

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### **Rev. Rul. 2001-34, page 31.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate.** For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2001.

#### **T.D. 8947, page 36.**

This T.D. removes certain final regulations under section 6656 of the Code because amendments to the Code section have made these regulation sections obsolete.

#### **T.D. 8949, page 33.**

Final regulations relate to the aggregation of stock ownership in a corporation of members of a consolidated group. Section 1.1502-34 generally provides that for purposes of the consolidated return regulations, the stock ownership of all members of a consolidated group in another corporation is aggregated in determining the application of certain Code provisions. These regulations reflect a technical correction enacted in the Community Renewal Tax Relief Act of 2000 that, in substance, provides that the stock aggregation rules under regulation section 1.1502-34 shall apply for purposes of section 732(f) of the Code.

#### **T.D. 8950, page 34.**

Final regulations provide guidance as to the time for filing an application for a tentative carryback adjustment by consoli-

dated groups and by certain new members of consolidated groups. The amendments also extend the period of time for filing an application for a tentative carryback adjustment for the separate return year created by a corporation becoming a new member of a consolidated group.

#### **Rev. Proc. 2001-39, page 38.**

This procedure modifies the definitions of capitation fee and per-unit fee in Rev. Proc. 97-13 (1997-1 C.B. 632) to permit automatic increases of those fees according to a specified, objective, and external standard such as the Consumer Price Index. Rev. Proc. 97-13 modified.

### EMPLOYEE PLANS

#### **T.D. 8948, page 27.**

Final regulations clarify the circumstances under which an employer is considered to have significantly reduced retiree health coverage during the cost maintenance period defined under section 420(c)(3) of the Code.

### EXEMPT ORGANIZATIONS

#### **Announcement 2001-72, page 39.**

A list is provided of organizations now classified as private foundations.

(Continued on the next page)

Finding Lists begin on page ii.



## ESTATE TAX

### **Announcement 2001-74, page 40.**

This announcement contains revised filing locations for some states for estate, gift, and generation-skipping transfer tax returns.

## GIFT TAX

### **Announcement 2001-74, page 40.**

This announcement contains revised filing locations for some states for estate, gift, and generation-skipping transfer tax returns.

## ADMINISTRATIVE

### **Announcement 2001-73, page 40.**

This document contains a correction to Rev. Proc. 2000-39 (2000-41 I.R.B. 340) relating to business and traveling expenses, and *per diem* allowances.

### **Announcement 2001-75, page 42.**

This announcement describes the procedures for requesting a waiver from electronic filing for partnerships that are required to electronically file Form 1065, but do not have the necessary software to file all forms and schedules.

# The IRS Mission

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## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2001. See Rev. Rul. 2001-34, page 31.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2001. See Rev. Rul. 2001-34, page 31.

## 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 July 2001. See Rev. Rul. 2001-34, page 31.

## Section 420.— Transfers of Excess Pension Assets to Retiree Health Accounts

26 CFR 1.420-1: Significant reduction in retiree health coverage during the cost maintenance period.

T.D. 8948

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Minimum Cost Requirement Permitting the Transfer of Excess Assets of a Defined Benefit Pension Plan to a Retiree Health Account

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the minimum cost requirement under section 420, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account. Pursuant to section 420(c)(3)(E), these regulations provide that an employer who significantly reduces re-

tiree health coverage during the cost maintenance period does not satisfy the minimum cost requirement of section 420(c)(3). In addition, these regulations clarify the circumstances under which an employer is considered to have significantly reduced retiree health coverage during the cost maintenance period.

**DATES: Effective Date:** These regulations are effective June 19, 2001.

**Applicability Date:** These regulations are applicable to transfers of excess pension assets occurring on or after December 18, 1999. See the *Effective Date* portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Laufer or Vernon S. Carter (202) 622-6060 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains final regulations (26 CFR Part 1) under section 420 of the Internal Revenue Code of 1986 (Code). These regulations provide guidance concerning the minimum cost requirement under section 420. The Revenue Reconciliation Act of 1990 (Public Law 101-508) (104 Stat. 1388), section 12011, added section 420 of the Code, a temporary provision permitting certain qualified transfers of excess pension assets from a non-multiemployer defined benefit pension plan to a health benefits account. A health benefits account is defined as an account established and maintained under section 401(h) of the Code (401(h) account) that is part of the plan.<sup>1</sup>

<sup>1</sup> Section 420(a)(1) and (2) provide that the trust that is part of the plan is not treated as failing to satisfy the qualification requirements of section 401(a) or (h) of the Code, and no amount is includible in the gross income of the employer maintaining the plan, solely by reason of such transfer. Also, section 420(a)(3) provides that a qualified transfer is not treated as either an employer reversion for purposes of section 4980 or a prohibited transaction for purposes of section 4975.

In addition, Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), as amended (ERISA), provides that a qualified transfer pursuant to section 420 is not a prohibited transaction under ERISA (ERISA section 408(b)(13)) or a prohibited reversion of assets to the employer (ERISA section 403(c)(1)). ERISA also provides certain notification requirements with respect to such qualified transfers.

One of the conditions of a qualified section 420 transfer was that the employer satisfy a maintenance of effort requirement in the form of a “minimum cost requirement” under which the employer was required to maintain employer-provided retiree health expenditures for covered retirees, their spouses, and dependents at a minimum dollar level for a 5-year cost maintenance period, beginning with the taxable year in which the qualified transfer occurs.

The Uruguay Round Agreements Act (Public Law 103-465) (108 Stat. 4809) (December 8, 1994) extended the availability of section 420 through December 31, 2000. In conjunction with the extension, Congress modified the maintenance of effort rules for plans transferring assets for retiree health benefits so that employers could take into account cost savings realized in their health benefit plans. As a result, the focus of the maintenance of effort requirement was shifted from health costs to health benefits. Under this “benefit maintenance requirement,” which applied to qualified transfers made after December 8, 1994, an employer had to maintain substantially the same level of employer-provided retiree health coverage for the taxable year of the transfer and the following 4 years. The level of coverage required to be maintained was based on the coverage provided in the taxable year immediately preceding the taxable year of the transfer.

The Tax Relief Extension Act of 1999 (title V of H.R. 1180, the Ticket to Work and Work Incentives Improvement Act of 1999) (Public Law 106-170, 113 Stat. 1860) (TREA-99) extended section 420 through December 31, 2005. In conjunction with this extension, the minimum cost requirement was reinstated as the applicable “maintenance of effort” provision (in lieu of requiring the maintenance of the level of coverage) for qualified transfers made after December 17, 1999. Because the minimum cost requirement relates to *per capita* cost, an employer could satisfy the minimum cost requirement by maintaining the average cost even though the employer defeats the purpose of the maintenance of effort requirement by reducing the number of people covered by the health plan. In response to

concerns regarding this possibility, TREA-99 also added section 420(c)(3)(E), which requires the Secretary of the Treasury to prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement of section 420(c)(3). If the minimum cost requirement of section 420(c)(3) is not satisfied, the transfer of assets from the pension plan to the 401(h) account is not a “qualified transfer” to which the provisions of section 420(a) apply.

On January 5, 2001, a notice of proposed rulemaking (REG-116468-00, 2001-6 I.R.B. 522) was published in the **Federal Register** (66 FR 1066). Written comments were received on the proposed regulations. A public hearing scheduled for March 15, 2001, was canceled because no one had requested to speak (66 FR 13864). After consideration of all the comments received on the proposed regulations, the regulations are adopted as modified by this Treasury decision.

## Explanation of Provisions

### *General Framework*

Following the approach taken in the proposed regulations, these regulations provide that the minimum cost requirement of section 420(c)(3) is not met if an employer significantly reduces retiree health coverage during the cost maintenance period. Whether an employer has significantly reduced retiree health coverage is determined by looking at the number of individuals (retirees, their spouses, and dependents) who lose coverage during the cost maintenance period as a result of employer actions, measured on both an annual basis and a cumulative basis.

In determining whether an employer has significantly reduced retiree health coverage, the regulations provide that the employer does not satisfy the minimum cost requirement if the percentage decrease in the number of individuals provided with applicable health benefits that is attributable to employer action exceeds 10 percent in any year, or if the sum of the annual percentage decreases during the cost maintenance period exceeds 20 percent.

### *Employer Action*

The regulations retain the broad definition of employer action contained in the proposed regulations. Thus, employer action includes not only plan amendments but also situations in which other employer actions, such as the sale of all or part of the employer’s business, operate in conjunction with the existing plan terms to have the indirect effect of ending an individual’s coverage.

The proposed regulations contained no exceptions from the rule that treats individuals as losing health coverage by reason of employer action if those individuals’ coverage ends by reason of a sale of all or part of the employer’s business, even if the buyer provides coverage for such individuals (on the implicit assumption that a buyer of less than an entire corporation rarely undertakes to provide such coverage to retirees in these transactions). The preamble to the proposed regulations specifically requested comments as to (1) the circumstances, if any, in which buyers commonly provide the seller’s retirees, and their spouses and dependents, with health coverage following a corporate transaction, and (2) in such cases, criteria that should apply to the replacement coverage in determining whether to treat those individuals as not having lost coverage.

Commentators disagreed with the assumption stated in the preamble to the proposed regulations that a buyer acquiring a portion of a seller’s business rarely undertakes to provide retiree health coverage to retirees in these transactions and expressed concern about the approach taken in the proposed regulations concerning individuals who lose retiree health coverage in such situations. One commentator stated that in the case of business combinations involving organizations that contract with the United States Government, the relevant procurement regulations encourage buyers to assume a seller’s obligations for retirees’ pension and retiree medical benefits. Other commentators expressed a desire to retain flexibility in structuring future business dispositions so that a buyer or transferee of a business could undertake to provide retiree health coverage for the seller’s employees.

Generally, commentators requested that the regulations allow an employer who sells or transfers a business to take into

account health coverage that a buyer or transferee provides to retired employees of the employer. Various approaches were suggested, most of them centering around allowing an employer to take credit for retiree health benefits provided by a buyer or transferee that are substantially similar to the benefits provided by the employer.

In cases in which a buyer acquires the entire employer sponsoring the pension plan that is the subject of the maintenance of effort requirement under section 420(c)(3)(E), no special rule is required, because the buyer as the successor employer maintaining the plan is responsible for continuing to satisfy the minimum cost requirements of section 420(c)(3) with respect to that transfer. However, based upon comments received, these final regulations include a special rule that allows the employer responsible for satisfying the maintenance of effort requirement of section 420(c)(3)(E) to take credit for a buyer’s or transferee’s provision of retiree health benefits in certain other situations.

Under the final regulations, an employer may, but is not required to, treat retiree health coverage as not having ended for individuals whose coverage is provided by a buyer. In such a case, for the year of the sale and future taxable years of the cost maintenance period, the employer must apply the minimum cost requirement contained in section 420(c)(3) by treating the individuals whose coverage is provided by the buyer as individuals to whom coverage for applicable health benefits is provided during the year (*i.e.*, including all such individuals in the denominator in the determination of applicable employer cost) and treating amounts the buyer spends on health benefits for those individuals as qualified current retiree health liabilities. After the buyer commences providing the retiree health benefits, action of the buyer is attributed to the employer for purposes of determining whether an individual’s coverage ends by reason of employer action. Accordingly, if a buyer initially provides retiree health benefits to individuals affected by the sale, but later amends its plan to stop providing benefits to those individuals, the employer must treat those individuals as having lost coverage by reason of employer action.



These final regulations also add a definition of “sale” to clarify that the rule for sales applies as well to other transfers of a business. In the case of a transfer, the transferee is treated as the buyer. Thus, for example, the rule applies in a situation in which an employer spins off all or part of its business, and also applies when a contractor that operates a government-owned facility is replaced by another contractor and the replacement contractor hires the employees of the prior contractor to operate the facility.

#### *Effective Date*

The proposed regulations provided that the 10 percent annual limit would not apply to a taxable year beginning before February 5, 2001 (30 days after publication of the proposed regulations in the **Federal Register**). However, under the proposed regulations, the 20 percent cumulative limit applied with respect to cost maintenance periods pertaining to any transfers made on or after December 18, 1999. Thus, if an employer reduced coverage by more than 20 percent prior to issuance of the proposed regulations, the employer would have failed the cumulative test.

Several commentators expressed concern about the proposed effective date of transfers occurring on or after December 18, 1999. None of the comments indicated that any employers had in fact reduced coverage by more than 20 percent prior to issuance of the proposed regulations, and one of the commentators stated that as a practical matter, the issue of retroactivity is moot. However, a number of the commentators expressed concern over retroactive effective dates in Treasury regulations as a matter of principle.

These final regulations, like the proposed regulations, provide that the 20 percent cumulative test will apply with respect to transfers of excess pension assets occurring on or after December 18, 1999. In order to address concerns raised by commentators, however, the final regulations take into account any reinstatement of coverage that occurs during the portion of a cost maintenance period that precedes the first day of the first taxable year beginning on or after January 1, 2002 (the initial period). Thus, for purposes of the cumulative test, if an employer reduced retiree health coverage by more than 20

percent, the employer can, before the end of the initial period, resume providing coverage for individuals who lost coverage and treat those individuals as not having lost coverage. However, if an employer reduces retiree health coverage by more than 20 percent during the initial period and does not “correct” by again providing coverage for individuals who lost coverage, the employer would fail the cumulative test. Also, the annual test of significant reduction applies only to taxable years beginning on or after January 1, 2002, which reflects a further delay from the date in the proposed regulation.

#### *Additional changes*

The proposed regulations contained a special rule that addresses situations in which an employer adopts plan terms that establish eligibility for health coverage for some individuals, but provide that those same individuals lose health coverage upon the occurrence of a particular event or after a stated period of time. In those cases, an individual is not counted as having lost health coverage by reason of employer action merely because that individual’s coverage ends upon the occurrence of the event or after a certain period of time, such as when health benefits are provided to employees retiring as a result of a plant closing only for the period during which they receive severance pay (see example 2 of the regulations). As a result of the changes discussed above that address “corrections” through restoration of coverage during the initial period and sale transactions, these final regulations contain two modifications of the special rule for contemporaneously-adopted plan terms. First, the special rule is not available with respect to an amendment that restores coverage before the end of the initial period. Second, in the context of an amendment of a buyer’s health plan to provide retiree health coverage for a seller’s employees, the special rule is available only to the extent that any terms that have the effect of ending an individual’s coverage are the same as the terms of the plan maintained by the seller, and only if the terms of the seller’s plan that terminate coverage were adopted contemporaneously with the provision under which the individual became eligible for retiree health coverage under the seller’s plan.

## **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## **Drafting Information**

The principal authors of these regulations are Janet A. Laufer and Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

## **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

### **PART 1 – INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805, 26 U.S.C. 420(c)(3)(E)\*\*\*

Par. 2. Section 1.420–1 is added under the undesignated centerheading “Pension, Profit-Sharing, Stock Bonus Plans, etc.” to read as follows:

*§1.420–1 Significant reduction in retiree health coverage during the cost maintenance period.*

(a) *In general.* Notwithstanding section 420(c)(3)(A), the minimum cost requirements of section 420(c)(3) are not met if the employer significantly reduces retiree health coverage during the cost maintenance period.

(b) *Significant reduction*—(1) *In general.* An employer significantly reduces retiree health coverage during the cost maintenance period if, for any taxable year beginning on or after January 1, 2002, that is included in the cost maintenance period, either —

(i) The employer-initiated reduction percentage for that taxable year exceeds 10 percent; or

(ii) The sum of the employer-initiated reduction percentages for that taxable year and all prior taxable years during the cost maintenance period exceeds 20 percent.

(2) *Employer-initiated reduction percentage.* The employer-initiated reduction percentage for any taxable year is the fraction B/A, expressed as a percentage, where:

A = The total number of individuals (retired employees plus their spouses plus their dependents) receiving coverage for applicable health benefits as of the day before the first day of the taxable year.

B = The total number of individuals included in A whose coverage for applicable health benefits ended during the taxable year by reason of employer action.

(3) *Special rules for taxable years beginning before January 1, 2002.* The following rules apply for purposes of computing the amount in paragraph (b)(1)(ii) of this section if any portion of the cost maintenance period precedes the first day of the first taxable year beginning on or after January 1, 2002—

(i) *Aggregation of taxable years.* The portion of the cost maintenance period that precedes the first day of the first taxable year beginning on or after January 1, 2002 (the initial period), is treated as a single taxable year and the employer-initiated reduction percentage for the initial period is computed as set forth in paragraph (b)(2) of this section, except that the words “initial period” apply instead of “taxable year.”

(ii) *Loss of coverage.* If coverage for applicable health benefits for an individual ends by reason of employer action at any time during the initial period, an employer may treat that coverage as not having ended if the employer restores coverage for applicable health benefits to that

individual by the end of the initial period.

(4) *Employer action*—(i) *General rule.* For purposes of paragraph (b)(2) of this section, an individual’s coverage for applicable health benefits ends during a taxable year by reason of employer action, if on any day within the taxable year, the individual’s eligibility for applicable health benefits ends as a result of a plan amendment or any other action of the employer (e.g., the sale of all or part of the employer’s business) that, in conjunction with the plan terms, has the effect of ending the individual’s eligibility. An employer action is taken into account for this purpose regardless of when the employer action actually occurs (e.g., the date the plan amendment is executed), except that employer actions occurring before the later of December 18, 1999, and the date that is 5 years before the start of the cost maintenance period are disregarded.

(ii) *Special rule.* Notwithstanding paragraph (b)(4)(i) of this section, coverage for an individual will not be treated as having ended by reason of employer action merely because such coverage ends under the terms of the plan if those terms were adopted contemporaneously with the provision under which the individual became eligible for retiree health coverage. This paragraph (b)(4)(ii) does not apply with respect to plan terms adopted contemporaneously with a plan amendment that restores coverage for applicable health benefits before the end of the initial period in accordance with paragraph (b)(3)(ii) of this section.

(iii) *Sale transactions.* If a purchaser provides coverage for retiree health benefits to one or more individuals whose coverage ends by reason of a sale of all or part of the employer’s business, the employer may treat the coverage of those individuals as not having ended by reason of employer action. In such a case, for the remainder of the year of the sale and future taxable years of the cost maintenance period —

(A) For purposes of computing the applicable employer cost under section 420(c)(3), those individuals are treated as individuals to whom coverage for applicable health benefits was provided (for as long as the purchaser provides retiree health coverage to them), and any amounts expended by the purchaser of the business to provide for health benefits for those individuals are treated as paid by the employer;

(B) For purposes of determining whether a subsequent termination of coverage is by reason of employer action under this paragraph (b)(4), the purchaser is treated as the employer. However, the special rule in paragraph (b)(4)(ii) of this section applies only to the extent that any terms of the plan maintained by the purchaser that have the effect of ending retiree health coverage for an individual are the same as terms of the plan maintained by the employer that were adopted contemporaneously with the provision under which the individual became eligible for retiree health coverage under the plan maintained by the employer.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Applicable health benefits.* Applicable health benefits means applicable health benefits as defined in section 420(e)(1)(C).

(2) *Cost maintenance period.* Cost maintenance period means the cost maintenance period as defined in section 420(c)(3)(D).

(3) *Sale.* A sale of all or part of an employer’s business means a sale or other transfer in connection with which the employees of a trade or business of the employer become employees of another person. In the case of such a transfer, the term *purchaser* means a transferee of the trade or business.

(d) *Examples.* The following examples illustrate the application of this section:

*Example 1.* (i) Employer W maintains a defined benefit pension plan that includes a 401(h) account and permits qualified transfers that satisfy section 420. The number of individuals receiving coverage for applicable health benefits as of the day before the first day of Year 1 is 100. In Year 1, Employer W makes a qualified transfer under section 420. There is no change in the number of individuals receiving health benefits during Year 1. As of the last day of Year 2, applicable health benefits are provided to 99 individuals, because 2 individuals became eligible for coverage due to retirement and 3 individuals died in Year 2. During Year 3, Employer W amends its health plan to eliminate coverage for 5 individuals, 1 new retiree becomes eligible for coverage and an additional 3 individuals are no longer covered due to their own decision to drop coverage. Thus, as of the last day of Year 3, applicable health benefits are provided to 92 individuals. During Year 4, Employer W amends its health plan to eliminate coverage under its health plan for 8 more individuals, so that as of the last day of Year 4, applicable health benefits are provided to 84 individuals. During Year 5, Employer W amends its health plan to eliminate coverage for 8 more individuals.

(ii) There is no significant reduction in retiree health coverage in either Year 1 or Year 2, because



there is no reduction in health coverage as a result of employer action in those years.

(iii) There is no significant reduction in Year 3. The number of individuals whose health coverage ended during Year 3 by reason of employer action (amendment of the plan) is 5. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 2 is 99, the employer-initiated reduction percentage for Year 3 is 5.05 percent (5/99), which is less than the 10 percent annual limit.

(iv) There is no significant reduction in Year 4. The number of individuals whose health coverage ended during Year 4 by reason of employer action is 8. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 3 is 92, the employer-initiated reduction percentage for Year 4 is 8.70 percent (8/92), which is less than the 10 percent annual limit. The sum of the employer-initiated reduction percentages for Year 3 and Year 4 is 13.75 percent, which is less than the 20 percent cumulative limit.

(v) In Year 5, there is a significant reduction under paragraph (b)(1)(ii) of this section. The number of individuals whose health coverage ended during Year 5 by reason of employer action (amendment of the plan) is 8. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 4 is 84, the employer-initiated reduction percentage for Year 5 is 9.52 percent (8/84), which is less than the 10 percent annual limit. However, the sum of the employer-initiated reduction percentages for Year 3, Year 4, and Year 5 is 5.05 percent + 8.70 percent + 9.52 percent = 23.27 percent, which exceeds the 20 percent cumulative limit.

*Example 2.* (i) Employer X, a calendar year taxpayer, maintains a defined benefit pension plan that includes a 401(h) account and permits qualified transfers that satisfy section 420. X also provides lifetime health benefits to employees who retire from Division A as a result of a plant shutdown, no health benefits to employees who retire from Division B, and lifetime health benefits to all employees who retire from Division C. In 2000, X amends its health plan to provide coverage for employees who retire from Division B as a result of a plant shutdown, but only for the 2-year period coinciding with their severance pay. Also in 2000, X amends the health plan to provide that employees who retire from Division A as a result of a plant shutdown receive health coverage only for the 2-year period coinciding with their severance pay. A plant shutdown that affects Division A and Division B employees occurs in 2000. The number of individuals receiving coverage for applicable health benefits as of the last day of 2001 is 200. In 2002, Employer X makes a qualified transfer under section 420. As of the last day of 2002, applicable health benefits are provided to 170 individuals, because the 2-year period of benefits ends for 10 employees who retired from Division A and 20 employees who retired from Division B as a result of the plant shutdown that occurred in 2000.

(ii) There is no significant reduction in retiree health coverage in 2002. Coverage for the 10 retirees from Division A who lose coverage as a result of the end of the 2-year period is treated as having ended by reason of employer action, because coverage for those Division A retirees ended by reason of a plan amendment made after December 17, 1999.

However, the terms of the health plan that limit coverage for employees who retired from Division B as a result of the 2000 plant shutdown (to the 2-year period) were adopted contemporaneously with the provision under which those employees became eligible for retiree coverage under the health plan. Accordingly, under the rule provided in paragraph (b)(4)(ii) of this section, coverage for those 20 retirees from Division B is not treated as having ended by reason of employer action. Thus, the number of individuals whose health benefits ended by reason of employer action in 2002 is 10. Since the number of individuals receiving coverage for applicable health benefits as of the last day of 2001 is 200, the employer-initiated reduction percentage for 2002 is 5 percent (10/200), which is less than the 10 percent annual limit.

(e) *Regulatory effective date.* This section is applicable to transfers of excess pension assets occurring on or after December 18, 1999.

David A. Mader,  
*Acting Deputy Commissioner  
of Internal Revenue.*

Approved June 12, 2001.

Mark A. Weinberger,  
*Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on June 14, 2001, at 2:45 p.m., and published in the issue of the Federal Register for June 19, 2001, 66 FR 32897)

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **Section 642.—Special Rules for Credits and Deductions**

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2001. See Rev. Rul. 2001-34, on this page.

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **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 July 2001. See Rev. Rul. 2001-34, on this page.

### **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, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2001.

### **Rev. Rul. 2001-34**

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2001 (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 ad-

justed 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)(2)

for buildings placed in service during the current month. 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 inter-

est for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2001 for purposes of section 7872

REV. RUL. 2001-34 TABLE 1				
Applicable Federal Rates (AFR) for July 2001				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	4.07%	4.03%	4.01%	4.00%
110% AFR	4.48%	4.43%	4.41%	4.39%
120% AFR	4.90%	4.84%	4.81%	4.79%
130% AFR	5.31%	5.24%	5.21%	5.18%
<i>Mid-Term</i>				
AFR	5.12%	5.06%	5.03%	5.01%
110% AFR	5.65%	5.57%	5.53%	5.51%
120% AFR	6.16%	6.07%	6.02%	5.99%
130% AFR	6.69%	6.58%	6.53%	6.49%
150% AFR	7.73%	7.59%	7.52%	7.47%
175% AFR	9.06%	8.86%	8.76%	8.70%
<i>Long-Term</i>				
AFR	5.82%	5.74%	5.70%	5.67%
110% AFR	6.41%	6.31%	6.26%	6.23%
120% AFR	7.01%	6.89%	6.83%	6.79%
130% AFR	7.60%	7.46%	7.39%	7.35%

REV. RUL. 2001-34 TABLE 2				
Adjusted AFR for July 2001				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
adjusted AFR	3.16%	3.14%	3.13%	3.12%
<i>Mid-term</i>				
adjusted AFR	3.87%	3.83%	3.81%	3.80%
<i>Long-term</i>				
adjusted AFR	5.00%	4.94%	4.91%	4.89%

REV. RUL. 2001-34 TABLE 3	
Rates Under Section 382 for July 2001	
Adjusted federal long-term rate for the current month	5.00%
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.)	5.01%

REV. RUL. 2001-34 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for July 2001

Appropriate percentage for the 70% present value low-income housing credit	8.28%
Appropriate percentage for the 30% present value low-income housing credit	3.55%

REV. RUL. 2001-34 TABLE 5

Rate Under Section 7520 for July 2001

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	6.2%
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REV. RUL. 2001-34 TABLE 6

Blended Annual Rate for 2001

Section 7872(e)(2) blended annual rate for 2001	4.98%
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**Section 1288.—Treatment of Original Issue Discounts of Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2001. See Rev. Rul. 2001-34, on page 31.

**Section 1502.—Regulations**

26 CFR 1.1502-34: *Special aggregate stock ownership rules.*

**T.D. 8949**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1**

**Special Aggregate Stock  
Ownership Rules**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the aggregation of stock ownership in a corporation of members of a consolidated group. These regulations reflect a technical correction enacted in section 311(c) of the Community Renewal Tax Relief Act of 2000 that, in substance, provides that the

special aggregate stock ownership rules shall apply for purposes of section 732(f) of the Code. These final regulations may affect all consolidated groups.

DATES: *Effective Date:* June 19, 2001.

FOR FURTHER INFORMATION CONTACT: Frances L. Kelly or David H. Kessler (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1986 (Code). Section 1.1502-34 generally provides that, for purposes of the consolidated return regulations, the stock ownership of all members of a consolidated group in another corporation is aggregated in determining the application of certain Code provisions, including section 332(b)(1), in a consolidated return year.

Section 538 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170, 113 Stat. 1939) (the 1999 Act) enacted section 732(f) on December 17, 1999. With certain exceptions, section 732(f) generally provides that if (1) a corporate partner of a partnership receives a distribution from that partnership of stock in another corpo-

ration, (2) the corporate partner has control of the distributed corporation immediately after the distribution or at any time thereafter, and (3) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution, then an amount equal to such excess shall reduce the basis of the property held by the distributed corporation at such time.

On December 21, 2000, Congress enacted section 311(c) of the Community Renewal Tax Relief Act of 2000 (Public Law 106-554, 114 Stat. 2763) (the 2000 Act), a technical correction to section 538 of the 1999 Act. Section 311(c) of the 2000 Act states "[t]he reference to section 332(b)(1) of the Internal Revenue Code of 1986 in Treasury Regulation section 1.1502-34 shall be deemed to include a reference to section 732(f) of such Code." The Conference Report states that the rule in the consolidated return regulations (§1.1502-34) aggregating stock ownership for purposes of section 332 (relating to a complete liquidation of a subsidiary that is a controlled corporation) also applies for purposes of section 732(f) (relating to basis adjustments to assets of a controlled corporation received in a partnership distribution). H.R. Conf. Rep. No. 1033, 106th Cong., 2d Sess. 1022 (2000).

Section 311(d) of the 2000 Act provides that section 311(c) of the 2000 Act takes effect as if included in the provisions of the 1999 Act to which it relates. Thus, the effective date of section 311(c) of the 2000 Act is the same as that for section 538(a) of the 1999 Act, which is contained in section 538(b) of the 1999 Act.

### Explanation of Provisions

These final regulations conform § 1.1502-34 to a technical correction enacted in section 311(c) of the 2000 Act and add a regulation under section 732 reflecting that correction. These regulations reflect this statutory provision clarifying that the stock aggregation rules under § 1.1502-34 apply for purposes of section 732(f).

Because section 311(d) of the 2000 Act provides that section 311(c) of the 2000 Act shall take effect as if it had been included in the provisions of the 1999 Act, the effective date provisions of section 538(b) of the 1999 Act apply to these regulations. Section 538(b) generally provides that the amendments made by section 538(a) of the 1999 Act apply to distributions made after July 14, 1999. In the case of a corporation that was a partner in a partnership as of July 14, 1999, the amendments made by section 538(a) of the 1999 Act apply to distributions made (or treated as made) to that partner from that partnership after June 30, 2001. In the case of any such distribution made after December 17, 1999, and before July 1, 2001, the rule of the preceding sentence does not apply unless that partner makes an election to have the rule apply to the distribution on the partner's income tax return for the year in which the distribution occurs.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required for this final regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This final rule merely conforms § 1.1502-34 to the statutory amendment made by section 311(c) of the 2000 Act. Pursuant to 5 U.S.C. 553, it is determined

that prior notice and comment are unnecessary and contrary to the public interest. For the same reason, good cause exists for not delaying the effective date of this final rule.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1 — INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.732-3 also issued under 26 U.S.C. 732(f). \* \* \*

Section 1.1502-34 also issued under 26 U.S.C. 1502. \* \* \*

Par. 2. Section 1.732-3 is added to read as follows:

*§ 1.732-3 Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner.*

The determination of whether a corporate partner has control of a distributed corporation for purposes of section 732(f) shall be made by applying the special aggregate stock ownership rules of § 1.1502-34.

#### § 1.1502-34 [Amended]

Par. 3. In § 1.1502-34, the first sentence is amended by adding "732(f)," immediately after "351(a),".

Robert E. Wenzel,  
Deputy Commissioner of  
Internal Revenue.

Approved June 8, 2001.

Mark A. Weinberger,  
Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on June 13, 2001, at 8:45 a.m., and published in the issue of the Federal Register for June 19, 2001, 66 FR 32901)

26 CFR 1.1502-78: Tentative carryback adjustments.

T.D. 8950

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Guidance on Filing an Application for a Tentative Carryback Adjustment in a Consolidated Return Context

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the filing of an application for a tentative carryback adjustment. These regulations provide guidance as to the time for filing such application by a consolidated group and by certain corporations for the separate return year created by their becoming a member of a consolidated group. These final regulations may affect all consolidated groups.

DATES: *Effective Date:* June 22, 2001.

*Applicability Date:* For dates of applicability, see § 1.1502-78(e)(2)(v) of these regulations.

FOR FURTHER INFORMATION CONTACT: Christopher M. Bass or Frances L. Kelly (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1986 (Code) relating to the filing of an application for a tentative carryback adjustment. The amendments provide guidance as to the time for filing an application for a tentative carryback adjustment by a consolidated group. The amendments also extend the time for filing an application for a tentative carryback adjustment by certain corporations for the separate return year created by their becoming new members of a consolidated group.

On January 4, 2001, a temporary regulation (T.D. 8919, 2001-6 I.R.B. 505) was published in the **Federal Register** (66 FR 713). On this same day, a notice of pro-



posed rulemaking (REG-119352-00, 2001-6 I.R.B. 525) cross-referencing the temporary regulation and a notice of public hearing were published in the **Federal Register** (66 FR 747). No comments or requests to speak were received from the public in response to the notice of proposed rulemaking. Accordingly, the public hearing scheduled for April 26, 2001 was canceled in the **Federal Register** (66 FR 19104) on April 13, 2001. The proposed regulation is adopted as amended by this Treasury Decision, and the corresponding temporary regulation is removed.

### Explanation of Provisions

The amendments adopted by this Treasury decision provide a general rule for all corporations filing consolidated returns stating that the provisions of section 6411(a) shall apply to determine the time for filing an application for a tentative carryback adjustment by a consolidated group. In addition, the amendments provide a special rule for applications filed by certain corporations that become new members of a consolidated group, extending the period of time for filing an application for a tentative carryback adjustment resulting from losses or credits arising in the new member's last separate return year. For these purposes, the separate return year is treated as ending on the same date as the end of the current taxable year of the consolidated group.

Until Form 1139 (*Application for a Tentative Carryback Adjustment*) is modified to reflect the changes made by this regulation, an application for a tentative carryback adjustment filed under the special rule must include additional information in the form of a statement, "Filed pursuant to Treas. Reg. section 1.1502-78(e)(2)," in red, at the top of the current Form 1139. In addition, the Form 1139 must state, in red, the "year end" of the consolidated group that the new member joins. In response to the changes made by this regulation, IRS Service Centers developed a procedure to assist in processing applications filed under §1.1502-78(e)(2). This procedure requires that the additional information, as set forth above, be included on the Form 1139. This procedure supplements existing guidelines for filing and processing Form 1139.

The proposed regulation (66 FR 747) was issued as §1.1502-78T(g). This final regulation adopts the substance of the proposed regulation and renumbers such provision as §1.1502-78(e).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not impose a significant economic impact on a substantial number of small entities because it affects a relatively small number of corporations and few, if any, of those corporations are likely to be small businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal authors of these regulations are Christopher M. Bass and Frances L. Kelly, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1 — INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502-78(b) and 1.1502-78T and by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.1502-78 also issued under 26 U.S.C. 1502, 6402(k), and 6411(c). \* \* \*

Par. 2. Section 1.1502-78 is amended by adding paragraph (e) to read as follows:

*§1.1502-78 Tentative carryback adjustments.*

\* \* \* \* \*

(e) *Time for filing application*—(1) *General rule.* The provisions of section 6411(a) apply to the filing of an application for a tentative carryback adjustment by a consolidated group.

(2) *Special rule for new members*—(i) *New member.* A new member is a corporation that, in the preceding taxable year, did not qualify as a member, as defined in §1.1502-1(b), of the consolidated group that it now joins.

(ii) *End of taxable year.* Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), the separate return year of a qualified new member shall be treated as ending on the same date as the end of the current taxable year of the consolidated group that the qualified new member joins.

(iii) *Qualified new member.* A new member of a consolidated group qualifies for purposes of the provisions of this paragraph (e)(2) if, immediately prior to becoming a new member, either—

(A) It was the common parent of a consolidated group; or

(B) It was not required to join in the filing of a consolidated return.

(iv) *Examples.* The provisions of this paragraph (e)(2) may be illustrated by the following examples:

*Example 1.* Individual A owns 100 percent of the stock of X, a corporation that is not a member of a consolidated group and files separate tax returns on a calendar year basis. On January 31 of year 1, X becomes a member of the Y consolidated group, which also files returns on a calendar year basis. X is a qualified new member as defined in paragraph (e)(2)(iii)(B) of this section because, immediately prior to becoming a new member of the Y consolidated group, X was not required to join in the filing of a consolidated return. As a result of its becoming a new member of Group Y, X's separate return for the short taxable year (January 1 of year 1 through January 31 of year 1) is due September 15 of year 2 (with extensions). See §1.1502-76(c). Group Y's consolidated return is also due September 15 of year 2 (with extensions). See §1.1502-76(c). Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), X's taxable year for the separate return year is treated as ending on December 31 of year 1. X's application for a tentative carryback adjustment is therefore due on or before December 31 of year 2.

*Example 2.* Assume the same facts as in *Example 1* except that immediately prior to becoming a new member of Group Y, X was a member of the Z consolidated group. Because X was required to join in the filing of the consolidated return for Group Z, X



is not a qualified new member as defined in paragraph (e)(2)(iii) of this section. X's items for the one-month period will be included in the consolidated return for Group Z. Group Z's application for a tentative carryback adjustment, if any, continues to be due within 12 months of the end of its taxable year, which is not affected by X's change in status as a new member of Group Y.

(v) *Effective date.* The provisions of this paragraph (e)(2) apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

### **§1.1502-78T [Removed]**

Par. 3. Section 1.1502-78T is removed.

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

Approved June 13, 2001.

Mark A. Weinberger,  
*Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on June 21, 2001, at 8:45 a.m., and published in the issue of the Federal Register for June 22, 2001, 66 FR 33462)

## **Section 6302.—Mode or Time of Collection**

*26 CFR 1.6302-1: Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.*

### **T.D. 8947**

## **DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 301, and 602**

### **Penalties for Underpayments of Deposits and Overstated Deposit Claims**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of final regulations.

**SUMMARY:** This document makes conforming amendments to certain final regulations to reflect the removal of final regulations, relating to the penalty for underpayment of deposits of taxes and the penalty for overstated deposit claims. These regulations are obsolete due to amendments to section 6656 of the Internal Revenue Code. The removal of these regulations will not affect taxpayers.

**DATES:** The amendments and removal of these regulations is effective June 15, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robin M. Tuczak (202) 622-4940 (not a toll-free number).

### **SUPPLEMENTARY INFORMATION:**

#### **Background and Explanation of Provisions**

This document removes two sections from the Procedure and Administration Regulations (26 CFR part 301) relating to penalties for underpayment of Federal tax deposits and overstated deposit claims under section 6656 of the Internal Revenue Code. The Omnibus Budget Reconciliation Act of 1989, Public Law 101-239 (103 Stat. 2106, 1989) amended section 6656, modifying the penalty rates relating to a failure to make a Federal tax deposit and removing the penalty relating to overstatement of Federal tax deposits. These changes have rendered §§301.6656-1 and 301.6656-2 obsolete.

Section 301.6656-1 was revised and §301.6656-2 was added by T.D. 7925 (1984-1 C.B. 261), published in the **Federal Register** for December 13, 1983 (LR-311-81, 1982-1 C.B. 570), 48 FR 5453). Section 301.6656-2 was added to implement changes made by the Economic Recovery Tax Act of 1981, Public Law 97-34 (95 Stat. 172, 1981). Section 301.6656-1 was revised to remove outdated provisions relating to deposits made before January 1, 1970, based on the law in effect for those deposits.

Section 301.6656-1 reflects that, at the time it was revised, the penalty for underpayment of deposits was five percent of the amount of the underpayment without regard to the period during which the underpayment continued, absent reasonable cause. The Omnibus Budget Reconciliation Act of 1986, Public Law 99-509 (100 Stat. 1874, 1986) amended section 6656

to impose a ten percent penalty for underpayment. The Omnibus Budget Reconciliation Act of 1989 further amended this section to provide for a penalty that is equal to an applicable percentage of the amount of the underpayment based on the duration of the underpayment. This regulation does not reflect the most recent amendments to section 6656. Furthermore, all relevant information regarding underpayment penalties is put forth in the code section or in other published guidance. This regulation does not provide any additional guidance regarding the current underpayment penalties as set forth in section 6656 and therefore may be removed.

Section 301.6656-2 explains and expands upon former section 6656(b), Overstated Deposit Claims. The Omnibus Budget Reconciliation Act of 1989 removed former section 6656(b), making this regulation obsolete.

In addition, §301.6656-3 is redesignated as §301.6656-1. Further, §§1.6302-1(d) and 1.6302-2(d) of the Income Tax Regulations and §§31.6302-1(m)(1) and 31.6302(c)-4(a) of the Employment Tax Regulations are revised to remove references to the removed regulations under section 6656.

#### **Effect on other Documents**

The final regulations §§301.6656-1 and 301.6656-2 published in the **Federal Register** for December 13, 1983 (LR-311-81, 48 FR 5453), are removed as of June 15, 2001.

#### **Special Analyses**

It has been determined that the removal of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because this rule merely removes regulatory provisions made obsolete by statute, prior notice and comment and a delayed effective date are unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(B) and (d) Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

#### **Drafting Information**

The principal author of the removal of the regulations is Robin M. Tuczak of the

Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).  
\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

#### 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. In §1.6302–1, paragraph (d) is revised to read as follows:

*§1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes and certain taxes of tax-exempt organizations.*

\* \* \* \* \*

(d) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

Par. 3. In §1.6302–2, paragraph (d) is revised to read as follows:

*§1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.*

\* \* \* \* \*

(d) *Penalties for failure to make deposits.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

#### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 5. In §31.6302–1, paragraph (m)(1) is revised to read as follows:

*§31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.*

\* \* \* \* \*

(m) \* \* \*(1) *Failure to deposit penalty.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

Par. 6. In §31.6302(c)–4, paragraph (a) is revised to read as follows:

*§31.6302(c)–4 Cross references.*

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

#### §§301.6656–1 and 301.6656–2 [Removed]

Par. 8. Sections 301.6656–1 and 301.6656–2 are removed.

#### §301.6656–3 [Redesignated as §301.6656–1]

Par. 9. Section 301.6656–3 is redesignated as new §301.6656–1.

#### PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In §602.101, paragraph (b) is amended by removing the entries for 301.6656–1 and 301.6656–2 from the table.

Robert E. Wenzel,  
Deputy Commissioner  
of Internal Revenue.

Approved June 1, 2001.

Mark A. Weinberger,  
Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on June 14, 2001, at 8:45 a.m., and published in the issue of the Federal Register for June 15, 2001, 66 FR 32541)

### Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2001. See Rev. Rul. 2001–34, page 31.

### 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 July 2001. See Rev. Rul. 2001–34, page 31.

## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.  
(Also Part I, §§ 103, 141, 145; 1.141-3, 1.145-2.)

### Rev. Proc. 2001-39

#### SECTION 1. PURPOSE

This revenue procedure modifies the definitions of capitation fee and per-unit fee in Rev. Proc. 97-13, 1997-1 C.B. 632, to permit an automatic increase of those fees according to a specified, objective, external standard that is not linked to the output or efficiency of a facility (for example, the Consumer Price Index).

#### SECTION 2. BACKGROUND

.01 Rev. Proc. 97-13 sets forth conditions under which a management contract does not result in private business use under § 141(b) of the Internal Revenue Code. The revenue procedure also applies to determinations of whether a management contract causes the test in § 145(a)(2)(B) to be met.

.02 Section 3 of Rev. Proc. 97-13 defines various terms, including capitation fee, periodic fixed fee, and per-unit fee.

.03 Section 3.02 of Rev. Proc. 97-13 defines a capitation fee as a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

.04 Section 3.05 of Rev. Proc. 97-13 defines a periodic fixed fee as a stated dollar amount for services rendered for a specified period of time. The definition of periodic fixed fee provides that the stated dollar amount may automatically increase according to a specified, objec-

tive, external standard that is not linked to the output or efficiency of a facility.

.05 Section 3.06 of Rev. Proc. 97-13 defines a per-unit fee as a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user.

.06 Neither the capitation fee definition nor the per-unit fee definition expressly contemplates an automatic increase based on a specified, objective, external standard not linked to the output or efficiency of the facility.

.07 This revenue procedure clarifies that a capitation fee and a per-unit fee may be determined using an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility (for example, the Consumer Price Index).

#### SECTION 3. SCOPE

This revenue procedure applies when, under a management contract, a service provider provides management or other services involving property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B).

#### SECTION 4. MODIFICATIONS

.01 Section 3.02 of Rev. Proc. 97-13 is modified to add the following text immediately before the last sentence:

A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

.02 Section 3.06 of Rev. Proc. 97-13 is modified to add the following text at the end:

A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of a facility. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

#### SECTION 5. INQUIRIES

For further information regarding this revenue procedure, contact David White at (202) 622-3980 (not a toll-free call).

#### SECTION 6. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies Rev. Proc. 97-13, 1997-1 C.B. 632.

#### SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for any management contract entered into, materially modified, or extended (other than pursuant to a renewal option) on or after July 9, 2001. In addition, an issuer may apply this revenue procedure to any management contract entered into prior to July 9, 2001.

#### DRAFTING INFORMATION

The principal authors of this revenue procedure are Mary Truchly and Rebecca Harrigal, Office of Chief Counsel.

## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 2001–72

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

1st Generation Community Development Corporation, Jefferson City, MO  
Academy, Cedar Rapids, IA  
Afro-American Military Historical Association, Inc., Kansas City, MO  
Akwaaba, Inc., St. Louis, MO  
American Research Center, Mt. Pleasant, IA  
Americharities, Eden Prairie, MN  
Athletics for Disadvantaged and Disabled Athletes, Inc., White Bear Lake, MN  
Aware Committee, St. James, MO  
Before and After School Services, Spirit Lake, IA  
Bernard Whittington Foundation, St. Louis, MO  
Black Belt Parents Association of Missouri, Inc., St. Louis, MO  
Brainerd South Housing Group, Inc., Brainerd, MN  
Bridges Institute for Health Services Research, St. Louis, MO  
Central Lakes Snowmobile Club, Watkins, MN  
Cherryfest, Cherryville Community Betterment Organization, Cherryville, MO  
Christian Ministry Center, Willmar, MN  
Christian Teachers College St. John Under the Rock Fund, Chambersburg, PA

Christopher Foundation, Burnsville, MN  
Clay Central Everly Community School District Foundation, Everly, IA  
C.O.I.N. Betterment, Coin, IA  
Committed by Choice Ministries, Minneapolis, MN  
Community Development University and Entertainment Center, Inc., Boone, IA  
Community Health Resources, Woodbury, MN  
Compass Institute, Springfield, MO  
Computer Information Age Expo, Inc., St. Louis, MO  
Concerned Citizens for the Emergency Room & Spelman Hospital, Smithville, MO  
Council Bluffs Parenting Coalition, Inc., Council Bluffs, IA  
Crossroads Ministries, Goldfield, IA  
Do the Right Thing of Greater St. Louis, Inc., St. Louis, MO  
Doug Stanton Ministries International, Big Lake, MN  
Duluth Woodland Community Center, Inc., Duluth, MN  
Dutchmen Dutchgirl Athletic Booster Club, Owensville, MO  
Eden Prairie ABC Foundation, Eden Prairie, MN  
Education & Housing Equity Project, Minneapolis, MN  
Egbe Omo Oduduwa, Inc., Minneapolis, MN  
Equipment Replacement Fund, St. Louis, MO  
Evangelical Human Care, St. Paul, MN  
Exchange Club Foundation of Brainerd, Inc., Brainerd, MN  
Family Life Skills Learning Center, Inc., Plano, IA  
Family YMCA of Muscatine Endowment Foundation, Muscatine, IA  
Faribault Ice Arena Association, Faribault, MN  
Feed the Children, Inc., University City, MO  
Foundation for Senior Housing Options, Minneapolis, MN  
Freedom Foundation, Inc., Lees Summit, MO  
Friends of Decorah Public Library, Inc., Decorah, IA  
Friends of Lacey-Keosauqua State Park, Keosauqua, IA  
Friends of the Green, Inc., Litchfield, CT

Friends of the Saint Paul Riverfront Stadium, St. Paul, MN  
Fully Reciprocal Theatre Company, Minneapolis, MN  
Gateway Center for Development and Learning, Inc., St. Louis, MO  
Great Northern Ball Association, Minneapolis, MN  
Hale Mahaolu Ehiku, Inc., Kahului, HI  
Hopkins Varsity Basketball College Scholarship Fund, Minnetonka, MN  
House of Pain, Inc., Waterloo, IA  
H.R. Services of St. Paul, St. Paul, MN  
Hurricanes E.S.A., Edina, MN  
Immaculate Heart of Mary Our Lady Queen of Heaven, Minnetonka, MN  
Interfaith Council of Greater Sun Lakes, Inc., Sun Lakes, AZ  
Interns, Inc., Pleasant Hill, CA  
Iowa Citizens for the Arts Education, Inc., Des Moines, IA  
Jazz Partners, Des Moines, IA  
Joplin Area Aids Resource Center, Inc., Joplin, MO  
Juneteenth Historical Commemoration Association, St. Louis, MO  
Karaoke Kare of Missouri, Inc., Marthasville, MO  
Keenes Creek Youth Organization, Duluth, MN  
Koshkonong Volunteer Fire Dept., Koshkonong, MO  
Lakeville Area Historical Society, Lakeville, MN  
Lee County Rabbitary, Inc., Bishopville, SC  
Legion of Friends, Carmel, CA  
Library of Lives, Lees Summit, MO  
L.O.V.E. Home, Inc., Hermantown, MN  
LRC Partners Foundation, Inc., Troy, NY  
Lubavitch of Iowa, Inc., Des Moines, IA  
Luv-N-Care, Inc., Sedalia, MO  
Mabel Youth, Inc., Mabel, MN  
Macon County Crisis Center, New Cambria, MO  
Main Stage Productions, Inc., Kansas City, MO  
Marathon Area Historical Society, Marathon, IA  
Marquette Learning Institute, St. Louis, MO  
Matoska Neighborhood Association, White Bear Lake, MN  
Midwest Tarlton Institute of Marine Education, Bloomington, MN



Minnesota Aviation History and Education Center, Inc., St. Paul, MN  
 Mission-A Catholic Worker Community, St. Cloud, MN  
 Missouri Black Bass Unlimited, Inc., Clinton, MO  
 Mt. Pleasant Neighborhood, St. Louis, MO  
 National Native American War Memorial Complex, Incorporated, Chapter Oak, IA  
 Network for Prep., Inc., Bettendorf, IA  
 New Harmony Care Center, Inc., Richfield, MN  
 Nguzo Saba Community Studio, St. Paul, MN  
 Nisswa Enhanced Reading Foundation, Nisswa, MN  
 North Lilbourn Development, Inc., Lilbourn, MO  
 Northland Opera Theater Experience, Duluth, MN  
 Northside Economic Development Council, Inc., Minneapolis, MN  
 One Small Step, St. Paul, MN  
 Parents Together Network, Inc., Marion, IA  
 Patch, Ballwin, MO  
 Paths Unlimited, Minneapolis, MN  
 People Place, Minneapolis, MN  
 Philip & Adeline Woods Memorial Fund, Yanceyville, NC  
 Pilot Grove Community Athletic Association, Pilot Grove, MO  
 Playground, Inc., Buffalo, MO  
 Port Morris Neighborhood Development Corporation, Bronx, NY  
 Presbyterian Homes-Wedum Affordable Housing, Inc., Arden Hills, MN  
 Quite Light Opera Company, St. Joseph, MN  
 Ralls County Community 2000, Inc., Perry, MO  
 Recover America, Inc., Joplin, MO  
 Recovery Road, Inc., St. Paul, MN  
 Red Wing Public Schools Foundation, Red Wing, MN  
 Responsible Adults & Youths, Ofallon, MO  
 R.O.F. Reins of Freedom, Avon, MN  
 Roots Program, St. Paul, MN  
 Save Iowas Civil War Monument Foundation, W. Branch, IA  
 Shelly Dorgan Memorial Scholarship Fund, Minneapolis, MN  
 Simien Foundation for Seniors, Inc., Kansas City, MO  
 Southern California Allstars, Garden Grove, CA

Southwest Missouri Youth Baseball Club, Carl Junction, MO  
 Special Needs Association, Cresco, IA  
 Springfield Community Theatre Group, Springfield, MN  
 St. Andrews Assisted Living Services, St. Louis, MO  
 St. Charles Basketball Club, St. Charles, MO  
 St. James Opera House Restoration Project, Inc., St. James, MN  
 St. Louis Northside Coaches Association, St. Louis, MO  
 Starving Artists Entertainment Group, Inc., Edina, MN  
 Stewartsville Community Betterment Association, Stewartsville, MO  
 Stoddard County Inter-Agency Council, Dexter, MO  
 Suburban Documentation Project, St. Paul, MN  
 Summit Psych Care, Pleasant Hill, MO  
 Teen Pregnancy Prevention Action Council, Alexandria, MN  
 Tom Peterson Memorial Foundation, Sioux City, IA  
 Trees for Tomorrow, Newton, IA  
 Tumwater Hardball Association, Tumwater, WA  
 Twin Cities Business Foundation, St. Paul, MN  
 United Neighborhoods of Jennings, Inc., Jennings, MO  
 Urban Hope Ministries, Inc., Minneapolis, MN  
 Voce Magna, Blaine, MN  
 West End Elderly Housing Corporation, Saint Louis, MO  
 Wild Rice Electric Trust, Mahanomen, MN  
 Willow Springs Medical Assistance Program, Willow Springs, MO  
 Winterset Fire Fighters Association, Inc., Winterset, IA  
 Youth Gospel Music Conference, Inc., St. Louis, MO

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised clas-

sification of foundation status in the Internal Revenue Bulletin.

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## Rev. Proc. 2000-39, Business and Traveling Expenses; Correction

### Announcement 2001-73

This document contains a correction to Rev. Proc. 2000-39 (2000-41 I.R.B. 340) published on October 10, 2000, relating to business and traveling expenses, and *per diem* allowances.

Under SECTION 5. HIGH-LOW SUBSTANTIATION METHOD, .01 *General rule.*, toward the end of the paragraph on page 343 of the Internal Revenue Bulletin, the text below in brackets is missing.

...substantiated for each calendar day is equal [to the lesser of the *per diem* allowance for such day or the amount computed at the rate set forth in section 5.02 of this revenue procedure for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure). Except as provided in section 5.06 of this revenue procedure, this high-low substantiation method may be used in lieu of the *per diem* substantiation method provided in section 4.01 of this revenue procedure, but may not be used in lieu of the meals] only substantiation method provided in section 4.02 or 4.03 of this revenue procedure.

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## New Filing Locations for Estate, Gift, and Generation-Skipping Transfer Tax Returns

### Announcement 2001-74

Beginning with returns filed on or after January 1, 2001, the filing locations for some states have changed for the following tax returns:

Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*  
 Form 706-CE, *Certificate of Payment of Foreign Death Tax*  
 Form 706-GS(D), *Generation-Skipping Transfer Tax Return for Distributions*  
 Form 706-GS(D-1), *Notification of Distribution From a Generation-Skipping Trust*



Form 706–GS(T), *Generation-Skipping Transfer Tax Return for Terminations*

Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*

Form 709–A, *United States Short Form Gift Tax Return*

Send these forms to the applicable IRS address listed below. Note that all returns filed in 2002 and thereafter, except those with a foreign, APO, or FPO address, will be filed at the Cincinnati Service Center.

For estates of decedents domiciled in, donees residing in, and settlors (now or at the time of death) residing in	Use the following Internal Revenue Service address — For returns filed	
	During 2001	Beginning January 1, 2002
New York ( <i>New York City and counties of Nassau, Rockland, Suffolk, and Westchester</i> )	Brookhaven Service Center Holtsville, NY 00501	USPS: Cincinnati, OH 45999
New York ( <i>all other counties</i> ), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501	Courier service: 201 W. Rivercenter Blvd. Covington, KY 41015
Florida, Georgia	Atlanta, GA 39901	
Arkansas, Delaware, District of Columbia, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, West Virginia, Wisconsin	Cincinnati, OH 45999	
Kansas, New Mexico, Oklahoma	Austin, TX 73301	
Alaska, Arizona, California ( <i>counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solana, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba</i> ), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201	
California ( <i>all other counties</i> )	Fresno, CA 93888	
Illinois	Kansas City, MO 64999	
Alabama, Tennessee	Memphis, TN 37501	
Virginia	Philadelphia, PA 19255	
American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, a foreign address, or have an APO or FPO address	Philadelphia, PA 19255	Philadelphia, PA 19255

**Important**

Any return filed before the date this announcement is published in the Internal Revenue Bulletin will be considered correctly filed if it was filed in accordance with the instructions for that return at the time it was filed. Do not file a duplicate of a return that has already been filed solely because the filing location has changed.

**Waivers for Form 1065 Electronic Filing Due to Unavailability of the Necessary Software**

**Announcement 2001-75**

Section 6011(e)(2) of the Internal Revenue Code and section 301.6011-3(a) of the Regulations on Procedure and Administration require partnerships with more than 100 partners to file their partnership returns (Form 1065 series) on magnetic media. The regulations define “magnetic media” to include electronic filing, if electronic filing is required by the Internal Revenue Service (“Service”).

The Service has become aware that some partnerships cannot file electronically because the necessary software for some required forms is unavailable. This announcement describes how partnerships required to file electronically under section 6011(e)(2) may request a section 6724(a) reasonable cause waiver for failing to file electronically.

**This announcement is applicable only to waiver requests made by taxpayers who are required to file forms and schedules that are not supported by electronic filing software and who cannot file those forms and schedules as paper attachments to the Form 8453-P.**

The forms that may be attached to the Form 8453-P are listed later in this announcement. This announcement is not applicable to other types of waiver requests (i.e. economic hardship). Announcement 2001-101 describes how to request waivers from filing electronically under section 6011(e) for other reasons.

**Waiver Request Procedures**

Taxpayers are required to submit a waiver request to the Memphis Submission Processing Center by October 1, 2001. To initiate a waiver request, the following information must be submitted for each partnership:

Partnership Name	Federal Tax Identification Number	Number Of K-1's	Name Of Software Being Used	Unavailable Forms And Schedules

Taxpayers may mail or fax the waiver request to the following:

**Mail to:** Internal Revenue Service  
P.O. Box 420  
Memphis, TN 38101-0420  
  
Attn: Electronic Filing Unit,  
Stop 2711

or

**Fax to:** 901-546-2544

Requests from the partnerships’ tax advisor/preparer do not have to be accompanied by a valid power of attorney. If a valid power of attorney is not on file, the Service will address questions about the waiver to the partnership. Also, partnerships need not file Form 8800 before submitting a waiver request under this procedure. However, approval of a waiver request will not relieve the partnership of a failure to file penalty for returns filed after the original due date without a valid extension.

To complete the waiver request process, taxpayers must attach a signed waiver request to the Form 1065 return at the time it is filed. The signed waiver request must include the following information:

1. A notation in large red letters at the top of page 1 of the Form 1065 return,

*“Waiver Request: IRC Section 6011(e)(2)”;*

2. The Waiver Request Attached must contain:
  - a) A notation at the top *“Waiver Request: IRC Section 6011(e)(2)”;*
  - b) The name, federal tax identification number, and mailing address of the partnership;
  - c) The taxable year for which the waiver is requested;
  - d) A detailed statement which lists:
    - (i) What steps the partnership has taken in an attempt to meet its requirement to file its return electronically,
    - (ii) Why the steps were unsuccessful,
    - (iii) What steps the partnership will take to assure its ability to electronically file its partnership return for the next tax year.
  - e) A *statement signed by the Tax Matters Partner*, as defined in section 6231(a)(7) of the Code, stating:

*“Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief.”*

Failure to complete the entire process will result in the Service denying the waiver

request and assessing the penalty for failure to file electronically.

**Service Determination**

Within 30 days after receipt of the initial waiver request, the Service will notify the partnership if the Service is denying the waiver request. Partnerships may not appeal a denial of a waiver request at any time. After verifying that a listed form is unavailable and may not be filed with the Form 8453-P, the Service will process initial waiver requests to prevent the assessment of the penalty for failure to file electronically. However, the Service must also receive the required waiver request attached to the filed Form 1065 to ensure the penalty will not be subsequently assessed. If the Service processes an initial waiver request and a form listed in the initial waiver request becomes available before the partnership files its Form 1065, the Service will not deny the waiver request based on the subsequent availability of the form.

The Service will not grant waiver requests for the following forms that may be attached to the 8453-P, allowing the rest of the return to be filed electronically: Schedule A (Form 5713), Schedule A (Form 8847), Schedule B (Form 5713), Schedule C (Form 5713), Schedule J (Form 5471), Schedule M (Form 5471),

Schedule N (Form 5471), Schedule O (Form 5471), Form T, Form 982, Form 4255, Form 5471, Form 6478, Form 8283, Form 8582-CR, Form 8594, Form 8820, Form 8861, Form 8866, Form 8873.

#### **Failure to File Penalty**

It is not the Service's intent to assess penalties for failure to file electronically because the necessary software is not available and the partnership cannot file the forms with the Form 8453-P. However, penalties may inadvertently be as-

essed. If a filer receives an improper penalty notice, the filer should request an abatement of the penalties by sending a letter to the IRS at the address provided in this announcement. Filers must include the information requested in the CP Notice 162 assessing the penalty.

#### **Late Filing Penalties**

The electronic postmark is not available for the current tax year for electronic Forms 1065. However, the IRS will accept the transmitter's date and time acknowledgement for purposes of evaluat-

ing requests to abate late-filing penalties assessed on partnership returns.

For questions concerning a request for waiver or a late filing penalty of an electronic Form 1065, contact the Memphis Submission Processing Center at 901-546-2690 (not a toll-free call).

## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contributions Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

## Numerical Finding List<sup>1</sup>

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### **Announcements:**

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### **Notices:**

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2001–41, 2001–27 I.R.B. 2

### **Proposed Regulations:**

REG–106917–99, 2001–27 I.R.B. 4

### **Railroad Retirement Quarterly Rates:**

2001–27, I.R.B. 1

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.



## Finding List of Current Actions on Previously Published Items<sup>1</sup>

Bulletin 2001–27

### Proposed Regulations:

#### **REG–107186–00**

Corrected by  
Ann. 2001–71, 2001–27 I.R.B. 26

### Revenue Rulings:

#### **57–589**

Obsolated by  
REG–106917–99, 2001–27 I.R.B. 4

#### **65–316**

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REG–106917–99, 2001–27 I.R.B. 4

#### **68–125**

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REG–106917–99, 2001–27 I.R.B. 4

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REG–106917–99, 2001–27 I.R.B. 4

#### **74–326**

Obsolated by  
REG–106917–99, 2001–27 I.R.B. 4

#### **78–179**

Obsolated by  
REG–106917–99, 2001–27 I.R.B. 4

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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	048-004-02335-1	Cum. Bulletin 1995-1 (Jan-June)	63	
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