

Notice 2010-73 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

<u>Calendar Year</u>	<u>Applicable Percentage</u>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent
2010	15 percent

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. McRee at (202) 622-3110 (not a toll-free call).

**2010 National Pool**

**Notice 2010-74**

This notice informs taxpayers that there is no unused housing credit carryover amount to be allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2010.

Rev. Proc. 92-31, 1992-1 C.B. 775, provides guidance to state housing credit

agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). Qualified states are states that have allocated all their credits in a calendar year and who request, by May 1st of the following calendar year, to receive an allocation of credit from the National Pool determined in the year of the request.

For 2010 there is no unused housing credit carryover amount assigned to the National Pool. Consequently, there is no

National Pool amount from which credits can be redistributed to qualified states.

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*26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 36C, 42, 59, 62, 135, 137, 146, 147, 148, 170, 213, 220, 512, 513, 877, 877A, 911, 2032A, 2503, 2523, 4161, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148-3, 1.148-5.)*

**Rev. Proc. 2010-40**

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SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2011.

SECTION 2. CHANGES

.01 This revenue procedure does not include the following items: the tax rate tables under § 1 of the Internal Revenue

Code (Code), the child tax credit under § 24, the Hope Scholarship and Lifetime Learning Credits under § 25A, the earned income credit under § 32, the standard deduction under § 63, the overall limitation on itemized deductions under § 68, the qualified transportation fringe under § 132, the personal exemption under § 151, and the interest on education loans under § 221.

Those items will be addressed in future guidance.

.02 Sections 10909(a)(1) and (b) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111–148, 124 Stat. 119 (PPACA), redesignated § 23 of the Code as § 36C, made the adoption credit refundable, and for taxable years beginning in 2010, increased the maximum adoption credit from \$10,000 (as adjusted

for inflation under former § 23(h)) to \$13,170. For taxable years beginning after December 31, 2010, the maximum adoption credit amounts in § 36C(a)(3) and (b)(1) are adjusted for inflation under § 36C(h). (See section 3.02 of this revenue procedure and Rev. Proc. 2010–35, 2010–42 I.R.B. 438).

.03 For taxable years beginning in 2010, § 10909(a)(2) of PPACA increased the maximum adoption assistance exclusion under § 137(a)(2) and (b)(1) of the Code from \$10,000 (as adjusted for inflation under former § 137(f)) to \$13,170, and amended the inflation adjustment provisions of § 137(f). For taxable years beginning after December 31, 2010, the amounts under § 137(a)(2) and (b)(1) are adjusted for inflation under amended § 137(f). (See section 3.08 of this revenue procedure and Rev. Proc. 2010–35.)

.04 For taxable years beginning after December 31, 2009, and before January 1, 2011, § 201(a) of the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111–147, 124 Stat. 71 (HIRE), amended § 179(b) of the Code to temporarily increase the amount of § 179 property placed into service during the taxable year that a taxpayer may elect to expense. In addition, for taxable years beginning after December 31, 2009, § 201(a) of HIRE eliminated the inflation adjustment to the dollar amounts under § 179(b)(1) and (2). Accordingly, those amounts are no longer included in this revenue procedure. (See Rev. Proc. 2010–24, 2010–25 I.R.B. 764.)

.05 The passenger air transportation excise taxes imposed under § 4261(b) and (c), as extended by § 2(b)(1) of the Airport and Airway Extension Act of 2010, Part III, Pub. L. No. 111–249, 124 Stat. 2627, apply to transportation taken through December 31, 2010, and to amounts paid on or before December 31, 2010, for transportation beginning after that date. Accordingly, the amounts in § 4261(b) and (c) are not included in this revenue procedure.

### SECTION 3. 2011 ADJUSTED ITEMS

.01 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax")*. For taxable years beginning in 2011, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the

child's return that is subject to the "kiddie tax," is \$950. The same \$950 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2011 must be more than \$950 but less than \$9,500.

.02 *Adoption Credit*. For taxable years beginning in 2011, under § 36C(a)(3) the credit allowed for an adoption of a child with special needs is \$13,360. For taxable years beginning in 2011, under § 36C(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$13,360. The available adoption credit begins to phase out under § 36C(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$185,210 and is completely phased out for taxpayers with modified adjusted gross income of \$225,210 or more. (See section 3.08 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.03 *Rehabilitation Expenditures Treated as Separate New Building*. For calendar year 2011, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is \$6,100.

.04 *Low-Income Housing Credit*. For calendar year 2011, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) \$2.15 multiplied by the State population, or (2) \$2,465,000.

.05 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax"*. For taxable years beginning in 2011, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) \$6,800.

.06 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans*. For calendar year 2011, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to \$16

per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to \$10 per hour is deemed substantiated if paid under Rev. Proc. 2002–41.

.07 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2011, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above \$106,650 for joint returns and \$71,100 for other returns. The exclusion is completely phased out for modified adjusted gross income of \$136,650 or more for joint returns and \$86,100 or more for other returns.

.08 *Adoption Assistance Programs*. For taxable years beginning in 2011, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is \$13,360. For taxable years beginning in 2011, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is \$13,360. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$185,210 and is completely phased out for taxpayers with modified adjusted gross income of \$225,210 or more. (See section 3.02 of this revenue procedure for the adjusted items relating to the adoption credit.)

.09 *Private Activity Bonds Volume Cap*. For calendar year 2011, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) \$95 multiplied by the State population, or (2) \$277,820,000.

.10 *Loan Limit on Agricultural Bonds*. For calendar year 2011, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is \$477,000.

.11 *General Arbitrage Rebate Rules.* For bond years ending in 2011, the amount of the computation credit determined under § 1.148-3(d)(4) of the proposed Income Tax Regulations is \$1,520.

.12 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow.* For calendar year 2011, under § 1.148-5(e)(2)(iii)(B)(I), a broker's com-

mission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) \$36,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, \$4,000; and (2) the issuer does not treat more than \$101,000 in brokers'

commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.13 *Eligible Long-Term Care Premiums.* For taxable years beginning in 2011, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

<i>Attained Age Before the Close of the Taxable Year</i>	<i>Limitation on Premiums</i>
40 or less	\$ 340
More than 40 but not more than 50	\$ 640
More than 50 but not more than 60	\$1,270
More than 60 but not more than 70	\$3,390
More than 70	\$4,240

.14 *Medical Savings Accounts.*

(1) *Self-only coverage.* For taxable years beginning in 2011, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than \$2,050 and not more than \$3,050, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$4,100.

(2) *Family coverage.* For taxable years beginning in 2011, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than \$4,100 and not more than \$6,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed \$7,500.

.15 *Treatment of Dues Paid to Agricultural or Horticultural Organizations.* For taxable years beginning in 2011, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is \$148.

.16 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.*

(1) *Low cost article.* For taxable years beginning in 2011, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of \$9.70 or less.

(2) *Other insubstantial benefits.* For taxable years beginning in 2011, the \$5,

\$25, and \$50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are \$9.70, \$48.50, and \$97, respectively.

.17 *Expatriation to Avoid Tax.* For calendar year 2011, an individual with "average annual net income tax" of more than \$147,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is a covered expatriate for purposes of § 877A(g)(1).

.18 *Tax Responsibilities of Expatriation.* For taxable years beginning in 2011, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by \$636,000.

.19 *Foreign Earned Income Exclusion.* For taxable years beginning in 2011, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is \$92,900.

.20 *Valuation of Qualified Real Property in Decedent's Gross Estate.* For an estate of a decedent dying in calendar year 2011, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A

for purposes of the estate tax cannot exceed \$1,020,000.

.21 *Annual Exclusion for Gifts.*

(1) For calendar year 2011, the first \$13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2011, the first \$136,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.22 *Tax on Arrow Shafts.* For calendar year 2011, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is \$0.45 per shaft.

.23 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures.* For taxable years beginning in 2011, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is \$103 or less.

.24 *Notice of Large Gifts Received from Foreign Persons.* For taxable years beginning in 2011, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the ag-

gregate value of gifts received in a taxable year exceeds \$14,375.

*.25 Persons Against Whom a Federal Tax Lien Is Not Valid.* For calendar year 2011, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than \$1,400, or (2) a mechanic's lienor under § 6323(b)(7) that repaired or improved certain residential property if the contract price with the owner is not more than \$6,990.

*.26 Property Exempt from Levy.* For calendar year 2011, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed \$8,370. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed \$4,180.

*.27 Interest on a Certain Portion of the Estate Tax Payable in Installments.* For an estate of a decedent dying in calendar year 2011, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is \$1,360,000.

*.28 Attorney Fee Awards.* For fees incurred in calendar year 2011, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is \$180 per hour.

*.29 Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts.* For calendar year 2011, the stated dollar amount of the *per diem* limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is \$300.

#### SECTION 4. EFFECTIVE DATE

*.01 General Rule.* Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2011.

*.02 Calendar Year Rule.* This revenue procedure applies to transactions or events occurring in calendar year 2011 for purposes of sections 3.03 (rehabilitation expenditures treated as separate new building), 3.04 (low-income housing credit), 3.06 (transportation mainline pipeline construction industry optional expense substantiation rules for payments

to employees under accountable plans), 3.09 (private activity bonds volume cap), 3.10 (loan limit on agricultural bonds), 3.11 (general arbitrage rebate rules), 3.12 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.17 (expatriation to avoid tax), 3.20 (valuation of qualified real property in decedent's gross estate), 3.21 (annual exclusion for gifts), 3.22 (tax on arrow shafts), 3.25 (persons against whom a federal tax lien is not valid), 3.26 (property exempt from levy), 3.27 (interest on a certain portion of the estate tax payable in installments), 3.28 (attorney fee awards), and 3.29 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

#### SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Christina M. Glendening of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Glendening at (202) 622-4920 (not a toll-free call).