

are age 55 or over is expressed under the terms of the plan as a life annuity payable at normal retirement age (or current age, if later) as described in paragraph (b)(1)(i)(A) of this section and the plan provides that the accumulated benefit of participants who are younger than age 55 is expressed as the current balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section, then the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to individuals who are or could be participants who are age 55 or over.

(iv) \* \* \*

*Example 4.* \* \* \*

(iii) \* \* \* If, instead of the facts in paragraph (i) of this *Example 4*, the plan had been amended to provide only participants who have not yet attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, then the safe harbor would not be satisfied with respect to individuals who have attained age 55 by January 1, 2012.

\* \* \*

(c) \* \* \*

(5) \* \* \*

*Example 2.* \* \* \*

(iv) \* \* \* The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account balance payable in the particular optional form of benefit selected is equal to or greater than the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date.

*Example 3.* \* \* \* (i) \* \* \* Under the terms of Plan E, the benefit attributable to A's opening hypothetical account balance is increased so that A's straight life annuity commencing on January 1, 2015, is \$1,000 per month.

\* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Market rate of return for single rates.* Except as otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan terms provide that the interest credit for each plan year is determined using one of the following specified interest crediting rates:

\* \* \*

(f) \* \* \*

(2) \* \* \*

(iii) \* \* \* For the periods after the statutory effective date set forth in paragraph (f)(1) of this section and before the regulatory effective date set forth in paragraph (f)(2)(i) of this

section, the safe harbor and other relief of section 411(b)(5) apply and the market rate of return and other requirements of section 411(b)(5) must be satisfied. \* \* \*

**Guy R. Traynor**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9508]

**RIN 1545-BJ85**

#### Source of Income From Qualified Fails Charges; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to temporary regulations (TD 9508) that were published in the **Federal Register** on Wednesday, December 8, 2010 (75 FR 76262) providing guidance about the treatment of fails charges for purposes of sections 871 and 881, which generally require gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation and the withholding of such tax under sections 1441 and 1442.

**DATES:** This correction is effective on December 28, 2010, and is applicable beginning December 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sheila Ramaswamy or Anthony J. Marra at (202) 622-3870 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The temporary regulations (TD 9508) that are the subject of this document are under section 863 of the Internal Revenue Code.

##### Need for Correction

As published, the temporary regulations (TD 9508) contain an error that may prove to be misleading and is in need of clarification.

##### List of Subject 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 1.863-10T is amended by revising the paragraph (f) to read as follows:

**§ 1.863-10T Source of income from a qualified fails charge (temporary).**

\* \* \*

(f) *Expiration date.* This section expires on December 6, 2013.

**Guy R. Traynor,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

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## DEPARTMENT OF JUSTICE

[Docket No. USPC-2010-04]

### 28 CFR Part 2

#### Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Final rules.

**SUMMARY:** The U.S. Parole Commission is revising its rule on original jurisdiction cases. The revision adds as a criterion for original jurisdiction designation a case in which the offender caused the death of a law enforcement officer while the officer was performing his duty. In the rule on the quorum of Commissioners needed for agency action, the Commission is adding provisions that describe the consequence of a vote in which the Commission members are equally divided in their decisions.

**DATES:** *Effective date:* January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rockne Chickinell, Office of General Counsel, U. S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.