple-net lease of property. A commenter noted that the term "net lease" is not defined for purposes of section 856 and, therefore, may encompass different economic arrangements, the variations in which are not relevant to whether property is real property. The commenter further contended that many REITs do not net lease their assets. The commenter suggested that if it is necessary to describe the underlying facts, the term "lease" is sufficient and avoids the implication that a REIT must net lease its asset.

Each of *Examples 1, 5, 6, 7, 8,* and *10* of the proposed regulations stated that the assets are net leased to avoid any potential implication that the REIT is operating the property. *Examples 1, 5, 6, 7, 8,* and *10* are revised in these final regulations to provide that the REIT neither operates the property nor provides services to the lessee.

B. Example 4

Section 1.856–10(g), *Example 4*, of the proposed regulations analyzed whether a bus shelter is an IPS. One commenter suggested that *Example 4* be deleted because it was uncertain if a REIT would make a section 1033(g)[13] election with respect to the bus shelter. Additionally, the commenter was not aware of any REIT that leases or intends to lease bus shelters to a transit authority and believed that such shelters are rarely relocated. For these reasons, the commenter recommended that the example be stricken. No commenters, however, disagreed with the conclusion in the example.

The Treasury Department and the IRS believe that *Example 4* is helpful because it describes a structure that is not permanently affixed and thus does not qualify as an IPS under the standards provided in the regulations. Therefore, these final regulations do not adopt this suggestion.

C. Example 6

Section 1.856–10(g), *Example 6*, of the proposed regulations illustrated the definition of structural component in the context of a data center. One commenter suggested changes to *Example 6* including clarification that the electrical system and telecommunication infrastructure systems are (1) embedded in significant part within the walls and floors of the building, (2) would be difficult to remove, and (3) are intended to remain in place indefinitely. Although suggestions (1) and (2) would clarify the example and would not affect the analysis or conclusion of the example, suggestion (3) is not relevant because the structural component factors in § 1.856–10(d)(3)(ii)(B) of the proposed regulations do not include the intent of the owner of the asset. Accordingly, these final regulations revise *Example 6* to accurately reflect the integration of these assets into the data center building.[14]

Another commenter suggested that cross-connects used in a data center should not be considered real property because the cross-connects produce income that is not for the use or occupancy of space and this income is significant in comparison to the income produced by other assets in a data center. *Example 6* did not, and was not intended to, address every distinct asset that may be part of a data center. Distinct assets that are not

[13]Section 1033(g)(3) provides that a taxpayer may elect to treat property that constitutes an outdoor advertising display as real property for purposes of chapter 1 of the Code.

[14]For consistency and clarity, similar revisions have been made to other examples illustrating the definition of structural component.

addressed in the example may be analyzed by applying the standards set forth in the proposed regulations. Accordingly, no change was made to the final regulation in response to this comment.

E. Example 8

Section 1.856–10(g), *Example 8*, of the proposed regulations analyzed a solar energy site that includes land, photovoltaic modules (PV modules), mounts and an exit wire. The solar energy site was triple-net leased to an operator who uses the assets to produce and transmit energy to an electrical power grid for sale to third parties. The example concluded that the land, mounts, and exit wire qualify as real property and that the PV modules do not qualify as IPSs because they convert solar energy into electricity, which is an active function.

One commenter requested that the Treasury Department and the IRS update *Example 8* to include an analysis of inverters, which the commenter contended serve an active function compared to PV modules, which the commenter contended are relatively passive. Another commenter elaborated on the function of the PV modules, above ground wiring, and inverters. The commenter proposed adding language to *Example 8* to state that these assets have no moving parts and are therefore passive.

The Treasury Department and the IRS have concluded that PV modules and inverters that are used in the generation of energy for sale to third parties do not qualify as IPSs under the proposed regulations. The Treasury Department and the IRS do not believe the inclusion of above ground wiring in *Example 8*, which already analyzes an exit wire, is necessary to illustrate the application of the rules in §1.856–10 to above ground wiring. For these reasons, the final regulations do not adopt these suggestions.

F. Example 9

Section 1.856–10(g), *Example 9*, of the proposed regulations described a solar energy site similar to the solar energy site in *Example 8*, except that the solar energy site in *Example 9* is mounted on land adjacent to an office building owned by the REIT. Other than occasional transfers of electricity to the grid, the solar energy site in *Example 9* serves only the REIT's office building to which it is constituent. The solar energy site in *Example 9* of the proposed regulations qualifies as a structural component.

A commenter recommended revisions to the statements in *Example 9* that the solar energy site was (1) designed specifically for the particular office building of which it is a part and (2) expensive and time consuming to install and remove. The commenter stated that most materials used for solar rooftop and other smaller-scale installations are mass-produced and standardized and can be removed and reinstalled without major complications or damage. These final regulations revise *Example 9* to state that the size and other specifications of the solar energy system were established to serve the needs of the office building and that no facts indicate that the solar energy system will not remain in place indefinitely.

Another commenter requested clarification of the term "occasionally transfers." This commenter recommended changing "occasionally transfers" to "regularly transfers" in describing the transfer of energy from the solar energy site to a utility company. As discussed in section XI.A. of this preamble, the Treasury Department and the IRS are considering whether additional guidance is necessary to address this commenter's concern. Until the issuance of such additional guidance, the Treasury Department and the IRS (1) will not treat the transfer of the excess electricity as affecting the qualification of the distinct assets as structural components of the IPS for REIT purposes, (2) will exercise its authority under section 856(c)(5)(J)(i) to treat any income resulting from the transfer of the excess electricity as not constituting gross income for purposes of section 856(c)(2) and (3), and (3) will not treat any net income resulting from the transfer of the excess electricity as constituting net income derived from a prohibited transaction under section 857(b)(6).

A commenter noted that even when a building uses all of the solar electricity produced by a solar energy site, such as the one in *Example 9*, the tenant of the building may earn income through the sale of RECs awarded under a local renewable portfolio standard. The Treasury Department and the IRS believe that income earned by a tenant from RECs in this situation would not affect the qualification of the solar energy site as a structural component. The tax consequences of income earned by a REIT from RECs are beyond the scope of this guidance.

Another commenter requested that *Example 9* be modified to address wind facilities rather than solar facilities. The Treasury Department and the IRS believe that the components of wind facilities may similarly be analyzed using the standards provided in §1.856–10(d)(3) of the proposed regulations. For these reasons, the final regulations do not adopt these recommendations.

G. Example 10

Section 1.856–10(g), *Example 10*, of the proposed regulations addressed application of the proposed regulations to a pipeline transmission system. Distinct assets of the pipeline transmission system include underground pipelines, storage tanks, valves, vents, meters, and compressors. The example stated that the pipeline transmission system serves a passive function, containing oil, and an active function, transporting oil. The example further stated that, even though the pipeline transmission system serves an active function, a distinct asset within the system may nevertheless be an IPS if that asset does not perform an active function.

One commenter noted that whether the entire system performs an active function is not relevant because the system is composed of distinct assets, each of which must be separately analyzed. The Treasury Department and the IRS believe that *Example 10* is helpful because it demonstrates that a distinct asset within a system may still qualify as an IPS, or a structural component thereof, even though the system serves an active function.

As discussed in section III.A.2. of this preamble, these final regulations include providing a conduit or route as a permitted passive function and retain transport, which has been clarified to mean cause to move, as a prohibited active function. The Treasury Department and the IRS have revised *Example 10* to illustrate that the pipelines in *Example 10* serve the passive function of providing a conduit.

Another commenter suggested revising *Example 10* so that the pipeline transmission system transports natural gas rather than oil and suggested changing the vents and valves to isolation valves and vents, pressure control valves, relief valves, and pressure regulating stations. The commenter also suggested that *Example 10* be revised to apply the factors set forth in the regulations to determine whether these assets are structural components. These final regulations incorporate this commenter's suggestions.

In addition, commenters argued that the compressors within a pipeline transmission system are analogous to elevators and escalators within a building, with the function of moving things or people within an IPS. One commenter noted that compressors may be viewed as performing a propelling function. Another commenter suggested that elevators and escalators serve a building by enabling access to taller buildings, higher levels of occupancy, and more efficient usage. Another commenter suggested that compressors enable the efficient use of space within a pipeline.

To qualify as a structural component, a distinct asset must serve an IPS in its passive function. The compressors that transport natural gas through the pipeline transmission system in *Example 10* do not serve the underground pipelines in their passive function of providing a conduit but rather cause the natural gas to move through the conduit, which is an active function. For this reason, these final regulations do not adopt these suggestions.

H. Example 11

Section 1.856–10(g), *Example 11*, of the proposed regulations addressed whether goodwill established under GAAP as a result of the acquisition of stock of a corporation that owned a hotel qualifies as real property for purposes of sections 856 through 859. This example stated that the amount of the acquisition cost allocated to the hotel was limited to the hotel's depreciated replacement cost. The example also stated that the difference between the amount paid for the acquired corporation's stock and the depreciated replacement cost of the hotel was treated as goodwill attributable to the acquired hotel. The Treasury Department and the IRS have been advised that depreciated replacement cost is no longer the standard under GAAP for valuing property such as the hotel. The Treasury Department and the IRS have therefore removed this example.

I. Example 13

Section 1.856–10(g), *Example 13*, of the proposed regulations addressed whether a license to operate a casino is real property. *Example 13* concluded that because the license permits the holder to engage in the business of operating a casino the license is not real property even though the license applies only to the REIT's building and cannot be transferred to another location.

One commenter stated that in some foreign jurisdictions, a casino license may be more in the nature of a zoning permit that may be transferred to a subsequent buyer. This commenter suggested that a license that runs with the land is more in the nature of a zoning permit. The commenter recommended either deleting *Example 13* or revising it to distinguish transferable zoning-based or similar real estate-based licenses.

Another commenter noted that the permitted use of a facility for gaming purposes may enhance its value as real estate, apart from the value of the gaming license itself. The commenter also remarked that zoning laws frequently restrict gaming activities or liquor sales to particular geographical areas or locations, which restrictions, in general, favorably affect the value of real estate in these areas or locations.

These final regulations do not adopt these recommendations. Under §1.856–10(f) of the proposed regulations, whether a license runs with the land is not dispositive in determining whether the license is real property for purposes of sections 856 through 859. The valuation of real property, including any effect that zoning may have on the value of real property, are beyond the scope of these final regulations.

J. Additional examples

The Treasury Department and the IRS received requests to add additional examples to the final regulations.

Section VII.B. of this preamble describes comments received requesting clarification that intangible assets related to in-place above-market leases in which the REIT is the lessor and below-market leases in which the REIT is the lessee be treated as qualifying real property. As discussed in section VII.B., these final regulations include § 1.856–10(g), *Example 11*, which illustrates the application of these final regulations to an in-place above-market lease that produces both rents from real property under section 856(d)(1) and other income that does not qualify as rents from real property under section 856(d)(1).

A commenter suggested adding an example applying these final regulations to an electric transmission and distribution system. The Treasury Department and the IRS believe that the distinct assets of an electric transmission and distribution system are similar in many respects to the distinct assets of the solar energy site addressed by § 1.856–10(g), *Example 8* of the proposed regulations, and may be analyzed using the standards provided in § 1.856–10(d)(2) and (3) of the proposed regulations. Accordingly, these final regulations adequately address the distinct assets that may be part of an electrical transmission and distribution system.

Another commenter suggested that the final regulations include an example illustrating the components of an in-ground swimming pool. (The proposed regulations listed the pool itself as an OIPS.) The Treasury Department and the IRS are not aware that there have been significant questions concerning whether the various components qualify as real property. Therefore, these final regulations do not include an example addressing whether these components qualify as real property for purposes of sections 856 through 859.

XIII. Additional Comments

A. Potential tax inequality among taxpayers

Three commenters viewed the proposed regulations as a substantial expansion of the definition of real property. The Treasury Department and the IRS believe that the proposed regulations and these final regulations generally clarify existing

law. These commenters also called for equal application of the tax laws and appear to believe that REITs are a vehicle that some corporations use to avoid taxes. The REIT structure was established by Congress in 1960, and it is not within the scope of these final regulations to change the REIT structure as these commenters suggest.

B. Clarification that buildings can be on or inside of other buildings or IPSs

A commenter requested that the final regulations clarify that buildings can be on or inside of other buildings or IPSs. The Treasury Department and the IRS believe that this comment was adequately addressed by the proposed regulations, which provided that the affixation of an IPS (which may be a building) may be to land or to another IPS. In addition, § 1.856–10(g), *Example 3*, concludes that a large sculpture inside an office building qualifies as an IPS. A building inside another building is not analytically different from the sculpture inside the building in *Example 3*. Accordingly, the proposed regulations, as finalized by this Treasury decision, adequately address this commenter's concern.

C. Qualification of appurtenances and zoning and similar rights

A commenter suggested that appurtenances should be included in the definition of land. The commenter suggested that real estate law provides that an appurtenance encompasses easements and rights of way over another's land to access one's own land. In addition, this commenter suggested that zoning and similar rights should be included in the definition of real property.

Taxpayers should apply § 1.856–10(f)(2) of these final regulations, which addresses the treatment of rights for the use, enjoyment, or occupation of land, to determine whether an appurtenance qualifies as real property for purposes of sections 856 through 859. Zoning rights may increase the value of real property. Consistent with § 1.856–2(d)(3), if a zoning right is considered a separate asset under GAAP, then the zoning right should be analyzed as an intangible asset under § 1.856–10(f) of these final regulations.

D. Additional comments

A commenter suggested that the final regulations address the definition of rents from real property, eliminate the standard requiring that total assets be based on GAAP, and regulate the type of services that a taxable REIT subsidiary may provide. These issues are beyond the scope of these final regulations.

Effective/Applicability Date

These final regulations apply to taxable years that begin after August 31, 2016. Under section 856(c)(4), whether a taxpayer loses status as a REIT in one quarter may depend on whether the taxpayer satisfied section 856(c)(4) at the close of one or more prior quarters. For purposes of applying the first sentence of the flush language in section 856(c)(4) to a quarter in a taxable year that begins after August 31, 2016, these final regulations apply in determining whether the taxpayer met the requirements of section 856(c)(4) at the close of prior quarters. Taxpayers may rely on these final regulations for quarters that end before the applicability date.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal author of these regulations is Julanne Allen, Office of Associate Chief Council (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

The IRS revenue rulings and revenue procedure cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. Section 1.856–3(d) is revised to read as follows:

§ 1.856–3 Definitions.

* * * * *

(d) *Real property*. See §1.856–10 for the definition of *real property*. A regulation that adopts the definition of real property in this paragraph is to be interpreted as if it had referred to §1.856–10.

* * * * *

Par. 3. Section 1.856–10 is added to read as follows:

§ 1.856–10 Definition of real property.

(a) *In general*. This section provides definitions for purposes of part II, subchapter M, chapter 1 of the Internal Revenue Code. Paragraph (b) of this section defines real property, which includes land as defined under paragraph (c) of this section and improvements to land as defined under paragraph (d) of this section. Improvements to land include inherently per-

manent structures as defined under paragraph (d)(2) of this section and structural components of inherently permanent structures as defined under paragraph (d)(3) of this section. Paragraph (e) of this section provides rules for determining whether an item is a distinct asset for purposes of applying the definitions in paragraphs (b), (c), and (d) of this section. Paragraph (f) of this section identifies intangible assets that are real property or interests in real property. Paragraph (g) of this section provides examples illustrating the rules of paragraphs (b) through (f) of this section. Paragraph (h) of this section provides the effective/applicability date for this section.

(b) *Real property*. The term *real property* means land and improvements to land. Local law definitions are not controlling for purposes of determining the meaning of the term real property.

(c) *Land*. Land includes water and air space superjacent to land and natural products and deposits that are unsevered from the land. Natural products and deposits, such as crops, water, ores, and minerals, cease to be real property when they are severed, extracted, or removed from the land. The storage of severed or extracted natural products or deposits, such as crops, water, ores, and minerals, in or upon real property does not cause the stored property to be recharacterized as real property.

(d) *Improvements to land*—(1) *In general*. The term *improvements to land* means inherently permanent structures and their structural components.

(2) *Inherently permanent structure*—(i) *In general*. The term *inherently permanent structure* means any permanently affixed building or other permanently affixed structure. Affixation may be to land or to another inherently permanent structure and may be by weight alone. If the affixation is reasonably expected to last indefinitely based on all the facts and circumstances, the affixation is considered permanent. A distinct asset that serves an active function, such as an item of machinery or equipment, is not a building or other inherently permanent structure.

(ii) *Building*—(A) *In general*. A building encloses a space within its walls and is covered by a roof.

(B) *Types of buildings*. Buildings include the following distinct assets if permanently affixed: houses; apartments; hotels; motels; enclosed stadiums and arenas; enclosed shopping malls; factory and office buildings; warehouses; barns; enclosed garages; enclosed transportation stations and terminals; and stores.

(iii) *Other inherently permanent structures*—(A) *In general*. Other inherently permanent structures serve a passive function, such as to contain, support, shelter, cover, protect, or provide a conduit or a route, and do not serve an active function, such as to manufacture, create, produce, convert, or transport.

(B) *Types of other inherently permanent structures*. Other inherently permanent structures include the following distinct assets if permanently affixed: microwave transmission, cell, broadcast, and electrical transmission towers; telephone poles; parking facilities; bridges; tunnels; roadbeds; railroad tracks; transmission lines; pipelines; fences; in-ground swimming pools; offshore drilling platforms; storage structures such as silos and oil and gas storage tanks; and stationary wharves and docks. Other inherently permanent structures also include outdoor advertising displays for which an election has been properly made under section 1033(g)(3).

(iv) *Facts and circumstances determination*. If a distinct asset (within the meaning of paragraph (e) of this section) does not serve an active function as described in paragraph (d)(2)(iii)(A) of this section and is not otherwise listed in paragraph (d)(2)(ii)(B) or (d)(2)(iii)(B) of this section or in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) of this chapter), the determination of whether that asset is an inherently permanent structure is based on all the facts and circumstances. In particular, the following factors must be taken into account:

(A) The manner in which the distinct asset is affixed to real property;

(B) Whether the distinct asset is designed to be removed or to remain in place indefinitely;

(C) The damage that removal of the distinct asset would cause to the item itself or to the real property to which it is affixed;

(D) Any circumstances that suggest the expected period of affixation is not indefinite (for example, a lease that requires or permits removal of the distinct asset upon the expiration of the lease); and

(E) The time and expense required to move the distinct asset.

(3) *Structural components*—(i) *In general*. The term *structural component* means any distinct asset (within the meaning of paragraph (e) of this section) that is a constituent part of and integrated into an inherently permanent structure, serves the inherently permanent structure in its passive function, and, even if capable of producing income other than consideration for the use or occupancy of space, does not produce or contribute to the production of such income. If interconnected assets work together to serve an inherently permanent structure with a utility-like function (for example, systems that provide a building with electricity, heat, or water), the assets are analyzed together as one distinct asset that may be a structural component. A structural component may qualify as real property only if the real estate investment trust (REIT) holds its interest in the structural component together with a real property interest in the space in the inherently permanent structure served by the structural component. A mortgage secured by a structural component is a real estate asset only if the mortgage is also secured by a real property interest in the inherently permanent structure served by the structural component. If a distinct asset is customized in connection with the rental of space in or on an inherently permanent structure to which the asset relates, the customization does not affect whether the distinct asset is a structural component.

(ii) *Types of structural components*. Structural components include the following distinct assets and systems if integrated into the inherently permanent structure and held together with a real property interest in the space in the inherently permanent structure served by that distinct asset or system: wiring; plumbing systems; central heating and air-conditioning systems; elevators or escalators; walls; floors; ceilings; permanent coverings of walls, floors, and ceilings; windows; doors; insulation; chimneys; fire suppression systems,

such as sprinkler systems and fire alarms; fire escapes; central refrigeration systems; security systems; and humidity control systems.

(iii) *Facts and circumstances determination*. If an interest in a distinct asset (within the meaning of paragraph (e) of this section) is held together with a real property interest in the space in the inherently permanent structure served by that distinct asset and that asset is not otherwise listed in paragraph (d)(3)(ii) of this section or in guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) of this chapter), the determination of whether that asset is a structural component is based on all the facts and circumstances. In particular, the following factors must be taken into account:

(A) The manner, time, and expense of installing and removing the distinct asset;

(B) Whether the distinct asset is designed to be moved;

(C) The damage that removal of the distinct asset would cause to the item itself or to the inherently permanent structure to which it is affixed;

(D) Whether the distinct asset serves a utility-like function with respect to the inherently permanent structure;

(E) Whether the distinct asset serves the inherently permanent structure in its passive function;

(F) Whether the distinct asset produces income from consideration for the use or occupancy of space in or upon the inherently permanent structure;

(G) Whether the distinct asset is installed during construction of the inherently permanent structure; and

(H) Whether the distinct asset will remain if the tenant vacates the premises.

(e) *Distinct asset*—(1) *In general*. A distinct asset is analyzed separately from any other assets to which the asset relates to determine if the asset is real property, whether as land, an inherently permanent structure, or a structural component of an inherently permanent structure.

(2) *Facts and circumstances*. The determination of whether a particular separately identifiable item of property is a distinct asset is based on all the facts and circumstances. In particular, the following factors must be taken into account:

(i) Whether the item is customarily sold or acquired as a single unit rather than as a component part of a larger asset;

(ii) Whether the item can be separated from a larger asset, and if so, the cost of separating the item from the larger asset;

(iii) Whether the item is commonly viewed as serving a useful function independent of a larger asset of which it is a part; and

(iv) Whether separating the item from a larger asset of which it is a part impairs the functionality of the larger asset.

(f) *Intangible assets*—(1) *In general*. To the extent that an intangible asset, including an intangible asset established under generally accepted accounting principles (GAAP) as a result of an acquisition of real property or an interest in real property, derives its value from real property or an interest in real property, is inseparable from that real property or interest in real property, and does not produce or contribute to the production of income other than consideration for the use or occupancy of space, the intangible asset is real property or an interest in real property.

(2) *Licenses and permits*. A license, permit, or other similar right that is solely for the use, enjoyment, or occupation of land or an inherently permanent structure and that is in the nature of a leasehold or easement generally is an interest in real property. A license or permit to engage in or operate a business is not real property or an interest in real property if the license or permit produces or contributes to the production of income other than consideration for the use or occupancy of space.

(g) *Examples*. The following examples demonstrate the rules of this section. *Examples 1* and *2* illustrate the definition of land as provided in paragraph (c) of this section. *Examples 3* through *10* illustrate the definition of improvements to land as provided in paragraph (d) of this section. Finally, *Examples 11* through *13* illustrate whether certain intangible assets are real property or interests in real property as provided in paragraph (f) of this section.

Example 1. Natural products of land. A is a REIT. REIT A owns land with perennial fruit-bearing plants. REIT A leases the fruit-bearing plants to a tenant and grants the tenant an easement to enter the land to cultivate the plants and to harvest the fruit. The lease and easement are long-term and REIT A provides no services to the tenant. The unsevered plants are natural products of the land and are land within the meaning of paragraph (c) of this section. The tenant annually harvests fruit from the plants. Upon severance from the land, the harvested fruit ceases to qualify as land. Storage of the harvested fruit upon or within real property does not cause the harvested fruit to be real property.

Example 2. Water space superjacent to land. REIT B leases a marina from a governmental entity. The marina is comprised of U-shaped boat slips and end ties. The U-shaped boat slips are spaces on the water that are surrounded by a dock on three sides. The end ties are spaces on the water at the end of a slip or on a long, straight dock. REIT B rents the boat slips and end ties to boat owners. The boat slips and end ties are water space superjacent to land that is land within the meaning of paragraph (c) of this section and, therefore, are real property.

Example 3. Indoor sculpture. (i) REIT C owns an office building and a large sculpture in the atrium of the building. The sculpture measures 30 feet tall by 18 feet wide and weighs five tons. The building was specifically designed to support the sculpture, which is permanently affixed to the building by supports embedded in the building's foundation. The sculpture was constructed within the building. Removal would be costly and time consuming and would destroy the sculpture. The sculpture is reasonably expected to remain in the building indefinitely. The sculpture does not manufacture, create, produce, convert, transport, or serve any similar active function.

(ii) The sculpture is not an asset listed in paragraph (d)(2)(iii)(B) of this section, and, therefore, the sculpture is an asset that must be analyzed to determine whether it is an inherently permanent structure using the factors provided in paragraph (d)(2)(iv) of this section. The sculpture—

(A) Is permanently affixed to the building by supports embedded in the building's foundation;

(B) Is not designed to be removed and is designed to remain in place indefinitely;

(C) Would be damaged if removed and would damage the building to which it is affixed;

(D) Will remain affixed to the building after any tenant vacates the premises and will remain affixed to the building indefinitely; and

(E) Would require significant time and expense to move.

(iii) The factors described in this paragraph (g) *Example 3* (ii)(A) through (E) all support the conclusion that the sculpture is an inherently permanent structure within the meaning of paragraph (d)(2) of this section and, therefore, is real property.

Example 4. Bus shelters. (i) REIT D owns 400 bus shelters, each of which consists of four posts, a roof, and panels enclosing two or three sides. REIT D enters into a long-term lease with a local transit authority for use of the bus shelters. Each bus shelter is prefabricated from steel and is bolted to the sidewalk. Bus shelters are disassembled and moved when bus routes change. Moving a bus shelter takes less than a day and does not significantly damage either the bus shelter or the real property to which it was affixed.

(ii) The bus shelters are not permanently affixed enclosed transportation stations or terminals and do not otherwise meet the definition of a building in paragraph (d)(2)(ii) of this section nor are they listed as types of other inherently permanent structures in paragraph (d)(2)(iii)(B) of this section. Therefore, the bus shelters must be analyzed to determine whether they are inherently permanent structures using the factors provided in paragraph (d)(2)(iv) of this section. The bus shelters—

(A) Are not permanently affixed to the land or an inherently permanent structure;

(B) Are designed to be removed and are not designed to remain in place indefinitely;

(C) Would not be damaged if removed and would not damage the sidewalks to which they are affixed;

(D) Will not remain affixed after the local transit authority vacates the site and will not remain affixed indefinitely; and

(E) Would not require significant time and expense to move.

(iii) The factors described in this paragraph (g) *Example 4* (ii)(A) through (E) all support the conclusion that the bus shelters are not inherently permanent structures within the meaning of paragraph (d)(2) of this section. Although the bus shelters serve a passive function of sheltering, the bus shelters are not permanently affixed, which means the bus shelters are not inherently permanent structures within the meaning of paragraph (d)(2) of this section and, therefore, are not real property.

Example 5. Cold storage warehouse. (i) REIT E owns a refrigerated warehouse (Cold Storage Warehouse). REIT E enters into a long-term lease with a tenant. REIT E neither operates the Cold Storage Warehouse nor provides services to its tenant. The tenant uses the Cold Storage Warehouse to store perishable products. Certain components and utility systems that are integrated into the Cold Storage Warehouse have been customized to accommodate the tenant's need for refrigerated storage space. For example, the Cold Storage Warehouse has customized freezer walls and a central refrigeration system. Freezer walls within the Cold Storage Warehouse are specifically designed to maintain the desired temperature within the Cold Storage Warehouse. The freezer walls and central refrigeration system comprise a series of interconnected assets that work together to serve a utility-like function within the Cold Storage Warehouse, were installed during construction of the building, and will remain in place when the tenant vacates the premises. The freezer walls and central refrigeration system were designed to remain permanently in place.

(ii) Walls and central refrigeration systems are listed as structural components in paragraph (d)(3)(ii) of this section and, therefore, are real property. The customization of the freezer walls does not affect their qualification as structural components of REIT E's Cold Storage Warehouse within the meaning of paragraph (d)(3) of this section. Therefore, the freezer walls and central refrigeration system are structural components of REIT E's Cold Storage Warehouse.

Example 6. Data center. (i) REIT F owns a building that it leases to a tenant under a long-term lease. REIT F neither operates the building nor provides services to its tenant. To accommodate the particular requirements for housing computer servers, certain interior components and utility systems within the building have been customized to provide a higher level of functionality than a conventional office building. These customized systems are owned by REIT F and include an electrical distribution and redundancy system (Electrical System), a central heating and air-conditioning system, a telecommunication infrastructure system, an integrated security system, a fire suppression system, and a humidity control system (each, a System). In addition, the space for computer servers in REIT F's building has been constructed with raised flooring that is integrated into the building to accommodate the Systems. Each System is comprised of a series of interconnected assets that work together to serve a utility-like function within the building. The Systems are integrated into the office building, were installed during construction of the building, and will remain in place when the tenant vacates the premises. Each of the Systems was customized to enhance the capacity of the System in connection with the rental of space within the building.

(ii) The central heating and air-conditioning system, integrated security system, fire suppression system, and humidity control system are listed as structural components in paragraph (d)(3)(ii) of this section and, therefore, are real property. The customization of these Systems does not affect the qualification of these Systems as structural components of REIT F's building within the meaning of paragraph (d)(3) of this section. Therefore, these Systems are structural components of REIT F's building.

(iii) In addition to wiring and flooring, which are listed as structural components in paragraph (d)(3)(ii) of this section and, therefore, are real property, the Electrical System and telecommunication infrastructure system include equipment used to ensure that the tenant is provided with uninterruptable, stable power and telecommunication services. The Electrical System and telecommunication infrastructure system are not listed in paragraph (d)(3)(ii) of this section, and, therefore, they must be analyzed to determine whether they are structural components of the building using the factors provided in paragraph (d)(3)(iii) of this section. The Electrical System and telecommunication infrastructure system—

(A) Are embedded within the walls and floors of the building and would be costly to remove;

(B) Are not designed to be moved and are designed specifically for the particular building of which they are a part;

(C) Would not be significantly damaged upon removal and, although removing them would damage the walls and floors in which they are embedded, their removal would not significantly damage the building;

(D) Serve a utility-like function with respect to the building;

(E) Serve the building in its passive functions of containing, sheltering, and protecting computer servers;

(F) Produce income as consideration for the use or occupancy of space within the building;

(G) Were installed during construction of the building; and

(H) Will remain in place when the tenant vacates the premises.

(iv) The factors described in this paragraph (g) *Example 6* (iii)(A), (B), and (D) through (H) all support the conclusion that the Electrical System and telecommunication infrastructure system are structural components of REIT F's building within the meaning of paragraph (d)(3) of this section and, therefore, are real property. The factor described in this paragraph (g) *Example 6* (iii)(C) would support a conclusion that the Electrical System and telecommunication infrastructure system are not structural components. However this factor does not outweigh the factors supporting the conclusion that the Electric System and telecommunication infrastructure system are structural components.

Example 7. Partitions. (i) REIT G owns an office building that it leases to tenants under long-term leases. REIT G neither operates the office building nor provides services to its tenants. Partitions are owned by REIT G and are used to delineate space between tenants and within each tenant's space. The office building has two types of interior, non-load-bearing drywall partition systems: a conventional drywall partition system (Conventional Partition System) and a modular drywall partition system (Modular Partition System). Neither the Conventional Partition System nor the Modular Partition System was installed during construction of the office building. Conventional Partition Systems are comprised of fully integrated gypsum board partitions, studs, joint tape, and covering joint compound. Modular Partition Systems are comprised of assembled panels, studs, tracks, and exposed joints. Both the Conventional Partition System and the Modular Partition System reach from the floor to the ceiling.

(ii) Depending on the needs of a new tenant, the Conventional Partition System may remain in place when a tenant vacates the premises. The Conventional Partition System is integrated into the office building and is designed and constructed to remain in areas not subject to reconfiguration or expansion. The Conventional Partition System can be removed only by demolition, and, once removed, neither the Conventional Partition System nor its components can be reused. Removal of the Conventional Partition System causes substantial damage to the Conventional Partition System itself but does not cause substantial damage to the building.

(iii) Modular Partition Systems are typically removed when a tenant vacates the premises. Modular Partition Systems are not designed or constructed to remain permanently in place. Modular Partition Systems are designed and constructed to be movable. Each Modular Partition System can be readily removed, remains in substantially the same condition as before, and can be reused. Removal of a Modular Partition System does not cause any substantial damage to the Modular Partition System itself or to the building. The Modular Partition System may be moved to accommodate the reconfigurations of the interior space within the office building for various tenants that occupy the building.

(iv) The Conventional Partition System is comprised of walls that are integrated into an inherently permanent structure, and thus are listed as structural components in paragraph (d)(3)(ii) of this section.

The Conventional Partition System, therefore, is real property.

(v) The Modular Partition System is not integrated into the building and, therefore, is not listed in paragraph (d)(3)(ii) of this section. Thus, the Modular Partition System must be analyzed to determine whether it is a structural component using the factors provided in paragraph (d)(3)(iii) of this section. The Modular Partition System—

(A) Is installed and removed quickly and with little expense;

(B) Is designed to be moved and is not designed specifically for the particular building of which it is a part;

(C) Is not damaged, and the building is not damaged, upon its removal;

(D) Does not serve a utility-like function with respect to the building;

(E) Serves the building in its passive functions of containing and protecting the tenants' assets;

(F) Produces income only as consideration for the use or occupancy of space within the building;

(G) Was not installed during construction of the building; and

(H) Will not remain in place when a tenant vacates the premises.

(vi) The factors described in this paragraph (g) *Example 7* (v)(A) through (D), (G) and (H) all support the conclusion that the Modular Partition System is not a structural component of REIT G's building within the meaning of paragraph (d)(3) of this section and, therefore, is not real property. The factors described in this paragraph (g) *Example 7* (v)(E) and (F) would support a conclusion that the Modular Partition System is a structural component. These factors, however, do not outweigh the factors supporting the conclusion that the Modular Partition System is not a structural component.

Example 8. Solar energy site. (i) REIT H owns a solar energy site, among the components of which are land, photovoltaic modules (PV Modules), mounts and an exit wire. REIT H enters into a long-term lease with a tenant for the solar energy site. REIT H neither operates the solar energy site nor provides services to its tenant. The mounts support the PV Modules. The racks are affixed to the land through foundations made from poured concrete. The mounts will remain in place when the tenant vacates the solar energy site. The PV Modules convert solar photons into electric energy (electricity). The exit wire is buried underground, is connected to equipment that is in turn connected to the PV Modules, and transmits the electricity produced by the PV Modules to an electrical power grid, through which the electricity is distributed for sale to third parties.

(ii) REIT H's PV Modules, mounts, and exit wire are each separately identifiable items. Separation from a mount does not affect the ability of a PV Module to convert photons to electricity. Separation from the equipment to which it is attached does not affect the ability of the exit wire to transmit electricity to the electrical power grid. The types of PV Modules and exit wire that REIT H owns are each customarily sold or acquired as single units. Removal of the PV Modules from the mounts that support them does not damage the function of the mounts as support structures and removal is not costly. The PV Modules serve the active function of converting photons to electricity. Disconnecting the exit wire from the equipment to which it is attached does not damage the function of that equipment, and the disconnection is not costly. The PV Modules, mounts, and exit wire are each distinct assets within the meaning of paragraph (e) of this section.

(iii) The land is real property as defined in paragraph (c) of this section.

(iv) The mounts are designed and constructed to remain in place indefinitely, and they have a passive function of supporting the PV Modules. The mounts are not listed in paragraph (d)(2)(iii)(B) of this section, and, therefore, the mounts are assets that must be analyzed to determine whether they are inherently permanent structures using the factors provided in paragraph (d)(2)(iv) of this section. The mounts—

(A) Are permanently affixed to the land through the concrete foundations or molded concrete anchors (which are part of the mounts);

(B) Are not designed to be removed and are designed to remain in place indefinitely;

(C) Would be damaged if removed;

(D) Will remain affixed to the land after the tenant vacates the premises and will remain affixed to the land indefinitely; and

(E) Would require significant time and expense to move.

(v) The factors described in this paragraph (g) *Example 8* (iv)(A) through (E) all support the conclusion that the mounts are inherently permanent structures within the meaning of paragraph (d)(2) of this section and, therefore, are real property.

(vi) The PV Modules convert solar photons into electricity that is transmitted through an electrical power grid for sale to third parties. The conversion is an active function. Thus, the PV Modules are items of machinery or equipment and therefore are not inherently permanent structures within the meaning of paragraph (d)(2) of this section and, so, are not real property. The PV Modules do not serve the mounts in their passive function of providing support; instead, the PV Modules produce electricity for sale to third parties, which is income other than consideration for the use or occupancy of space. Thus, the PV Modules are not structural components of REIT H's mounts within the meaning of paragraph (d)(3) of this section and, therefore, are not real property.

(vii) The exit wire is buried under the ground and transmits the electricity produced by the PV Modules to the electrical power grid. The exit wire was installed during construction of the solar energy site and is designed to remain permanently in place. The exit wire is permanently affixed and is a transmission line, which is listed as an inherently permanent structure in paragraph (d)(2)(iii)(B) of this section. Therefore, the exit wire is real property.

Example 9. Solar-powered building. (i) REIT I owns a solar energy site similar to that described in *Example 8*, except that REIT I's solar energy site assets (Solar Energy Site Assets) are mounted on land adjacent to an office building owned by REIT I. REIT I leases the office building and the solar energy site to a single tenant. REIT I does not operate the office building or the solar energy site and does not provide services to its tenant. Although the tenant occasionally transfers excess electricity produced by the Solar Energy Site Assets to a utility company, the Solar Energy Site Assets are designed and intended to produce electricity only to serve the office building. The size and specifications of the Solar Energy Site Assets were designed to be appropriate to serve only the electricity needs of the office building. Although the Solar Energy Site Assets were not installed during construction of the office building, no facts indicate either that the Solar Energy Site Assets will not remain in place indefinitely or that they may be removed if the tenant vacates the premises.

(ii) With the exception of the occasional transfers of excess electricity to a utility company, the Solar Energy Site Assets serve the office building to which they are adjacent, and, therefore, the Solar Energy Site Assets are analyzed to determine whether they are a structural component using the factors provided in paragraph (d)(3)(iii) of this section. The Solar Energy Site Assets—

(A) Are expensive and time consuming to install and remove;

(B) Were designed with the size and specifications needed to serve only the office building;

(C) Will be damaged, but will not cause damage to the office building, upon removal;

(D) Serve a utility-like function with respect to the office building;

(E) Serve the office building in its passive functions of containing, sheltering, and protecting the tenant and the tenant's assets;

(F) Produce income from consideration for the use or occupancy of space within the office building;

(G) Were not installed during construction of the office building; and

(H) Will remain in place when the tenant vacates the premises.

(iii) The factors described in this paragraph (g) *Example 9* (ii)(A) through (C) (in part), (ii)(D) through (F), and (ii)(H) all support the conclusion that the Solar Energy Site Assets are a structural component of REIT I's office building within the meaning of paragraph (d)(3) of this section and, therefore, are real property. The factors described in this paragraph (g) *Example 9* (ii)(C) (in part) and (ii)(G) would support a conclusion that the Solar Energy Site Assets are not a structural component, but these factors do not outweigh the factors supporting the conclusion that the Solar Energy Site Assets are a structural component.

(iv) The result in this *Example 9* would not change if, instead of the Solar Energy Site Assets, solar shingles were used as the roof of REIT I's office building. Solar shingles are roofing shingles like those commonly used for residential housing, except that they contain built-in PV modules. The solar shingle installation was specifically designed and constructed to serve only the needs of REIT I's office building, and the solar shingles were installed as a structural component to provide solar energy to REIT I's office building (although REIT I's tenant occasionally transfers excess electricity produced by the solar shingles to a utility company). The analysis of the application of the factors provided in paragraph (d)(3)(ii) of this section would be similar to the analysis of the application of the factors to the Solar Energy Site Assets in this paragraph (g) *Example 9* (ii) and (iii).

Example 10. Pipeline transmission system. (i) REIT J owns a natural gas pipeline transmission system that provides a conduit to transport natural gas from unrelated third-party producers and gathering facilities to unrelated third-party distributors and end users. REIT J enters into a long-term lease with a tenant for the pipeline transmission system. REIT J neither operates the pipeline transmission system nor provides services to its tenant. The pipeline transmission system is comprised of underground pipelines, isolation valves and vents, pressure control and relief valves, meters, and compressors. Although the pipeline transmission system as a whole serves an active function (transporting natural gas), one or more distinct assets within the system may nevertheless be inherently permanent structures that do not themselves perform active functions. Each of these distinct assets was installed during construction of the pipeline transmission system and will remain in place when the tenant vacates the pipeline transmission system. Each of these assets was designed to remain permanently in place.

(ii) The pipelines are permanently affixed and are listed as other inherently permanent structures in paragraph (d)(2)(iii)(B) of this section. Therefore, the pipelines are real property.

(iii) Isolation valves and vents are placed at regular intervals along the pipelines to isolate and evacuate sections of the pipelines in case there is need for a shut-down or maintenance of the pipelines. Pressure control and relief valves are installed at regular intervals along the pipelines to provide overpressure protection. The isolation valves and vents and pressure control and relief valves are not listed in paragraph (d)(3)(ii) and, therefore, must be analyzed to determine whether they are structural components using the factors provided in paragraph (d)(3)(iii) of this section. The isolation valves and vents and pressure control and relief valves—

(A) Are time consuming and expensive to install and remove from the pipelines;

(B) Are designed specifically for the particular pipelines for which they are a part;

(C) Will sustain damage and will damage the pipelines if removed;

(D) Do not serve a utility-like function with respect to the pipelines;

(E) Serve the pipelines in their passive function of providing a conduit for natural gas;

(F) Produce income only from consideration for the use or occupancy of space within the pipelines;

(G) Were installed during construction of the pipelines; and

(H) Will remain in place when the tenant vacates the premises.

(iv) The factors described in this paragraph (g) *Example 10* (iii)(A) through (C) and (iii)(E) through (H) support the conclusion that the isolation valves and vents and pressure control and relief valves are structural components of REIT J's pipelines within the meaning of paragraph (d)(3) of this section and, therefore, are real property. The factor described in this paragraph (g) *Example 10* (iii)(D) would support a conclusion that the isolation valves and vents and pressure control and relief valves are not structural components, but this factor does not outweigh the factors that support the conclusion that the isolation valves and vents and pressure control and relief valves are structural components.

(v) Meters are used to measure the natural gas passing into or out of the pipeline transmission system for purposes of determining the end users' consumption. Over long distances, pressure is lost due to friction in the pipeline transmission system. Compressors are required to add pressure to transport natural gas through the entirety of the pipeline transmission system. The meters and compressors do not serve the pipelines in their passive function of providing a conduit for the natural gas, and are used in connection with the production of income from the sale and transportation of natural gas, rather than as consideration for the use or occupancy of space within the pipelines. The meters and compressors are not structural components within the meaning of paragraph (d)(3) of this section and, therefore, are not real property.

Example 11. Above-market lease. REIT K acquires an office building from an unrelated third party subject to a long-term lease with a single tenant under which the tenant pays above-market rents. The above-market lease is an intangible asset under GAAP. Seventy percent of the value of the above-market lease asset is attributable to income from the long-term lease that qualifies as rents from real property, as defined in section 856(d)(1). The remaining thirty percent of the value of the above-market lease asset is attributable to income from the long-term lease that does not qualify as rents from real property. The portion of the value of the above-market lease asset that is attributable to rents from real property (here, seventy percent) derives its value from real property, is inseparable from that real property, does not produce or contribute to the production of income other than consideration for the use or occupancy of space, and, therefore, is an interest in real property under section 856(c)(5)(C) and a real estate asset under section 856(c)(5)(B). The remaining portion of the above-market lease asset does not derive its value from real property and, therefore, is not a real estate asset.

Example 12. Land use permit. REIT L receives a special use permit from the government to place a cell tower on Federal Government land that abuts a federal highway. Government regulations provide that the permit is not a lease of the land, but is a permit to use the land for a cell tower. Under the permit, the government reserves the right to cancel the permit and compensate REIT L if the site is needed for a higher public purpose. REIT L leases space on the tower to various cell service providers. Each cell service provider installs its equipment on a designated space on REIT L's cell tower. The permit does not produce, or contribute to the production of, any income other than REIT L's receipt of payments from the cell service providers in consideration for their being allowed to use space on the tower. The permit is in the nature of a leasehold that allows REIT L to place a cell tower in a specific location on government land. Therefore, the permit is an interest in real property.

Example 13. License to operate a business. REIT M owns a building and receives a license from State to operate a casino in the building. The license applies only to REIT M's building and cannot be transferred to another location. REIT M's building is an inherently permanent structure under paragraph (d)(2)(i) of this section and, therefore, is real property. However, REIT M's license to operate a casino is not a right for the use, enjoyment, or occupation of REIT M's building but is rather a license to engage in the business of operating a casino in the building. Therefore, the casino license is not real property.

(h) *Effective/applicability date.* The rules of this section apply for taxable years beginning after August 31, 2016. For purposes of applying the first sentence of the flush language of section 856(c)(4) to a quarter in a taxable year that begins after August 31, 2016, the rules of this section apply in determining whether the taxpayer met the requirements of section 856(c)(4) at the close of prior quarters. Taxpayers may rely on this section for quarters that end before the applicability date.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: August 8, 2016

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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Part III. Administrative, Procedural, and Miscellaneous

Credit for Carbon Dioxide Sequestration 2016 Section 45Q Inflation Adjustment Factor

Notice 2016–53

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO_2) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2016. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. This notice also publishes the aggregate amount of qualified CO_2 taken into account for purposes of § 45Q.

SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of $20 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of $10 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term "qualified carbon dioxide" as CO_2 captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO_2includes the initial deposit of captured CO_2used as a tertiary injectant but does not include CO_2that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term "qualified facility" as an industrial facility that is owned by the taxpayer, where carbon capture equipment is placed in service, and where at least 500,000 metric tons of CO_2 is captured during the taxable year.

Section 45Q(d)(2) provides that the Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), the Secretary of Energy, and the Secretary of the Interior, shall establish regulations for determining adequate security measures for the geological storage of CO_2 under § 45Q(a)(1)(B) or (a)(2)(C) such that the CO_2 does not escape into the atmosphere. See section 5 of Notice 2009–83, 2009–2 C.B. 588, for procedures regarding secure geological storage.

Section 45Q(d)(5) allows the § 45Q credit to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified CO_2.

Under § 45Q(d)(7), for taxable years beginning in a calendar year after 2009, the dollar amount contained in § 45Q(a) must be adjusted for inflation by multiplying such dollar amount by the inflation adjustment factor for such calendar year determined under § 43(b)(3)(B), determined by substituting "2008" for "1990."

Section 43(b)(3)(B) defines the term "inflation adjustment factor" as, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of § 45Q(d)(7), with respect to 2016 calendar year, the inflation adjustment factor is a fraction the numerator of which is the GNP implicit price deflator for 2015 (109.868) and the denominator of which is the GNP implicit price deflator for 2008 (99.239).

Section 45Q(e) provides that the § 45Q credit will apply with respect to qualified CO_2 before the end of the calendar year in which the Secretary, in consultation with the EPA, certifies that 75,000,000 metric tons of qualified CO_2have been taken into account in accordance with § 45Q(a).

SECTION 3. INFLATION ADJUSTMENT FACTOR

The inflation adjustment factor for calendar year 2016 is 1.1071. The § 45Q credit for calendar year 2016 is $22.14 per metric ton of qualified CO_2 under § 45Q(a)(1) and $11.07 per metric ton of qualified CO_2 under § 45Q(a)(2).

SECTION 4. TAX CREDIT UTILIZATION

Section 6 of Notice 2009–83 requires taxpayers to file annual reports that provide (among other information) the amounts (in metric tons) of qualified CO_2 for the taxable year that has been taken into account for purposes of claiming the § 45Q credit. The annual reports must be filed with the Service not later than the last day of the second calendar month following the month during which the tax return on which the § 45Q credit is claimed was due (including extensions).

Based on the annual reports filed with the Service as of September 26, 2016, the aggregate amount of qualified CO_2taken into account for purposes of § 45Q is 44,590,130 metric tons.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Jennifer C. Bernardini on (202) 317-6853 (not a toll-free number).

Part IV. Items of General Interest

Announcement of Certification Resulting from the 2012–2013 Phase III Allocation Round of the Qualifying Advanced Coal Project Program

Announcement 2016–33

This announcement discloses the certification resulting from the 2012–2013 Phase III allocation round of the qualifying advanced coal project program provided by § 48A of the Internal Revenue Code.

SECTION 1. QUALIFYING ADVANCED COAL PROJECT PROGRAM

Pursuant to § 48A(d)(4), on August 13, 2012, the Internal Revenue Service (the "Service") published Notice 2012–51, 2012–2 C.B. 150 (the "Notice") to establish the § 48A Phase III qualifying advanced coal project program (the "Phase III program") to allocate § 48A credits (the "Phase III credits").

The Notice provides that the credit for a taxable year under the Phase III program is an amount equal to 30 percent of the qualified investment for that taxable year in a qualifying advanced coal project that uses integrated gasification combined cycle technology or other advanced coal-based generation technology. To receive an allocation of the Phase III credits, a qualifying advanced coal project must include equipment that separates and sequesters at least 70 percent of such project's total carbon dioxide emissions.

Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § § 48A(d) or 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant. Section 10.01 of the Notice further provides that the Service intends to publish the results of the Phase III allocation round, and disclose the following information in the event the Phase III credit is allocated to the taxpayer's project: (a) the name of the taxpayer and (b) the amount of the Phase III credit allocated to the project.

Accordingly, the certification resulting from the 2012–2013 Phase III allocation round of the qualifying advanced coal project program provided by § 48A is as follows:

Program	Taxpayer	Amount of Credit Certified
Phase III	STCE Holdings, LLC	$324,000,000

SECTION 2. DRAFTING INFORMATION

The principal author of this announcement is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement, contact Ms. Bernardini at (202) 317-5118 (not a toll-free number).

Announcement of the Results of the Phase III Allocation Round of the Qualifying Gasification Project Program

Announcement 2016–34

This announcement discloses the results of the Phase III allocation round under the qualifying gasification project program of § 48B of the Internal Revenue Code. This announcement also serves as notice to applicants that no additional allocation rounds will be conducted under the qualifying gasification project program.

SECTION 1. QUALIFYING GASIFICATION PROJECT PROGRAM

On December 29, 2014, the Internal Revenue Service ("Service") published Notice 2014–81, 2014–53 I.R.B. 1001 ("the Notice"), to announce the beginning of the § 48B Phase III allocation round under the qualifying gasification project program (the "Phase III program").

The Notice provides that the credit for a taxable year under the Phase III program is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects (as defined in § 48B(c)(1)) for which the credit is allocated under § 48B(d)(1)(A).

Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant. Section 9.01 of the Notice further provides that the Service intends to publish the results of Phase III allocation round, and disclose the following return information in the event the Phase III credit is allocated to the taxpayer's project: (a) the name of the taxpayer and (b) the amount of the Phase III credit allocated to the project.

Accordingly, the results of the Phase III allocation round of the qualifying gasification program provided by § 48B are as follows:

Program	Taxpayer	Credit Allocated	Total Credit Allocated
Phase III	Clean Energy Resources, LLC	$130,000,000	
	Lake Charles Resources, LLC	$130,000,000	
			$260,000,000

Additionally, § 48B(d)(2) provides that certificates of eligibility for credit awardees may be issued under the § 48B program only during the 10-year period beginning on October 1, 2005. As a result, the Service may only reallocate as Phase III credits any available § 48B credits prior to October 1, 2015. Accordingly, the Service will not conduct additional allocations under Phase III of the qualifying gasification program.

SECTION 2. DRAFTING INFORMATION

The principal author of this announcement is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement contact Jennifer C. Bernardini at (202) 317-5118 (not a toll-free number).

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2016–35

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Name of Organization	Date Suit Filed	Effective Date of Revocation	Location
Faith's Hope Foundation	8/26/2016	7/1/2010	Fullerton, CA
Modest Needs Foundation	4/13/2016	1/1/2011	New York NY

Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

Announcement 2016–36

This announcement serves notice to donors that on February 1, 2016, the United States Tax Court entered a stipulated decision that, effective January 15, 2016, the organization listed below is not qualified as an organization described in section 501(c)(3), is not exempt from taxation under section 501(a), and is not an organization described in section 170(c)(2).

Foundation for Harmony and Happiness
Santa Barbara, CA

Notice of Disposition of Declaratory Judgment Proceedings under Section 7428

Announcement 2016–37

This announcement serves notice to donors that on April 21, 2016, the United States Tax Court entered a stipulated decision that, effective August 21, 2014, the organization listed below is not qualified as an organization described in section 501(c)(3) and is not exempt from taxation under section 501(a).

America Housing Foundation
Amarillo, TX

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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