evidence that documents your type of Down syndrome that is consistent with prior karyotype analysis (for example, reference to a diagnosis of ''trisomy 21'') and (ii) that you have the distinctive facial or other physical features of Down syndrome. We do not require a detailed description of the facial or other physical features of the disorder. However, we will not find that your disorder meets 110.06B if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

b. If we do not have evidence of prior karyotype analysis (you did not have testing, or you had testing but we do not have information from a physician about the test results), we will find that your disorder meets 110.06C if we have: (i) a physician's report stating that you have the distinctive facial or other physical features of Down syndrome and (ii) evidence that your functioning is consistent with a diagnosis of non-mosaic Down syndrome. This evidence may include medical or nonmedical information about your physical and mental abilities, including information about your development, education, work history, or the results of psychological testing. However, we will not find that your disorder meets 110.06C if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

D. *What are catastrophic congenital disorders?* Some catastrophic congenital disorders, such as anencephaly, cyclopia, chromosome 13 trisomy (Patau syndrome or trisomy D), and chromosome 18 trisomy (Edwards' syndrome or trisomy E) are usually expected to result in early death. Others such as cri du chat syndrome (chromosome 5p deletion syndrome) and the infantile onset form of Tay-Sachs disease interfere very seriously with development. We evaluate catastrophic congenital disorders under 110.08. The term ''very seriously'' in 110.08 has the same meaning as in the term ''extreme'' in § 416.926a(e)(3) of this chapter.

E. *What evidence do we need under 110.08?*

We need one of the following to determine if your disorder meets 110.08A or B:

1. A laboratory report of the definitive test that documents your disorder (for example, genetic analysis or evidence of biochemical abnormalities) signed by a physician.

2. A laboratory report of the definitive test that documents your disorder that is not signed by a physician *and* a report from a physician stating that you have the disorder.

3. A report from a physician stating that you have the disorder with the typical clinical features of the disorder and that you had definitive testing that documented your disorder. In this case, we will find that your disorder meets 110.08A or B unless we have evidence that indicates that you do not have the disorder.

4. If we do not have the definitive laboratory evidence we need under E1, E2, or E3, we will find that your disorder meets 110.08A or B if we have: (i) a report from a physician stating that you have the disorder and that you have the typical clinical features of the disorder, *and* (ii) other evidence that supports the diagnosis. This evidence may include medical or nonmedical information about your development and functioning.

5. For obvious catastrophic congenital anomalies that are expected to result in early death, such as anencephaly and cyclopia, we need evidence from a physician that demonstrates that the infant has the characteristic physical features of the disorder. In these rare cases, we do not need laboratory testing or any other evidence that confirms the disorder.

F. *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*

1. *Mosaic Down syndrome.* Approximately 2 percent of children with Down syndrome have the mosaic form. In mosaic Down syndrome, there are some cells with an extra copy of chromosome 21 and other cells with the normal two copies of chromosome 21. Mosaic Down syndrome can be so slight as to be undetected clinically, but it can also be profound and disabling, affecting various body systems.

2. *Other congenital disorders that affect multiple body systems.* Other congenital disorders, such as congenital anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption of, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them, the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from child to child and may affect different body systems.

3. *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.* When the effects of mosaic Down syndrome or another congenital disorder that affects multiple body systems are sufficiently severe we evaluate the disorder under the appropriate affected body system(s), such as musculoskeletal, special senses and speech, neurological, or mental disorders. Otherwise, we evaluate the specific functional limitations that result from the disorder under our other rules described in 110.00G.

G. *What if your disorder does not meet a listing?* If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, we will consider whether it functionally equals the listings. See §§ 416.924a and 416.926a of this chapter. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

110.01 Category of Impairments, Congenital Disorders That Affect Multiple Body Systems

110.06 *Non-mosaic Down syndrome* (chromosome 21 trisomy or chromosome 21 translocation), documented by:

A. A laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician *and* a statement by a physician that the child has Down syndrome (see 110.00C1).

OR

B. A physician's report stating that the child has chromosome 21 trisomy or chromosome 21 translocation consistent with karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 110.00C2a).

OR

C. A physician's report stating that the child has Down syndrome with the distinctive facial or other physical features *and* evidence demonstrating that the child is functioning at the level of a child with non-mosaic Down syndrome (see 110.00C2b).

110.08 *A catastrophic congenital disorder* (see 110.00D and 110.00E) with:

A. Death usually expected within the first months of life.

OR

B. Very serious interference with development or functioning.

* * * * *

[FR Doc. 2011–27357 Filed 10–24–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109006–11]

RIN 1545–BK13

Modifications of Certain Derivative Contracts; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on notice of proposed rulemaking by cross-reference to temporary regulations relating to whether an exchange for purposes of § 1.1001–1(a) occurs for the nonassigning counterparty when there is an assignment of certain derivative contracts.

DATES: The public hearing, originally scheduled for October 27, 2011 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and

Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on Friday, July 22, 2011 (76 FR 43957), announced that a public hearing was scheduled for October 27, 2011, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 1001 of the Internal Revenue Code.

The public comment period for a notice of proposed rulemaking by cross-reference to temporary regulations expired on October 20, 2011. Outlines of topics to be discussed at the hearing were due on October 20, 2011. A notice of propose rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, October 21, 2011, no one has requested to speak. Therefore, the public hearing scheduled for October 27, 2011 is cancelled.

LaNita Van Dyke,

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

[FR Doc. 2011–27573 Filed 10–24–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109564–10]

RIN 1545–BJ37

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations removing § 1.704–1(b)(2)(iii)(e) (the de minimis partner rule) because the rule may have resulted in unintended tax consequences. The proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by January 23, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109564–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–109564–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC; or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–109564–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michala Irons, at (202) 622–3050; concerning submission of comments, or requests for a public hearing, Richard Hurst, at (202) 622–2949 (TDD Telephone) (not toll free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Subchapter K is intended to permit taxpayers to conduct joint business activities through a flexible economic arrangement without incurring an entity-level tax. To achieve this goal of a flexible economic arrangement, partners are generally permitted to decide among themselves how a partnership's items will be allocated. Section 704(a) of the Internal Revenue Code provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement.

Section 704(b) places a significant limitation on the general flexibility of section 704(a). Specifically, section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect. Thus, the statute provides that partnership allocations either must have substantial economic effect or must be in accordance with the partners' interests in the partnership.

Section 1.704–1(b)(2)(i) provides that the determination of whether an allocation of income, gain, loss, or deduction to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect within the meaning of § 1.704–1(b)(2)(ii). Second, the economic effect of the allocation must be substantial within the meaning of § 1.704–1(b)(2)(iii).

For an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event that there is an economic benefit or burden that corresponds to the allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden. See § 1.704–1(b)(2)(ii). Generally, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides: (1) for the determination and maintenance of the partners' capital accounts in accordance with § 1.704–1(b)(2)(iv); (2) for liquidating distributions to the partners to be made in accordance with the positive capital account balances of the partners; and (3) for each partner to be unconditionally obligated to restore the deficit balance in the partner's capital account following the liquidation of the partner's partnership interest. In lieu of satisfying the third criterion, the partnership may satisfy the qualified income offset rules set forth in § 1.704–1(b)(2)(ii)(d).

Section 1.704–1(b)(2)(iii)(a) provides as a general rule that the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. This section further provides that, even if the allocation affects substantially the dollar amounts, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement: (1) The after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement.