

7. CDC, "National Antimicrobial Resistance Monitoring System for Enteric Bacteria (NARMS): Human Isolates Final Report," 2004, Atlanta, GA, U.S. Department of Health and Human Services, CDC, 2007.

8. Giles, W.P., A. K. Benson, M. E. Olson, R. W. Hutkins, J. M. Whichard, P. L. Winokur, and P. D. Fey, "DNA Sequence Analysis of Regions Surrounding bla_{CMY-2} From Multiple *Salmonella* Plasmid Backbones," *Antimicrobial Agents and Chemotherapy*, 48:2845–2852, 2004.

9. Livermore, D. M., "Beta-Lactamases in Laboratory and Clinical Resistance," *Clinical Microbiology Review*, 8:557–584, 1995.

10. Clinical and Laboratory Standards Institute, Performance Standards for Antimicrobial Susceptibility Testing: Sixteenth Informational Supplement, M100-S16, Wayne, PA, USA: CLSI, 2006.

11. Livermore, D. M., R. Canton, M. Gniadkowski, P. Nordmann, G. M. Rossolini, G. Arlet, J. Ayala, T. M. Coque, I. Kern-Zdanowicz, F. Luzzaro, L. Poirel, and N. Woodford, "CTX-M: Changing the Face of ESBLs in Europe," *Journal of Antimicrobial Chemotherapy*, 59:165–174, 2007.

12. Jacoby, G. A. and L. S. Munoz-Price, "The New B-Lactamases," *New England Journal of Medicine*, 352:380–391, 2005.

13. U.S. Food and Drug Administration, Center for Veterinary Medicine, unpublished report, Summary of Data From Hatchery Inspections Conducted September–October 2001, April 15, 2002.

List of Subjects in 21 CFR Part 530

Administrative practice and procedure, Advertising, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 530 is amended as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

■ 1. The authority citation for 21 CFR part 530 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e.

■ 2. In § 530.41, add paragraph (a)(13) to read as follows:

§ 530.41 Drugs prohibited for extralabel use in animals.

(a) * * *

(13) Cephalosporins.

* * * * *

Dated: June 24, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–15052 Filed 7–2–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9406]

RIN 1545–BH03

Modifications to Subpart F Treatment of Aircraft and Vessel Leasing Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations addressing the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign commerce under sections 367, 954, and 956 of the Internal Revenue Code (Code). The regulations reflect statutory changes made by section 415 of the American Jobs Creation Act of 2004 (AJCA). In general, the regulations will affect United States shareholders of controlled foreign corporations that derive income from the leasing of aircraft or vessels in foreign commerce and U.S. persons that transfer property subject to these leases to a foreign corporation. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 3, 2008.

Applicability Dates: For dates of applicability, see §§ 1.367–2T(e)(2), 1.367–4T(c)(3)(i), 1.367–5T(f)(3)(ii), 1.954–2T(i) and 1.956–2T(e).

FOR FURTHER INFORMATION CONTACT:

Concerning the temporary regulations under section 367, John H. Seibert, at (202) 622–3860; concerning the temporary regulations under section 954 or 956, Paul J. Carlino at (202) 622–3840; concerning submissions of comments, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In General

This document contains amendments to 26 CFR Part 1 under sections 367, 954 and 956 of the Code. Section 415(a) of the AJCA, Public Law 108–357 (118 Stat. 1418) repealed sections 954(a)(4) and (f), the foreign base company shipping income provisions of subpart F. Following repeal of the foreign base company shipping income provisions, rents derived from leasing an aircraft or

vessel in foreign commerce may be included in subpart F income only if the rents are described in another category of subpart F income, such as foreign personal holding company income (FPHCI) defined in section 954(c). Rents are included in FPHCI under section 954(c)(1)(A). Section 954(c)(2)(A) excludes from FPHCI rents received from unrelated persons and derived in the active conduct of a trade or business.

Rents derived by a controlled foreign corporation (CFC) are considered to be derived in the active conduct of a trade or business if the rents are derived under any one of four circumstances described in the Treasury regulations under section 954(c)(2)(A). One such circumstance, provided in § 1.954–2(c)(1)(iv), is when rents are derived from property leased as a result of the performance of marketing functions by the lessor CFC. These rents are considered to be derived in the active conduct of a trade or business if the lessor CFC, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in the foreign country that is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from leasing the property.

Section 1.954–2(c)(2)(ii) provides that the determination of whether the organization in the foreign country is substantial in relation to the amount of rents derived is based on all the facts and circumstances. However, under § 1.954–2(c)(2)(ii), the organization will be considered substantial in relation to the amount of rents if active leasing expenses, as defined in § 1.954–2(c)(2)(iii), equal or exceed 25 percent of the adjusted leasing profit, as defined in § 1.954–2(c)(2)(iv).

Section 415(b) of the AJCA amended section 954(c)(2)(A) to create a new marketing safe harbor for the exclusion from FPHCI for rents derived from leasing an aircraft or vessel in foreign commerce. The amendment to section 954(c)(2)(A) provides:

[R]ents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

The legislative history of section 415(b) of the AJCA provides that the new safe harbor for rents derived from leasing an aircraft or vessel in foreign commerce "is to be applied in accordance with the existing regulations under section

954(c)(2)(A) by comparing the lessor's 'active leasing expenses' for its pool of leased assets to its 'adjusted leasing profit.' " H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. 389 (2004) (hereinafter 2004 Conference Report). The 2004 Conference Report includes in the definition of the term "aircraft or vessel" engines that are leased separately from an aircraft or vessel. *Id.* at 391.

An aircraft or vessel will qualify for the new safe harbor under section 954(c)(2)(A) only if it is leased in "foreign commerce." The legislative history provides that, for purposes of this safe harbor,

An aircraft or vessel will be considered to be leased in foreign commerce if it is used for the transportation of property or passengers between a port (or airport) in the United States and one in a foreign country or between foreign ports (or airports), provided the aircraft or vessel is used predominantly outside the United States. An aircraft or vessel will be considered used predominantly outside the United States if more than 50 percent of the miles during the taxable year are traversed outside the United States or the aircraft or vessel is located outside the United States more than 50 percent of the time during such taxable year.

Id. at 390.

As an alternative to the new safe harbor, the legislative history makes clear that a lessor may qualify for the marketing exception by satisfying a facts and circumstances test. The report of the House of Representatives provides that:

The safe harbor will not prevent a lessor from otherwise showing that it actively carries on a trade or business. In this regard, the requirements of section 954(c)(2)(A) will be met if a lessor regularly and directly performs active and substantial marketing, remarketing, management and operational functions with respect to the leasing of an aircraft or vessel (or component engines).

H.R. Rep. No. 108-548, Part I, at 210 (2004).

The 2004 Conference Report also clarifies that the marketing exception for aircraft and vessels will apply whether the lessor engages in the marketing of the lease as a form of financing (versus marketing the property as such) or whether the lease is classified as a finance lease or operating lease for financial accounting purposes. 2004 Conference Report at 390. The exception will also apply to an existing lease acquired by a lessor, if, following the acquisition, the lessor performs active and substantial management, operational, and remarketing functions with respect to the leased property. *Id.* The 2004 Conference Report makes clear that a taxpayer no longer can claim

FSC or ETI benefits for an existing FSC or ETI lease transferred to a CFC lessor. *Id.*

The legislative history directs the Secretary of the Treasury to make conforming changes to the current regulations "including guidance that aircraft or vessel leasing activity that satisfies the requirements of section 954(c)(2)(A) shall also satisfy the requirements for avoiding income inclusion under section 956 and section 367(a)." *Id.* This legislative history indicates that Congress anticipated that taxpayers might restructure their operations with minimal tax cost to take advantage of the new benefits under subpart F provided by section 415 of the AJCA, namely the repeal of the foreign base company shipping income provisions and a liberalized marketing safe harbor for excluding active leasing income from aircraft or vessels engaged in foreign commerce from FPHCI.

Notice 2006-48

Notice 2006-48 (2006-1 CB 922), released on May 2, 2006, provided guidance and announced the Treasury Department's and IRS' intention to amend the regulations under sections 367(a), 954, and 956 in accord with section 415 of the AJCA, and the accompanying legislative history. The notice provided that the future regulations would generally be effective beginning on or after May 2, 2006. These temporary regulations incorporate the rules of Notice 2006-48 with minor changes. See § 601.601(d)(2)(ii)(b).

Explanation of Provisions

The temporary regulations provide guidance with respect to the treatment of certain income and assets related to the leasing of aircraft or vessels in foreign commerce under sections 367, 954, and 956 of the Code in light of section 415 of the AJCA.

Section 954 Regulations

The temporary regulations add a new marketing safe harbor for purposes of determining whether rents derived from leasing aircraft or vessels (including component parts, such as engines, that are leased separately from an aircraft or vessel) in foreign commerce qualify for the active rents exclusion under section 954(c)(2)(A). This new safe harbor provides that an organization will be considered substantial under § 1.954-2(c)(2)(ii) if active leasing expenses equal or exceed 10 percent of the adjusted leasing profit. The temporary regulations retain the rules in the current regulations regarding how to determine active leasing expenses and adjusted leasing profit and that as an

alternative to the safe harbor test, a CFC can satisfy the substantiality test based upon its facts and circumstances. The temporary regulations also amend the current regulations to include a definition of foreign commerce and predominant use of an aircraft or vessel outside the United States in accordance with the definitions given such terms in the legislative history to section 415(b) of the AJCA. The temporary regulations also clarify that rents derived from certain finance leases and acquired leases are eligible for the active rents exclusion.

Section 956 Regulations

Section 956(c)(1)(A) provides that the term "United States property" generally includes tangible property located in the United States. Section 956(c)(2) provides exceptions to the general definition of U.S. property. Section 956(c)(2)(D) excludes from the term U.S. property any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States.

Section 1.956-2(b)(1)(vi) provides that whether an aircraft, railroad rolling stock, vessel, motor vehicle, or container is used predominantly outside the United States depends on the facts and circumstances in each case. The regulations also provide that as a general rule, such transportation property will be considered used predominantly outside the United States if 70 percent or more of the miles traversed in the use of such property are traversed outside the United States or if such property is located outside the United States 70 percent of the time during such taxable year. The temporary regulations amend § 1.956-2(b)(1)(vi) to provide that an aircraft or vessel is excluded from U.S. property if rents derived from leasing such aircraft or vessel are excluded from FPHCI under section 954(c)(2)(A).

Section 367 Regulations

Section 367 provides that if a U.S. person transfers property to a foreign corporation in an exchange described in sections 332, 351, 354, 356, or 361 of the Code, the foreign corporation will not be considered a corporation for purposes of determining the extent to which gain will be recognized on such transfer. However, section 367(a)(3)(A) generally provides an exception to this rule if the property is used by the foreign corporation in the active conduct of a trade or business outside of the United States. In general, this exception does not apply to property of which the

transferor is a lessor at the time of the transfer, unless the transferee is the lessee or the regulations provide otherwise.

Section 1.367(a)-2T(a) provides, in part, that section 367(a)(1) does not apply to property transferred to a foreign corporation if the property is transferred for use by that corporation in the active conduct of a trade or business outside of the United States and certain reporting requirements are met. Section 1.367(a)-2T(b)(3) provides that the principles of § 1.954-2(d)(1) are used to determine whether a trade or business that produces rents or royalties is actively conducted, without regard to whether the rents or royalties are received from an unrelated person. Section 1.367(a)-2T(b)(4) provides generally that a foreign corporation conducts a trade or business outside of the United States if the primary managerial and operational activities of the trade or business are located outside of the United States and if immediately after the transfer the transferred assets are located outside of the United States.

Section 1.367(a)-4T(c) through (f) contains rules for determining whether certain types of property are transferred for use in the active conduct of a trade or business outside the United States. Section 1.367(a)-4T(c)(1) provides that if the transferred property will be leased by the transferee foreign corporation, the property generally is considered to be transferred for use in the active conduct of a trade or business outside of the United States only if all three of the following conditions are met: (i) The transferee's leasing constitutes the active conduct of a leasing business; (ii) the lessee does not use the property in the United States; and (iii) the transferee has need for substantial investment in assets of the type transferred.

Section 1.367(a)-4T(b)(1) provides that even if property qualifies for the active trade or business exception, when a U.S. person transfers U.S. depreciated property to a foreign corporation, that person must include as ordinary income in the year of the transfer the gain realized that would have been included as ordinary income under section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) of the Code if the taxpayer had sold the property at its fair market value on the date of the transfer (section 367 recapture). Section 1.367(a)-4T(b)(2)(ii) provides that, for this purpose, U.S. depreciated property includes property that has been used in the United States or has qualified as section 38 property by virtue of section 48(a)(2)(B).

Section 1.367(a)-4T(b)(3) provides a methodology to compute the section 367 recapture amount if the property has

been used partly outside the United States. In this circumstance, the amount of the section 367 depreciation recapture is determined by multiplying the full section 367 recapture amount by a fraction, the numerator of which is the U.S. use of the property and denominator of which is the total use of the property. For this purpose, U.S. use is the number of months that the property either was used within the United States or qualified as section 38 property by virtue of section 48(a)(2)(B) and was subject to depreciation by the transferor or a related person. Total use is the total number of months that the property was used (or was available for use), and subject to depreciation, by the transferor or a related person. Property is not considered to be used outside the United States during any period in which the property was, for purposes of section 38 or 168, treated as property not used predominantly outside the United States pursuant to the provisions of section 48(a)(2)(B).

Section 1.367(a)-5T(f) provides that, regardless of use in an active trade or business, section 367(a)(1) applies to a transfer of tangible property with respect to which the transferor is a lessor at the time of the transfer unless: (i) The transferee was the lessee and the transferee will not lease to third persons; or (ii) the transferee will lease to third persons and the transferee satisfies the conditions of § 1.367(a)-4T(c)(1) or (2).

The temporary regulations amend the section 367(a) regulations to provide that the principles of section 954(c)(2)(A) and the related regulations shall apply to determine whether a trade or business that produces rents or royalties is actively conducted under § 1.367(a)-2T(b)(3). For purposes of applying § 1.367(a)-2T(b)(4), § 1.367(a)-4T(c)(3) provides that the substantial managerial and operational activities of the trade or business of leasing an aircraft or vessel must be conducted outside of the United States, and the aircraft or vessel must be used predominantly outside of the United States, as defined in section 954 and under the amended regulation. A lessee that uses an aircraft or vessel predominantly outside of the United States will satisfy the requirement in § 1.367(a)-4T(c)(1)(ii).

In addition, Notice 2006-48 states that the Treasury Department and IRS were considering future guidance regarding how to determine whether an aircraft or vessel was used predominantly outside the United States for a particular month for purposes of calculating section 367 recapture. The Notice also states that until further

guidance is issued, taxpayers are permitted to use any reasonable method to make this determination. The Treasury Department and IRS continue to study this issue and therefore taxpayers may continue to use any reasonable method to make this determination until further guidance is issued.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. Ch. 6) please refer to the cross-reference notice of proposed rule making published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation has been 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 John H. Seibert and Paul J. Carlino, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.367(a)-2T is amended by adding paragraph (e) to read as follows:

§ 1.367(a)-2T Exception for transfers of property for use in the active conduct of a trade or business (temporary).

* * * * *

(e) *Special rules for certain transfers occurring on or after May 2, 2006—(1) General rule.* Whether a trade or business that produces rents or royalties is actively conducted shall be determined under the principles of section 954(c)(2)(A) and the

accompanying regulations (but without regard to whether the rents or royalties are received from an unrelated party). See § 1.954–2(c) and (d).

(2) *Effective/applicability date.* The rules of this paragraph (e) apply to transfers occurring on or after May 2, 2006. However, if the transferor makes the election to apply the provisions of § 1.367(a)–4T(c)(3)(i) for transfers occurring on or after October 22, 2004, then paragraph (e)(1) will also be applicable for the transfers occurring on or after October 22, 2004.

(3) *Expiration date.* The applicability of this paragraph (e) will expire on July 1, 2011.

■ **Par. 3.** Section 1.367(a)–4T is amended by adding paragraphs (c)(3) and (i) to read as follows:

§ 1.367(a)–4T Special rules applicable to specified transfers of property (temporary).

* * * * *

(c) * * *

(3) *Aircraft and vessels leased in foreign commerce—(i) In general.* For the purposes of satisfying paragraph (c)(1) of this section, aircraft or vessels, including component parts such as engines leased separately from aircraft or vessels, transferred to a foreign corporation and leased to other persons by the foreign corporation shall be considered to be transferred for use in the active conduct of a trade or business if—

(A) The employees of the foreign corporation perform substantial managerial and operational activities of leasing aircraft or vessels outside the United States; and

(B) The leased tangible personal property is predominantly used outside the United States, as determined under § 1.954–2T(c)(2)(v).

* * * * *

(i) *Effective/applicability date.* (1) The rules of paragraph (c)(3) of this section apply for transfers of property occurring on or after May 2, 2006. Transferors may elect to apply these provisions to transfers occurring on or after October 22, 2004, by citing the provisions of paragraph (c)(3) of this section in the documentation for such transfers required by § 1.6038B–1T(c)(4)(i) and (iv).

(2) *Expiration date.* The applicability of paragraph (c)(3) of this section will expire on July 1, 2011.

■ **Par. 4.** Section § 1.367(a)–5T is amended by adding paragraph (f)(3) to read as follows:

§ 1.367(a)–5T Property subject to section 367(a)(1) regardless of use in a trade or business (temporary).

* * * * *

(f) * * *

(3)(i) With respect to vessels and aircraft, including their component parts, that will be leased by the transferee to third persons, the transferee satisfies the conditions set forth in § 1.367(a)–4T(c).

(ii) *Effective/applicability date.* The rules of this paragraph (f)(3) apply for transfers of property occurring on or after May 2, 2006. If the transferor makes the election to apply the provisions of § 1.367(a)–4T(c)(3) to transfers occurring on or after October 22, 2004, then paragraph (f)(3)(i) of this section will also be applicable for the transfers affected by that election.

(iii) *Expiration date.* The applicability of this paragraph (f)(3) will expire on July 1, 2011.

■ **Par. 5.** Section 1.954–2 is amended as follows:

■ 1. Paragraph (c)(2)(ii) is revised.

■ 2. Paragraphs (c)(2)(v), (c)(2)(vi), (c)(2)(vii) and (c)(3) *Example 6*, and (i) are added. The revision and additions read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(c) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see § 1.954–2T(c)(2)(ii).

* * * * *

(v) [Reserved]. For further guidance, see § 1.954–2T(c)(2)(v).

(vi) [Reserved]. For further guidance, see § 1.954–2T(c)(2)(vi).

(3) * * *

Example 6. [Reserved]. For further guidance, see § 1.954–2T(c)(3) *Example 6*.

* * * * *

(i) [Reserved]. For further guidance, see § 1.954–2T(i).

■ **Par. 6.** Section 1.954–2T is added to read as follows:

§ 1.954–2T Foreign personal holding company income (temporary).

(a) through (c)(2)(i) [Reserved]. For further guidance see, § 1.954–2(a) through (c)(2)(i).

(ii) *Substantiality of foreign organization.* For purposes of paragraph (c)(1)(iv) of this section, whether an organization in a foreign country is substantial in relation to the amount of rents is determined based on all facts and circumstances. However, such an organization will be considered substantial in relation to the amount of rents if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 25 percent of

the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section. In addition, for purposes of *aircraft or vessels* leased in foreign commerce, an organization will be considered substantial if active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal or exceed 10 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section. For purposes of paragraphs (c)(1)(iv) and (c)(2) of this section and § 1.956–2T(b)(1)(vi), the term *aircraft or vessels* includes component parts, such as engines that are leased separately from an aircraft or vessel.

(c)(2)(iii) through (c)(2)(iv) [Reserved]. For further guidance see, § 1.954–2(c)(2)(iii) through (c)(2)(iv).

(v) *Leased in foreign commerce.* For purposes of paragraph (c)(1)(iv) and (2)(ii) of this section, an aircraft or vessel is considered to be leased in foreign commerce if the aircraft or vessel is used in foreign commerce and is used predominately outside the United States. For purposes of this paragraph (c)(2)(v), an aircraft or vessel is considered to be leased in foreign commerce if used for the transportation of property or passengers between a port (or airport) in the United States and one in a foreign country or between foreign ports (or airports) provided the aircraft or vessel is used predominantly outside the United States. An aircraft or vessel will be considered to be used predominantly outside the United States if more than 50 percent of the miles traversed during the taxable year in the use of such property are traversed outside the United States or if the aircraft or vessel is located outside the United States more than 50 percent of the time during the taxable year.

(vi) *Leases acquired by the CFC lessor.* Except as provided in this paragraph (c)(2)(vi), the exception in paragraph (c)(1)(iv) of this section will also apply to rents from leases acquired from any person, if following the acquisition the lessor performs active and substantial management, operational, and remarketing functions with respect to the leased property. However, if any person is claiming a benefit with respect to an acquired lease pursuant to sections 921 or 114 of the Internal Revenue Code or section 101(d) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (2004), the rents from such lease, notwithstanding § 1.954–2(b)(6), (2)(c) and the remainder of this section, are ineligible for the exception in section 954(c)(2)(A).

(vii) *Finance leases.* Paragraph (c)(1)(iv) of this section can apply to a lessor engaged in the marketing of leases that are treated as finance leases for

financial accounting purposes but are treated as leases for Federal income tax purposes.

(3) *Examples 1 through 5* [Reserved]. For further guidance, see § 1.954–2(c)(3) *Examples 1 through 5*.

Example 6. The facts are the same as in *Example 2*, except that controlled foreign corporation D purchases aircraft which it leases to others. If Corporation D incurs active leasing expenses, as defined in paragraph (c)(2)(iii) of this section, equal to or in excess of 10 percent of its adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section, the rental income of Corporation D from its leases with the unrelated foreign corporations is substantial and will be considered as derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A). If a particular aircraft subject to lease was not used by the lessee corporation in foreign commerce, for example, because 50 percent or less of the miles during the taxable year were traversed outside the United States and the aircraft was located in the United States for 50 percent or more of the taxable year, Corporation D is not prevented from otherwise showing that it actively carries on a trade or business with regard to the rents derived from that aircraft, for example, based on its facts and circumstances, or as within the meaning of paragraph (c)(1)(i) or (iii) of this section.

(d) through (h) [Reserved]. For further guidance, see § 1.954–2(d) through (h).

(i)(1) *Effective/applicability date.* Paragraph (c) of this section applies to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations ends. Taxpayers may elect to apply paragraph (c) of this section to taxable years of controlled foreign corporations beginning after December 31, 2004, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations end. If an election is made to apply paragraph (b)(1)(vi) of this section to taxable years beginning after December 31, 2004, then the election must also be made for paragraph (c) of this section.

(2) *Expiration date.* The applicability of § 1.954–2T(c) will expire on July 1, 2011.

■ **Par. 7.** Section 1.956–2 is amended as follows:

- 1. Paragraph (b)(1)(vi) is revised.
- 2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 1.956–2 Definition of United States property.

* * * * *

(b) * * *

(1) * * *

(vi) [Reserved]. For further guidance, see § 1.956–2T(b)(1)(vi).

* * * * *

(e) [Reserved]. For further guidance, see § 1.956–2T(e).

■ **Par. 8.** Section 1.956–2T is amended as follows:

- 1. Paragraphs (a), (b), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(1)(v), (b)(i)(vi), (c), (d) and (d)(1) are added.
- 2. Paragraph (e) is added.

The revisions and addition read as follows:

§ 1.956–2T Definition of United States property (temporary).

(a) through (b)(1)(v) [Reserved]. For further guidance, see § 1.956–2(a) through (b)(1)(v).

(vi) Any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States. Whether transportation property described in this subdivision is used in foreign commerce and predominantly outside the United States is to be determined from all the facts and circumstances of each case. As a general rule, such transportation property will be considered to be used predominantly outside the United States if 70 percent or more of the miles traversed (during the taxable year at the close of which a determination is made under section 956(a)(2)) in the use of such property are traversed outside the United States or if such property is located outside the United States 70 percent of the time during such taxable year. Notwithstanding the above, an aircraft or vessel (as the term is defined in § 1.954–2T(c)(2)(ii)) is excluded from U.S. property if rents derived from leasing such aircraft or vessel are excluded from foreign personal holding company income under section 954(c)(2)(A). See paragraph (e) of this section for the effective/applicability dates of this paragraph (b)(1)(vi).

(c) through (d)(1) [Reserved]. For further guidance, see § 1.956–2(b)(1)(vii) through (d)(1).

* * * * *

(e) *Effective/applicability date.* Paragraph (b)(1)(vi) of this section applies to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for tax years of United States shareholders with or within which such tax years of the controlled foreign corporations end. Taxpayers may elect to apply the rule of this section to taxable years of controlled foreign corporations beginning after December 31, 2004, and

for tax years of United States shareholders with or within which such tax years of foreign corporations end. If an election is made to apply § 1.954–2T(c) to taxable years of a controlled foreign corporation beginning after December 31, 2004, then the election must also be made for paragraph (b)(1)(vi) of this section.

(2) *Expiration date.* The applicability of paragraph (b)(1)(vi) of this section will expire on July 1, 2011.

Approved: June 23, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AB15

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation (PBGC) is amending its regulation on Administrative Review of Agency Decisions to clarify that the agency's Appeals Board may refer certain categories of appeals to other PBGC departments for a written response and to remove determinations under section 4022A of the Employee Retirement Income Security Act of 1974 (ERISA) from the scope of part 4003. The amendments also include minor clarifying and technical changes to the rules for administrative review of agency decisions.

DATES: Effective August 4, 2008.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Shelton, Attorney, Office of the General Counsel or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On October 18, 2007, PBGC published (at 72 FR 59050) a proposed rule to amend