

(ii) The sect or division thereof of which such individual employer or employee is a member is found by the Secretary of Health and Human Services to have failed to meet the requirements of section 3127(b)(2).

(5) *Both the individual employer and employee must qualify and elect.* The exemption from the taxes imposed under sections 3101 and 3111 of the Code is applicable only if both the individual employer and the employee qualify and make the election under the provisions of section 3127.

(j) *Certain elections not addressed in this section.* Elections under the Act that are not addressed in this section include:

(1) An election relating to the effective date of certain source rules under section 861(a) of the Code (section 1012(g)(1) of the Act);

(2) An election relating to transitional rules for interest allocation under 864(e) of the Code (section 1012(h)(7) of the Act);

(3) An election relating to the chain deficit rules under section 952(c)(1)(C) of the Code (section 1012(i)(25) of the Act);

(4) An election relating to the definition of a passive foreign investment company in section 1296 of the Code (section 1012(p)(27) of the Act);

(5) An election by a shareholder of a qualified electing fund under section 1291(d)(2)(B) of the Code (section 1012(p)(28) of the Act);

(6) An election to be treated as a qualified electing fund under section 1295 of the Code (section 6127 of the Act);

(7) An election relating to treatment of an insurance branch as a separate corporation under section 964(d) of the Code (section 6129 of the Act);

(8) An election relating to certain regulated futures contracts and non-equity options under section 988(c)(1)(D) of the Code (section 6130(b) of the Act);

(9) An election relating to certain qualified funds under section 988(c)(1)(E) of the Code (section 6130(b) of the Act);

(10) An election under section 952(c)(1)(B) of the Code to apply section 953(a) without regard to the same coun-

try exception (section 6131(a) of the Act);

(11) An election relating to treatment of a foreign insurance company as a domestic corporation under section 953(d) of the Code (section 6135 of the Act).

Guidance concerning the elections described in this paragraph (j) will generally be provided in regulations to be issued under the relevant Code sections. With respect to certain elections described in this paragraph (j), preliminary guidance has been published. See Notice 88-125, 1988-52 I.R.B. 4, for guidance with respect to the election described in paragraph (j)(6) of this section, relating to the qualified electing fund election. See Notice 88-124, 1988-51 I.R.B. 6, for guidance with respect to the elections described in paragraph (j) (8) and (9) of this section, relating to section 988(c)(1) (D) and (E) of the Code.

(k) *Additional information required.* Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described in this section. In that event, the later regulations or revenue procedures will provide guidance with respect to the furnishing of additional information.

[T.D. 8267, 54 FR 38980, Sept. 22, 1989; 54 FR 41243, 41364, Oct. 6, 1989. Redesignated and amended by T.D. 8435, 57 FR 43895, 43896, Sept. 23, 1992; 57 FR 47373, Oct. 15, 1992]

**§ 301.9100-9T Election by a bank holding company to forego grandfather provision for all property representing pre-June 30, 1968, activities.**

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may elect under section 1103(g) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) as if the Act did not contain the proviso of section 4(a)(2) thereof.

(b) *Manner of making election.* The election under section 1103(g) shall be made in a written statement filed with

the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply the provisions of section 1103(g). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(g). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(g) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(g) is irrevocable.

(e) *Final certification.* An election under section 1103(g) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property (including property described in the proviso of section 4(a)(2) of the Bank Holding Company Act).

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(g) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

[T.D. 7570, 43 FR 52057, Nov. 8, 1978. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

**§ 301.9100-10T Election by certain family-owned bank holding companies to divest all banking or nonbanking property.**

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may

elect under section 1103(h) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) as if the Act did not contain clause (ii) of section 4(c) thereof.

(b) *Manner of making election.* The election under section 1103(h) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply, the provisions of section 1103(h). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(h). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(h) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(h) is irrevocable.

(e) *Final certification.* An election under section 1103(h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(h) shall not be considered to be made before the