

HOLDINGS

(1) A loss from criminal fraud or embezzlement in a transaction entered into for profit is a theft loss, not a capital loss, under § 165.

(2) A theft loss in a transaction entered into for profit is deductible under § 165(c)(2), not § 165(c)(3), as an itemized deduction that is not subject to the personal loss limits in § 165(h), or the limits on itemized deductions in §§ 67 and 68.

(3) A theft loss in a transaction entered into for profit is deductible in the year the loss is discovered, provided that the loss is not covered by a claim for reimbursement or recovery with respect to which there is a reasonable prospect of recovery.

(4) The amount of a theft loss in a transaction entered into for profit is generally the amount invested in the arrangement, less amounts withdrawn, if any, reduced by reimbursements or recoveries, and reduced by claims as to which there is a reasonable prospect of recovery. Where an amount is reported to the investor as income prior to discovery of the arrangement and the investor includes that amount in gross income and reinvests this amount in the arrangement, the amount of the theft loss is increased by the purportedly reinvested amount.

(5) A theft loss in a transaction entered into for profit may create or increase a net operating loss under § 172 that can be carried back up to 3 years and forward up to 20 years. An eligible small business may elect either a 3, 4, or 5-year net operating loss carryback for an applicable 2008 net operating loss.

(6) A theft loss in a transaction entered into for profit does not qualify for the computation of tax provided by § 1341.

(7) A theft loss in a transaction entered into for profit does not qualify for the application of §§ 1311–1314 to adjust tax liability in years that are otherwise barred by the period of limitations on filing a claim for refund under § 6511.

DISCLOSURE OBLIGATION UNDER § 1.6011–4

A theft loss in a transaction entered into for profit that is deductible under § 165(c)(2) is not taken into account in determining whether a transaction is a loss transaction under § 1.6011–4(b)(5). *See*

§ 4.03(1) of Rev. Proc. 2004–66, 2004–2 C.B. 966.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 71–381 is obsolete to the extent that it holds that a theft loss incurred in a transaction entered into for profit is deductible under § 165(c)(3) rather than § 165(c)(2).

DRAFTING INFORMATION

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Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. *See* Rev. Rul. 2009-10, page 738.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2009.

Rev. Rul. 2009-10

This revenue ruling provides various prescribed rates for federal income tax purposes for April 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term

adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable

percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009-10 TABLE 1				
Applicable Federal Rates (AFR) for April 2009				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.83%	.83%	.83%	.83%
110% AFR	.91%	.91%	.91%	.91%
120% AFR	1.00%	1.00%	1.00%	1.00%
130% AFR	1.08%	1.08%	1.08%	1.08%
<i>Mid-term</i>				
AFR	2.15%	2.14%	2.13%	2.13%
110% AFR	2.36%	2.35%	2.34%	2.34%
120% AFR	2.59%	2.57%	2.56%	2.56%
130% AFR	2.80%	2.78%	2.77%	2.76%
150% AFR	3.24%	3.21%	3.20%	3.19%
175% AFR	3.79%	3.75%	3.73%	3.72%
<i>Long-term</i>				
AFR	3.67%	3.64%	3.62%	3.61%
110% AFR	4.04%	4.00%	3.98%	3.97%
120% AFR	4.42%	4.37%	4.35%	4.33%
130% AFR	4.79%	4.73%	4.70%	4.68%

REV. RUL. 2009-10 TABLE 2				
Adjusted AFR for April 2009				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.87%	.87%	.87%	.87%
Mid-term adjusted AFR	2.39%	2.38%	2.37%	2.37%
Long-term adjusted AFR	4.61%	4.56%	4.53%	4.52%

REV. RUL. 2009-10 TABLE 3
Rates Under Section 382 for April 2009

Adjusted federal long-term rate for the current month	4.61%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.27%

REV. RUL. 2009-10 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for April 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.67%
Appropriate percentage for the 30% present value low-income housing credit	3.29%

REV. RUL. 2009-10 TABLE 5
Rate Under Section 7520 for April 2009

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.6%
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Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

Section 6411.—Tentative Carryback and Refund Adjustments

Guidance is provided for taxpayers to elect the 3, 4, or 5-year carryback of net operating losses of

small businesses under section 1211 of the American Recovery and Reinvestment Tax Act of 2009 by filing Form 1045, Application for Tentative Refund, or Form 1139, Corporation Application for Tentative Refund. See Rev. Proc. 2009-19, page 747.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2009. See Rev. Rul. 2009-10, page 738.