

small entity be subject to the Commission's jurisdiction, it may file for waiver of the requirements.<sup>64</sup> This is consistent with the exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,<sup>65</sup> the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

#### VIII. Document Availability

99. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

100. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.<sup>66</sup>

101. User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

#### IX. Effective Date and Congressional Notification

102. This Final Rule will become effective August 28, 2008. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>67</sup>

#### List of Subjects in 18 CFR part 38

Electric utilities, Reporting and recordkeeping requirements, Incorporation by reference.

By the Commission.  
**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

■ In consideration of the foregoing, the Commission amends Chapter I, Title 18, part 38 of the *Code of Federal Regulations*, as follows:

#### PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

■ 1. The authority citation for part 38 continues to read as follows:

**Authority:** 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 38.2, paragraphs (a)(1) through (8) are revised, and paragraphs (a)(9) through (11) are added to read as follows:

##### § 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) \* \* \*

(1) Business Practices for Open Access Same-Time Information Systems (OASIS), Version 1.4 (WEQ–001, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007) with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0 through 001–1.8, and 001–9.7;

(2) Business Practices for Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.4 (WEQ–002, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.4 (WEQ–003, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(4) Coordinate Interchange (WEQ–004, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(6) Manual Time Error Correction (WEQ–006, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(7) Inadvertent Interchange Payback (WEQ–007, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(8) Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(9) Gas/Electric Coordination (WEQ–011, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007);

(10) Public Key Infrastructure (PKI) (WEQ–012, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007); and

(11) Business Practices for Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.4 (WEQ–013, Version 001, Oct. 31, 2007, with minor corrections applied on Nov. 16, 2007).

\* \* \* \* \*

**Note:** The following appendix will not be published in the Code of Federal Regulations.

#### List of Entities Filing Comments on NOPR in Docket No. RM05–5–005, and the Abbreviations Used To Identify Them

Bonneville Power Administration (Bonneville).  
 Duke Energy Corporation (Duke).  
 Lafayette Utilities System (Lafayette).  
 Louisiana Energy and Power Authority (LEPA).  
 Midwest Independent Transmission System Operator, Inc. (Midwest ISO).  
 New York Independent System Operator, Inc. (NYISO).  
 North American Electric Reliability Corporation (NERC).  
 PJM Interconnection, L.L.C. (PJM).  
 Southern Company Services, Inc. (Southern Companies).  
 Southwest Power Pool, Inc. (SPP).

[FR Doc. E8–17194 Filed 7–28–08; 8:45 am]

BILLING CODE 6717–01–P

#### DEPARTMENT OF THE TREASURY

##### Internal Revenue Service

##### 26 CFR Part 1

[TD 9418]

RIN 1545–BE65

#### Converting an IRA Annuity to a Roth IRA

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 408A of the Internal Revenue Code (Code). These final regulations provide guidance concerning the tax consequences of converting a non-Roth IRA annuity to a Roth IRA. These final regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians and issuers of Roth IRAs.

**DATES:** *Effective date:* These final regulations are effective July 29, 2008.

*Applicability date:* These regulations are applicable to any Roth IRA

<sup>64</sup> We also have provided for requests of waiver in instances where compliance would be very burdensome and a waiver would not diminish the overall benefits of the standards. See *supra* P 19.

<sup>65</sup> 5 U.S.C. 605(b).

<sup>66</sup> NAESB's Dec. 26, 2007 submittal is also available for viewing in eLibrary. The link to this file is as follows: [http://elibrary.ferc.gov/0/idmws/doc\\_info.asp?document\\_id=13566661](http://elibrary.ferc.gov/0/idmws/doc_info.asp?document_id=13566661).

<sup>67</sup> See 5 U.S.C. 804(2).

conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005.

**FOR FURTHER INFORMATION CONTACT:**

William D. Gibbs at 202-622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Roth IRAs and Conversions*

This document contains final regulations that amend the Income Tax Regulations (26 CFR Part 1) under section 408A of the Code relating to Roth IRAs. Section 408A of the Code, which was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), establishes the Roth IRA as a type of individual retirement plan, effective for taxable years beginning on or after January 1, 1998.

The identifying characteristic of Roth IRAs is that all contributions to Roth IRAs are after-tax contributions (that is, an IRA owner cannot take a deduction for a contribution made to a Roth IRA) but qualified distributions are tax-free. A qualified distribution from a Roth IRA is a distribution that is made: (1) at least 5 years after the account owner (or the account owner's spouse) made a Roth IRA contribution, and (2) after age 59½, after death, on account of disability, or for a first-time home purchase.

A taxpayer whose modified adjusted gross income for a year does not exceed \$100,000 (and who, if married, files jointly) <sup>1</sup> may convert an amount held in a non-Roth IRA (that is, a traditional IRA or SIMPLE IRA) to an amount held in a Roth IRA. If a taxpayer converts an amount held in a non-Roth IRA to a Roth IRA, the taxpayer must include the value of the non-Roth IRA being converted in gross income (to the extent the conversion is not a conversion of basis in the non-Roth IRA).

A conversion may be accomplished by means of a rollover, trustee-to-trustee transfer, or account redesignation. Regardless of the means used to convert, any amount converted from a non-Roth IRA to a Roth IRA is treated as distributed from the non-Roth IRA and rolled over to the Roth IRA. In the case of a conversion involving property, the conversion amount generally is the fair market value of the property on the date of distribution or the date the property is treated as distributed from the traditional IRA.

Final regulations regarding Roth IRAs were published in the **Federal Register**

on February 4, 1999 (64 FR 5597). On August 19, 2005, the IRS issued temporary regulations under section 408A (70 FR 48868) relating to conversions involving annuities. These temporary regulations were also issued in identical form as proposed regulations (70 FR 48924).

Rev. Proc. 2006-13 (2006-1 CB 315), which was issued on January 17, 2006, in response to several comments received on the temporary and proposed regulations, provided interim guidance with respect to the temporary regulations. See § 601.601(d)(2)(ii)(b). After consideration of all comments received on the proposed regulations, these final regulations adopt the provisions of the proposed regulations with certain modifications described in the Explanation of Provisions.

**Explanation of Provisions**

Like the proposed regulations, these final regulations clarify that when a non-Roth individual retirement annuity is converted to a Roth IRA, the amount that is treated as distributed is the fair market value of the annuity contract on the date the annuity contract is converted. Similarly, when a non-Roth individual retirement account holds an annuity contract as an account asset and the account is converted to a Roth IRA, the amount that is treated as distributed with respect to the annuity contract is the fair market value of the annuity contract on the date the annuity contract is converted (that is distributed or treated as distributed from the non-Roth IRA).

One commentator suggested that the final regulations should clarify that where a conversion is made by surrendering an annuity without retaining or transferring rights, the amount converted, and hence the amount that must be included in income as a result of the conversion, is limited to the surrendered cash value (the actual proceeds to be deposited into the Roth IRA). Rev. Proc. 2006-13 provided that, in such a case, the valuation methods in the temporary regulations do not apply.

The final regulations adopt this suggestion. Thus, to the extent an individual retirement annuity or an annuity contract held by an individual retirement account is surrendered with no retained or transferred rights, the amount treated as a distribution is limited to the surrendered cash value (the actual proceeds available to be deposited into the Roth IRA).

The proposed regulations used a methodology from the gift tax regulations (§ 25.2512-6) to determine fair market value of an annuity contract.

Those rules depend on how soon after purchase the contract was converted and whether future premiums were to be paid. The different time periods were "soon after" the contract was sold and after the contract "has been in force for some time." A commentator stated that these terms are not defined and do not lend themselves to clear or uniform interpretation.

In response to these comments, the final regulations modify the application of the valuation rules taken from the gift tax regulations (collectively referred to under these regulations as the gift tax method). The applicability of one valuation rule within the gift tax method is based upon whether the company which sold the initial contract sells comparable annuities. If there is such a comparable contract currently being sold, the fair market value of the contract is determined as the price of the comparable contract. For example, assume a taxpayer who is age 60 at the time of the conversion had purchased from an insurance company a contract at an earlier age which will pay him \$500 per month for life beginning at age 70. If the insurance company is selling contracts that will provide a taxpayer who is age 60 \$500 per month for life at age 70, then the fair market value of the taxpayer's contract, for purposes of determining the amount converted, is the current price of the similar contract. (If the conversion occurs soon after the annuity was sold, the comparable contract is the annuity itself and, thus, the fair market value of the annuity is established by the actual premiums paid for such contract.) This comparable contract valuation rule subsumes the first two methods under the proposed regulations.

The gift tax method under the final regulations includes a second alternative for situations where there is no comparable contract. If no comparable contract is available to make a comparison, the fair market value is established through an approximation that is based on the interpolated terminal reserve at the date of the conversion, plus the proportionate part of the gross premium paid before the date of the conversion which covers the period extending beyond that date. This reserve alternative is the same as the third method under the proposed regulations, except that it applies whenever there is no comparable contract.

Rev. Proc. 2006-13 provided an alternative to the valuation method in the proposed regulations based on the accumulation of premiums and this alternative is included in the final regulations. Under this "accumulation

<sup>1</sup> These limitations are removed for taxable years beginning after December 31, 2009.

method”, the fair market value of an annuity contract is permitted to be determined using the methodology provided in § 1.401(a)(9)–6, A–12, with the following modifications. First, all front-end loads and other non-recurring charges assessed in the twelve months immediately preceding the conversion must be added to the account value. Second, future distributions are not to be assumed in the determination of the actuarial present value of additional benefits. Finally, the exclusions provided under § 1.401(a)(9)–6, A–12(c)(1) and (c)(2), are not to be taken into account.

These final regulations also provide authority for the Commissioner to issue additional guidance regarding the fair market value of an individual retirement annuity, including formulas to be used for determining fair market value.

#### Effective Date

These regulations are applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. However, taxpayers may instead apply the valuation methods in the temporary regulations and Rev. Proc. 2006–13 for annuity contracts distributed or treated as distributed from a traditional IRA on or before December 31, 2008. See § 601.601 (d)(2)(ii)(b). Thus, for example, the adoption of these final regulations does not eliminate the special rule for 2005 conversions set forth in section 4 of Rev. Proc. 2006–13.

#### Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. 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 final regulations and because these 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 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.

#### Drafting Information

The principal authors of these regulations are William Douglas Gibbs and Cathy V. Pastor of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government

Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 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 1.408A–4T is removed.

**§ 1.408A–4T [Removed].**

■ **Par. 3.** Section 1.408A–4 is amended by revising Q–14 and A–14 to read as follows:

#### § 1.408A–4 Converting amounts to Roth IRAs.

\* \* \* \* \*

Q–14. What is the amount that is treated as a distribution, for purposes of determining income inclusion, when a conversion involves an annuity contract?

A–14. (a) *In general*—(1) *Distribution of Fair Market Value Upon Conversion.* Notwithstanding § 1.408–4(e), when part or all of a traditional IRA that is an individual retirement annuity described in section 408(b) is converted to a Roth IRA, for purposes of determining the amount includible in gross income as a distribution under § 1.408A–4, A–7, the amount that is treated as distributed is the fair market value of the annuity contract on the date the annuity contract is converted. Similarly, when a traditional IRA that is an individual retirement account described in section 408(a) holds an annuity contract as an account asset and the traditional IRA is converted to a Roth IRA, for purposes of determining the amount includible in gross income as a distribution under § 1.408A–4, A–7, the amount that is treated as distributed with respect to the annuity contract is the fair market value of the annuity contract on the date that the annuity contract is distributed or treated as distributed from the traditional IRA. The rules in this A–14 also apply to conversions from SIMPLE IRAs.

(2) *Annuity contract surrendered.* Paragraph (a)(1) of this paragraph A–14 does not apply to a conversion of a traditional IRA to the extent the conversion is accomplished by the

complete surrender of an annuity contract for its cash value and the reinvestment of the cash proceeds in a Roth IRA, but only if the surrender extinguishes all benefits and other characteristics of the contract. In such a case, the cash from the surrendered contract is the amount reinvested in the Roth IRA.

(3) *Definitions.* The definitions set forth in § 1.408A–8 apply for purposes of this paragraph A–14.

(b) *Determination of fair market value*—(1) *Overview*—(i) *Use of alternative methods.* This paragraph (b) sets forth methods which may be used to determine the fair market value of an individual retirement annuity for purposes of paragraph (a)(1) of this paragraph A–14. However, if, because of the unusual nature of the contract, the value determined under one of these methods does not reflect the full value of the contract, that method may not be used.

(ii) *Additional guidance.* Additional guidance regarding the fair market value of an individual retirement annuity, including formulas to be used for determining fair market value, may be issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

(2) *Gift tax method*—(i) *Cost of contract or comparable contract.* If with respect to an annuity, there is a comparable contract issued by the company which sold the annuity, the fair market value of the annuity may be established by the price of the comparable contract. If the conversion occurs soon after the annuity was sold, the comparable contract may be the annuity itself, and thus, the fair market value of the annuity may be established through the sale of the particular contract by the company (that is, the actual premiums paid for such contract).

(ii) *Use of reserves where no comparable contract available.* If with respect to an annuity, there is no comparable contract available in order to make the comparison described in paragraph (b)(2)(i) of this paragraph A–14, the fair market value may be established through an approximation that is based on the interpolated terminal reserve at the date of the conversion, plus the proportionate part of the gross premium last paid before the date of the conversion which covers the period extending beyond that date.

(3) *Accumulation method.* As an alternative to the gift tax method described in paragraph (b)(2) of this paragraph A–14, this paragraph (b)(3) provides a method that may be used for an annuity contract which has not been

annuitized. The fair market value of such an annuity contract is permitted to be determined using the methodology provided in § 1.401(a)(9)–6, A–12, with the following modifications:

(i) All front-end loads and other non-recurring charges assessed in the twelve months immediately preceding the conversion must be added to the account value.

(ii) Future distributions are not to be assumed in the determination of the actuarial present value of additional benefits.

(iii) The exclusions provided under § 1.401(a)(9)–6, A–12(c)(1) and (c)(2), are not to be taken into account.

(c) *Effective/applicability date.* The provisions of this paragraph A–14 are applicable to any conversion in which an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. However, for annuity contracts distributed or treated as distributed from a traditional IRA on or before December 31, 2008, taxpayers may instead apply the valuation methods in § 1.408A–4T (as it appeared in the April 1, 2008, edition of 26 CFR part 1) and Revenue Procedure 2006–13 (2006–1 CB 315) (See § 601.601(d)(2)(ii)(b)).

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–17271 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

## 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; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to final and temporary regulations (TD 9406) that was published in the **Federal Register** on Thursday, July 3, 2008 (73 FR 38113) 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. The regulations reflect statutory changes made by section 415 of the American Jobs Creation Act of 2004. In general, the regulations will affect the 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.

**DATES:** This correction is effective July 29, 2008, and is applicable on July 3, 2008.

#### 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 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final and temporary regulations that are the subjects of this document are under sections 367, 954, and 956 of the Internal Revenue Code.

##### Need for Correction

As published, final and temporary regulations (TD 9406) contain an error that may prove to be misleading and is in need of clarification.

##### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

#### 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 1.954–2(c)(2) is amended by adding paragraph (vii) to read as follows:

##### § 1.954–2 Foreign personal holding company income.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

LaNita Van Dyke,

Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).

[FR Doc. E8–17269 Filed 7–28–08; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9420]

RIN 1545–BC22

#### Section 42 Utility Allowance Regulations Update

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

**DATES:** *Effective Date:* These regulations are effective July 29, 2008. *Applicability Date:* For dates of applicability see § 1.42–12(a)(4).

**FOR FURTHER INFORMATION CONTACT:** David Selig (202) 622–3040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code (Code). On June 19, 2007, the IRS and Treasury Department published in the **Federal Register** proposed regulations under section 42(g)(2)(B)(ii) (72 FR 33703). Written and electronic comments responding to the proposed regulations were received and a public hearing was held on the proposed regulations on October 9, 2007. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.