

# Internal Revenue bulletin

Bulletin No. 2002-32  
August 12, 2002

## 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. 2002-49, page 288.**

**Spin offs.** Guidance is provided under section 355(b) of the Code regarding the active trade or business requirement. Rev. Rul. 92-17 amplified.

**T.D. 9003, page 294.**

Final regulations under section 6015 of the Code provide guidance to married individuals filing joint returns who seek relief from joint and several liability. Section 6015 was added by the Internal Revenue Service Restructuring and Reform Act of 1998 to replace former section 6013(e) by providing new and expanded means for a spouse to obtain relief from joint and several liability.

**Notice 2002-56, page 319.**

This document notifies states and other issuers of qualified exempt facility bonds described in section 142(a)(13) of the Code of the proper population figures to be used for calculating the limitation under section 142(k)(5) of the annual aggregate face amount of tax-exempt bonds described in section 142(a)(13).

**Announcement 2002-71, page 323.**

This document contains corrections to final regulations (T.D. 8999, 2002-28 I.R.B. 78) under section 894 relating to the eligibility for treaty benefits of items of income paid by domestic entities.

### EMPLOYEE PLANS

**T.D. 9005, page 290.**

Final regulations under section 401 of the Code provide guidance relating to the return of employer contributions or withdrawal liability payments made to multiemployer plans due to a mistake of fact or law.

**T.D. 9006, page 315.**

Final regulations under section 7476 of the Code set forth standards by which a plan sponsor may satisfy the notice to interested parties requirement.

### EXEMPT ORGANIZATIONS

**Announcement 2002-72, page 323.**

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

### GIFT TAX

**REG-123345-01, page 321.**

Proposed regulations under section 2519 of the Code relate to the amount treated as a transfer under section 2519 when there is a right to recover gift tax under section 2207A(b) of the Code and the related gift tax consequences if the right to recover the gift tax is not exercised. A public hearing is scheduled for October 15, 2002.

Finding Lists begin on page ii.

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Department of the Treasury  
Internal Revenue Service

## **EXCISE TAX**

**Rev. Rul. 2002-50, page 292.**

**Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.** For purposes of section 4092, an aircraft that flies a person for hire between the United States and a foreign country is actually engaged in foreign trade within the meaning of section 4221(d)(3). That aircraft is also actually engaged in foreign trade when flying that person from a city in the United States to another city in the United States as part of the transportation between the United States and the foreign country. Rev. Rul. 69-259 modified and superseded.

## **ADMINISTRATIVE**

**T.D. 9003, page 294.**

Final regulations under section 6015 of the Code provide guidance to married individuals filing joint returns who seek relief from joint and several liability. Section 6015 was added by the Internal Revenue Service Restructuring and Reform Act of 1998 to replace former section 6013(e) by providing new and expanded means for a spouse to obtain relief from joint and several liability.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

## 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 procedures 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 Other Related Items, 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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This page is reserved for missing child Mercedes Rodriguez.

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

## Section 103.—Interest on State and Local Bonds

The Service notifies states and other issuers of qualified exempt facility bonds described in § 142(a)(13) of the Internal Revenue Code of the proper population figures to be used for calculating the limitation under § 142(k)(5) on the annual aggregate face amount of tax-exempt bonds described in § 142(a)(13). See Notice 2002-56, page 319.

## Section 142(a)(13).—Exempt Facility Bond—Qualified Public Educational Facilities

The Service notifies states and other issuers of qualified exempt facility bonds described in § 142(a)(13) of the Internal Revenue Code of the proper population figures to be used for calculating the limitation under § 142(k)(5) on the annual aggregate face amount of tax-exempt bonds described in § 142(a)(13). See Notice 2002-56, page 319.

## Section 142(k)(5).—Annual Aggregate Face Amount of Tax-Exempt Financing

The Service notifies states and other issuers of qualified exempt facility bonds described in § 142(a)(13) of the Internal Revenue Code of the proper population figures to be used for calculating the limitation under § 142(k)(5) on the annual aggregate face amount of tax-exempt bonds described in § 142(a)(13). See Notice 2002-56, page 319.

## Section 355.—Distribution of Stock and Securities of a Controlled Corporation

26 CFR 1.355-3: Active conduct of a trade or business.

**Spin-offs.** Guidance is provided under section 355(b) of the Code regarding the active trade or business requirement.

## Rev. Rul. 2002-49

### ISSUE

Under the facts described below, is the 5-year active conduct of a trade or business requirement of § 355(b) of the Inter-

nal Revenue Code satisfied when, during the 5-year period prior to a transaction that otherwise meets the requirements of § 355, a corporation holding a membership interest in a member-managed limited liability company purchases the remaining interests in that limited liability company, contributes a portion of the business to a newly formed controlled subsidiary, and then distributes the stock of the controlled subsidiary to its shareholders?

### FACTS

*Situation 1.* As of the first day of Year 1, LLC is a domestic member-managed limited liability company that has been classified as a partnership for Federal tax purposes since its date of organization. As of that day, LLC owns several commercial office buildings that it leases to unrelated third parties. On the first day of Year 1, D, a corporation, owns a 20 percent profit/loss and capital interest in LLC (the Interest). At that time, D has no business assets other than the Interest. In addition, at that time, X, a corporation, owns a 20 percent profit/loss and capital interest in LLC and one or more persons hold the remaining 60 percent profit/loss and capital interests of LLC.

LLC periodically repaints and refurbishes its existing properties. In addition, LLC continuously seeks to acquire additional properties to expand its rental business. When a property is located, LLC negotiates its purchase and financing and determines whether renovations or alterations are necessary to make the building suitable for rental.

Pursuant to the terms of its leases, LLC provides day-to-day upkeep and maintenance services for its office buildings. These services include trash collection, ground maintenance, electrical and plumbing repair, and insect control. Additionally, LLC advertises for new tenants, verifies information contained in lease applications, negotiates leases, handles tenant complaints, prepares eviction notices and warnings for delinquent tenants, collects rent, and pays all expenses, including gas, water, sewage, electricity and insurance for the office buildings. LLC also maintains financial and

accounting records to reflect income and expenses relating to each of its rental properties as well as LLC's general expenses.

Throughout the period during which D owns the Interest, D and X jointly manage LLC and have equal control over the management of LLC. D's and X's officers perform active and substantial management functions with respect to LLC's activities, including the decision-making regarding significant business decisions of LLC (e.g., decisions with respect to significant renovations of properties, the purchase and sale of properties, and significant financings and refinancings). Neither D nor X, however, can make a significant business decision without the consent of the other. In addition, D's and X's officers regularly participate in the overall supervision, direction, and control of LLC's employees in their performance of LLC's operational functions. None of the members of LLC other than D and X participate in the management or operational functions of LLC.

On the first day of Year 3, D purchases all of the remaining interests in LLC (the Remaining Interests) from the other members of LLC. At all times prior to the first day of Year 3, the other members of LLC are unrelated to D, X, or their respective shareholders. In connection with D's purchase of the Remaining Interests, LLC becomes an entity disregarded as an entity separate from D. After the purchase of the Remaining Interests, D's officers continue to conduct the activities and functions with respect to LLC that they and X's officers conducted prior to D's purchase of the Remaining Interests and LLC's employees continue to conduct the activities and functions with respect to LLC that they conducted prior to D's purchase of the Remaining Interests.

On the first day of Year 6, for a valid business purpose, when D owns no business assets other than those that it owns through LLC, D causes LLC to distribute to D rental properties that constitute 40 percent of the value of LLC's rental properties. D then transfers those properties to C, a newly formed, wholly owned subsidiary of D, and distributes the stock of C

*pro rata* to D's shareholders in a transaction intended to meet the requirements of § 355. After the distribution, D and LLC, together, and C will conduct the same activities and functions with respect to the portions of the business that they each own after the distribution that D and LLC conducted as of the beginning of Year 1. Assume that, except for the issue of whether the distribution satisfies the requirements of § 355(b), D's distribution of C stock otherwise satisfies all of the requirements of § 355.

*Situation 2.* The facts are the same as in Situation 1 except that, instead of owning the Interest on the first day of Year 1, on the first day of Year 2, D acquires the Interest by contributing appreciated securities to LLC in a transaction described in § 721.

## LAW

Section 355(a) provides that, under certain circumstances, a corporation may distribute stock and securities in a corporation it controls to its shareholders and security holders in a transaction that is nontaxable to such shareholders and security holders. Sections 355(a)(1)(C) and 355(b)(1) require that both the distributing and controlled corporations be engaged, immediately after the distribution, in the active conduct of a trade or business. Section 355(b)(2)(B) requires that such trade or business have been actively conducted throughout the 5-year period ending on the date of the distribution. In addition, under § 355(b)(2)(C), that trade or business must not have been acquired in a transaction in which gain or loss was recognized, in whole or in part, within the 5-year period.

Section 1.355-3(b)(2)(iii) of the Income Tax Regulations provides, in part, that the determination of whether a trade or business is actively conducted will be made from all of the facts and circumstances. Generally, the corporation is required itself to perform active and substantial management and operational functions. Generally, activities performed by the corporation itself do not include activities performed by independent contractors. A corporation, however, may satisfy the active conduct of a trade or business requirement through the activities that it performs itself even though some of its activities are performed by others.

Under § 1.355-3(b)(2)(iv), however, the active conduct of a trade or business does not include the ownership and operation (including leasing) of real or personal property used in a trade or business unless the owner performs significant services with respect to the operation and management of the property.

Section 1.355-3(b)(3)(ii) provides that the fact that a trade or business underwent change during the 5-year period preceding the distribution (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded, provided that the changes are not of such a character as to constitute the acquisition of a new or different business.

Section 721(a) provides that no gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

Rev. Rul. 92-17, 1992-1 C.B. 142, considers whether D, a corporate general partner in a limited partnership, is engaged in the active conduct of a trade or business within the meaning of § 355(b). For more than 5 years, D owned a 20 percent interest in LP, a limited partnership that owned several commercial office buildings leased to unrelated third parties. D's officers performed active and substantial management functions with respect to LP, including the significant business decision-making of the partnership, and regularly participated in the overall supervision, direction, and control of LP's employees in operating LP's rental business. Rev. Rul. 92-17 concludes that D is engaged in the active conduct of trade or business within the meaning of § 355(b).

Rev. Rul. 99-6, 1999-1 C.B. 432, considers the Federal income tax consequences of one person's purchase of ownership interests in a limited liability company that is classified as a partnership for Federal tax purposes. In Situation 1 of Rev. Rul. 99-6, A and B are equal partners in AB, a domestic limited liability company. A sells A's entire interest in AB to B. After the sale, the business is continued by the limited liability company, which then is owned solely by B. After the sale, no entity classification election is made under § 301.7701-3(c) of the

Procedure and Administration Regulations to treat the limited liability company as an association for Federal tax purposes. Rev. Rul. 99-6 holds, in part, that, when B purchases A's entire interest in AB, the AB partnership terminates. For purposes of determining the treatment of B, AB is deemed to make a liquidating distribution of all its assets to A and B, and, following this distribution, B is treated as acquiring from A the assets deemed to have been distributed to A in liquidation of A's partnership interest.

## ANALYSIS

*Situation 1.* In order to satisfy the active conduct of a trade or business requirement of § 355(b), each of D and C must be engaged in the active conduct of a trade or business immediately after the distribution in Year 6. In this case, immediately after the distribution, each of D and C is engaged in commercial office leasing activities that constitute the conduct of an active trade or business. See § 1.355-3(b)(2)(iv).

Under § 355(b)(2)(B) and (C), this trade or business must have been actively conducted throughout the 5-year period ending on the date of the distribution, and must not have been acquired within that 5-year period in a transaction in which gain or loss was recognized in whole or in part. During Years 1 and 2, while D owns the Interest, D conducts active and substantial management functions with respect to LLC, and regularly participates in the overall supervision, direction, and control of LLC's employees. Accordingly, consistent with Rev. Rul. 92-17, for purposes of § 355(b), during that period, D is engaged in the active conduct of the commercial office leasing business.

The commercial office leasing business actively conducted by D during Years 3, 4, and 5 is the same commercial office leasing business actively conducted by D in Years 1 and 2. Therefore, D's purchase of the Remaining Interests on the first day of Year 3, which causes the LLC to become disregarded as an entity separate from D, does not result in the acquisition of a new or different business. See § 1.355-3(b)(3)(i). Because this transaction does not result in the acquisition of a new or different business, the requirements of § 355(b)(2)(B) and (C)

are satisfied even though gain or loss is recognized in the transaction.

Because immediately after the distribution of C stock to D's shareholders each of D and C will be engaged in the active conduct of a trade or business that is treated as having been actively conducted throughout the 5-year period ending on the date of the distribution and that was not acquired during that period in a transaction prohibited by § 355(b)(2)(C), the distribution satisfies the 5-year active conduct of a trade or business requirement of § 355(b).

*Situation 2.* As in Situation 1, for purposes of § 355(b), prior to D's purchase of the Remaining Interests, while D owns the Interest, conducts active and substantial management functions with respect to LLC, and regularly participates in the overall supervision, direction, and control of LLC's employees, D is engaged in the active conduct of the commercial office leasing business. In addition, as in Situation 1, D is not treated as acquiring a new or different trade or business as a result of purchasing the Remaining Interests on the first day of Year 3.

Unlike in Situation 1, however, D will be treated as having acquired such trade or business in a transaction in which gain or loss was recognized within the 5-year pre-distribution period in violation of § 355(b)(2)(C). Although D's acquisition of the Interest on the first day of Year 2 was a transaction in which no gain or loss was recognized (under § 721(a)), had D instead directly acquired the trade or business that the Interest represents in exchange for the property D contributed to LLC, such exchange would have been a transaction in which gain or loss was recognized. For purposes of § 355(b), therefore, D will be treated as acquiring the trade or business attributable to the Interest on the first day of Year 2 in a transaction in which gain or loss was recognized.

Because both immediately before and immediately after the distribution D and C are engaged in a trade or business that is treated as having been acquired in a transaction in which gain or loss was recognized within the 5-year pre-distribution period, the distribution violates the prohibition of § 355(b)(2)(C). Accordingly, the distribution does not satisfy the 5-year

active conduct of a trade or business requirement of § 355(b).

## EFFECT ON OTHER REVENUE RULING(S)

Rev. Rul. 92-17 is amplified.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Mr. Subin at (202) 622-7790 (not a toll-free call).

## Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

*26 CFR 1.401(a)(2)-1: Refund of mistaken employer contributions and withdrawal liability payments to multiemployer plans.*

## T.D. 9005

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

## Refund of Mistaken Contributions and Withdrawal Liability Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document provides final regulations relating to the return of employer contributions or withdrawal liability payments made to multiemployer plans due to a mistake of fact or law. Changes to the applicable laws were made by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The final regulations provide guidance to the public in complying with MPPAA. The regulations affect multiemployer plans which receive mistaken contributions or withdrawal liability payments.

**EFFECTIVE DATE:** These regulations are effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622-6060 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background

Section 401(a)(2) generally requires a trust instrument forming part of a pension, profit sharing or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of employees or their beneficiaries. Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406 (88 Stat. 829), contains a parallel rule that prohibits the assets of a plan from inuring to the benefit of any employer and that requires the plan assets be held for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying reasonable expenses of administering the plan. Under these rules, employer contributions to qualified plans were generally not refundable. However, a contribution made due to a mistake of fact was permitted to be returned to the employer within one year after the date of the contribution.

The Multiemployer Pension Plan Amendments Act of 1980 (Public Law 96-364, 410(b) (94 Stat. 1208, 1308)) amended section 401(a)(2) of the Internal Revenue Code to reflect Congressional concern that the requirements of prior law for the return of an employer contribution were too narrow in the multiemployer context. Under section 401(a)(2), as amended, a contribution made to a multiemployer plan due to a mistake of fact or law may be returned within six months after the date that the plan administrator determines that it was made in error. Section 401(a)(2) was also amended by MPPAA to permit the return of any withdrawal liability payment determined to be an overpayment made due to a mistake of fact or law within six months after that determination.

The effective date of section 410(b) of MPPAA was January 1, 1975, except that in the case of any determination by a plan administrator made before September 26, 1980 (the date of enactment), that a past contribution was made by mistake of fact or law was deemed to have been

made on the date of enactment. Accordingly, the period of time for refund of these contributions was 6 months from the date of enactment.

The IRS published a notice of proposed rulemaking (EE-133-80, 1983-1 C.B. 821) in the **Federal Register** on March 11, 1983, (48 FR 10374) to amend the Income Tax Regulations (26 CFR part 1) under section 401(a)(2) of the Internal Revenue Code of 1954 (Code). At that time, the public was invited to comment in writing, or to make a request for public hearing, upon issues addressed in the proposals. Eight comments were received, but no public hearing was requested.

The proposed amendment to the regulations would have been numbered § 1.401(a)-3. However, in the intervening period of time the IRS has changed its system of numbering regulations to more closely align the regulation number to the number of the underlying Code section. Accordingly, the regulations are being finalized as § 1.401(a)(2)-1.

After consideration of all comments, the proposed provisions are revised and adopted as final regulations under this Treasury decision.

### Explanation of Provisions

In general, the final regulations follow the proposed regulations with minor changes described below.

1. *Amount to be refunded.* Several comments concerned the amount to be refunded to the employer when a determination of mistake is made by the plan administrator. Questions were raised relating to the earnings and losses attributable to the excess contribution or overpayment of withdrawal liability, and the Pension Benefit Guaranty Corporation rules regarding the refund of overpayments of withdrawal liability.

These final regulations provide a narrow exception to the general rule that trust assets not be used for, or diverted to, purposes other than the exclusive benefit of employees. That the employer may, under limited circumstances, receive a refund of a mistaken contribution does not detract from the primary purpose of ERISA to protect individual pension rights and maintain the solvency and integrity of pension funds.

In general, any earnings attributable to an excess contribution shall not be

returned to the employer, and any losses attributable to an excess contribution must reduce the amount to be returned to the employer. As a further limitation on the return of contributions, the final regulations provide that a refund of an excess contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred.

In the case of an overpayment of withdrawal liability, established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayment of withdrawal liability, the overpayment with interest is returned to the employer. (See 29 CFR Ch. XL 4219.31(d)).

2. *Amount to be included in income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

### Effective Date

These regulations apply for refunds made after July 22, 2002. However, plans and employers may apply the rules of these regulations to refunds made prior to that date.

### 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 also has 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 preceding proposed rule was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

### Drafting Information

The principal author of these regulations is John T. Ricotta, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the Service 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 an entry to read in part as follows:

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

§ 1.401(a)(2)-1 also issued under Multiemployer Pension Plan Amendments Act, Pub. L. 96-364, 410, (94 Stat. 1208, 1308) (1980). \* \* \*

Par. 2. Section 1.401(a)(2)-1 is added to read as follows:

*§ 1.401(a)(2)-1 Refund of mistaken employer contributions and withdrawal liability payments to multiemployer plans.*

(a) *Introduction*—(1) *In general.* Section 401(a)(2) provides that a contribution or payment of withdrawal liability made to a multiemployer plan due to a mistake of fact or mistake of law can be returned to the employer under certain conditions. This section specifies the conditions under which an employer's contribution or payment may be returned.

(2) *Effective dates.* This section applies to refunds made after July 22, 2002.

(b) *Conditions for return of contribution*—(1) *In general.* In the case of a contribution or a withdrawal liability payment to a multiemployer plan which was made because of a mistake of fact or a mistake of law, the plan will not violate section 401(a)(2) merely because the contribution or payment is returned within six months after the date on which the plan administrator determines that the contribution or payment was the result of a mistake of fact or law. The contribution or payment is considered as returned



within the required period if the employer establishes a right to a refund of the amount mistakenly contributed or paid by filing a claim with the plan administrator within six months after the date on which the plan administrator determines that a mistake did occur. For purposes of this section, plan administrator is defined in section 414(g) and the regulations thereunder.

(2) *Applicable conditions*—(i) *In general*. The employer making the contribution or withdrawal liability payment to a multiemployer plan must demonstrate that an excessive contribution or overpayment has been made due to a mistake of fact or law. A mistake of fact or law relating to plan qualification under section 401 or to trust exemption under section 501 is not considered to be a mistake of fact or law which entitles an employer to a refund under this section. For purposes of this section, a multiemployer plan is defined in section 414(f) and the regulations thereunder.

(ii) *Amount to be returned*—(A) *General rule*. The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made. This amount is the excess contribution or overpayment. Except as provided in paragraph (b)(2)(ii)(B) of this section, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount returned to the employer. For purposes of the previous sentence, the application of plan-wide investment experience to the excess contribution would be an acceptable method of calculating losses. A refund of a mistaken contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred. Thus, to the extent that the refund of an excess contribution would reduce a participant's account balance in a defined contribution plan to an amount less than the amount which would properly be in the participant's account had no

mistake occurred, the return of the excess contribution would be prohibited by this section.

(B) *Overpayment of withdrawal liability*. In the case of an overpayment of withdrawal liability established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayments of withdrawal liability (29 CFR 4219.31(d)), the overpayment, with interest, is returned to the employer.

(c) *Amount refunded includible in employer's income*. In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

(d) *Application of section 412*. An amount returned under paragraph (b)(2)(ii) of this section is charged to the funding standard account under section 412 in the year in which the amount is returned.

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

Approved July 10, 2002.

Pamela F. Olson,  
Acting Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on July 19, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2002, 67 F.R. 47692)

## Section 4041.—Imposition of Tax

26 CFR 48.4041-10: Exemption for use as supplies for vessels or aircraft.

When is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, on this page.

## Section 4081.—Imposition of Tax

When is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, on this page.

## Section 4091.—Imposition of Tax

When is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, on this page.

## Section 4092.—Exemptions

When is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, on this page.

## Section 4221.—Certain Tax-Free Sales

26 CFR 48.4221-4: Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft. (Also §§ 4041, 4081, 4091, 4092, 6416, 6421, 6427, 7805; §§ 48.4041-10, 48.6416(b)(2)-2, 301.7805-1.)

**Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.** For purposes of section 4092 of the Code, an aircraft that flies a person for hire between the United States and a foreign country is actually engaged in foreign trade within the meaning of section 4221(d)(3) of the Code. That aircraft is also actually engaged in foreign trade when flying that person from a city in the United States to another city in the United States as part of the transportation between the United States and the foreign country.

## Rev. Rul. 2002-50

### ISSUE

For purposes of § 4092 of the Internal Revenue Code, when is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)?

## FACTS

Aircraft *A*, Aircraft *B*, and Aircraft *C* are operated by a domestic airline in the business of transporting persons by air for hire. The aviation fuel purchased for use in the aircraft is purchased in the United States.

*Situation 1.* Aircraft *A* flies from city #1 in the United States to city #3 in a foreign country. En route to city #3 Aircraft *A* stops in city #2 in the United States. The flight from city #1 to city #2 is designated Flight No. 111 and the flight from city #2 to city #3 is designated Flight No. 333. Aircraft *A* transports at least one person for hire from city #1 to city #3.

*Situation 2.* Aircraft *B* flies from city #4 in a foreign country to city #6 in the United States. En route to city #6 Aircraft *B* stops in city #5 in the United States. The flight from city #4 to city #5 is designated Flight No. 555 and the flight from city #5 to city #6 is designated Flight No. 777. Aircraft *B* transports at least one person for hire from city #4 to city #6.

*Situation 3.* Aircraft *C* flies only within the United States. Aircraft *C* transports persons for hire from city #1 to city #2, some of whom will transfer to Aircraft *A* for its flight from city #2 to city #3 in a foreign country.

## LAW AND ANALYSIS

Section 4092 provides that no tax is imposed under § 4091 on aviation fuel sold by a producer for use by the purchaser in a nontaxable use (as defined in § 6427(l)(2)(B)).

Section 6427(l)(2)(B) provides that the term “nontaxable use” means, in the case of aviation fuel, any use that is exempt from the tax imposed by § 4041(c)(1) other than by reason of a prior imposition of tax.

Section 4041(g)(1) provides that no tax is imposed under § 4041(c)(1) on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of § 4221(d)(3)).

Section 4221(d)(3) provides that the term “supplies for vessels or aircraft” includes fuel supplies, ships’ stores, sea stores, or legitimate equipment on vessels actually engaged in foreign trade or trade between the United States and any of its possessions. For purposes of the preceding sentence, the term “vessels” includes

civil aircraft employed in foreign trade or trade between the United States and any of its possessions.

Section 48.4221-4(b)(2) of the Manufacturers and Retailers Excise Tax Regulations provides that the terms “fuel supplies” and “legitimate equipment” include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels actually engaged in foreign trade, even though such vessels may make intermediate stops in the United States.

Section 48.4221-4(b)(7) provides that the exemption relating to supplies for vessels or aircraft, with respect to aircraft not constituting equipment of the armed forces, extends to aircraft only when employed in foreign trade.

Section 48.4221-4(b)(8) provides that the term “trade” includes the transportation of persons or property for hire and the making of the necessary preparations for the transportation.

Rev. Rul. 69-259, 1969-1 C.B. 287, addresses the question of whether Plane No. 1 and Plane No. 2 are engaged in foreign trade within the meaning of § 4221(d)(3). Plane No. 1 flies from a city in the United States to a city in a foreign country with intermediate stops in the United States. The ruling holds that Plane No. 1 is engaged in foreign trade within the meaning of the statute and regulations even though it makes intermediate stops in the United States. Plane No. 2 flies only within the United States and carries passengers whose ultimate destinations are cities within the United States and other passengers with tickets to a city in a foreign country. The foreign bound passengers are transferred from Plane No. 2 to another airplane for completion of their flights. The ruling holds that Plane No. 2 cannot be considered engaged in foreign trade because, to be so engaged, the plane itself must travel to a foreign destination.

Section 4221(d)(3) defines the term supplies for vessels or aircraft as including fuel supplies on vessels actually engaged in foreign trade. Under § 48.4221-4(b)(8), the term trade includes the transportation of persons or property for hire. Thus, an aircraft is “actually engaged in foreign trade” when it is transporting any person for hire between the United States and a foreign

country. Under § 48.4221-4(b)(2), once an aircraft is actually engaged in foreign trade the aircraft remains so engaged even though it makes intermediate stops in the United States.

*Situation 1.* When flying from city #1 to city #3, Aircraft *A* is actually engaged in foreign trade within the meaning of § 4221(d)(3) because at least one person is transported for hire on that aircraft from city #1 to city #3. The stop in city #2 is an intermediate stop in the United States and thus Aircraft *A* is actually engaged in foreign trade on the flight from city #1 to city #2. Accordingly, the aviation fuel used in the aircraft on the flight from city #1 to city #2 is used in a nontaxable use for purposes of § 4092. The change in the flight number from Flight No. 111 to Flight No. 333 does not affect the determination of whether the aircraft is actually engaged in foreign trade.

*Situation 2.* When flying from city #4 to city #6, Aircraft *B* is actually engaged in foreign trade within the meaning of § 4221(d)(3) because at least one person is transported for hire on that aircraft from city #4 to city #6. The stop in city #5 is an intermediate stop in the United States and thus Aircraft *B* is actually engaged in foreign trade on the flight from city #5 to city #6. Accordingly, the aviation fuel used in the aircraft on the flight from city #5 to city #6 is used in a nontaxable use for purposes of § 4092. The change in the flight number from Flight No. 555 to Flight No. 777 does not affect the determination of whether the aircraft is actually engaged in foreign trade.

*Situation 3.* Aircraft *C* is not engaged in foreign trade even though some of its passengers transfer to Aircraft *A* for transport to a foreign country because Aircraft *C* flies only within the United States.

## HOLDING

For purposes of § 4092, an aircraft that flies a person for hire between the United States and a foreign country is actually engaged in foreign trade within the meaning of § 4221(d)(3). That aircraft is also actually engaged in foreign trade when flying that person from a city in the United States to another city in the United

States as part of the transportation between the United States and the foreign country.

This holding applies equally with respect to: fuel used in foreign aircraft that meet the requirements of § 4221(e)(1); aviation fuel not used for a taxable purpose within the meaning of § 6427(l); gasoline sold for specified uses and resales within the meaning of § 6416(b)(2); and gasoline sold for certain exempt purposes within the meaning of § 6421(c). This ruling does not consider the application of §§ 4092 and 4221(d)(3) to charter flights and no inferences should be drawn from this ruling regarding such flights.

#### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 69–259 is modified and superseded.

#### PROSPECTIVE APPLICATION

Pursuant to the authority provided by § 7805(b)(8), this revenue ruling will not apply before January 1, 2003.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Susan Athy of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Susan Athy at (202) 622–3130 (not a toll-free call).

### Section 6015.—Relief From Joint and Several Liability on Joint Return

*26 CFR 1.6015–1: Relief from joint and several liability on a joint return.*

#### T.D. 9003

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

#### Relief From Joint and Several Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and by the Community Renewal Tax Relief Act of 2000. The regulations provide guidance to married individuals filing joint returns who seek relief from joint and several liability.

EFFECTIVE DATE: These regulations are effective on July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles A. Hall, 202–622–4940 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1719. Responses to this collection of information are required in order for certain individuals to receive relief from the joint and several liability imposed by section 6013(d)(3).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The burden contained in § 1.6015–5 is reflected in the burden of Form 8857.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of

the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6013 of the Internal Revenue Code (Code), relating to the election to file a joint Federal income tax return, and section 6015, relating to relief from the joint and several liability. Section 6015 was added to the Code by section 3201 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA), effective for any joint liability that was unpaid as of July 22, 1998, and for any liability that arises after July 22, 1998. Section 6015 was amended by section 313 of the Community Renewal Tax Relief Act of 2000, which was enacted as part of the Consolidated Appropriations Act, 2001, Public Law 106–554 (114 Stat. 2763) (2000) (CRA).

This document also removes final regulation § 1.6013–5, relating to relief from joint and several liability under former section 6013(e). The final regulation under § 1.6013–5 is obsolete due to amendments to section 6013 of the Code by the Internal Revenue Service Restructuring and Reform Act of 1998. The removal of this regulation will not affect taxpayers.

A notice of proposed rulemaking (REG–106446–98, 2001–1 C.B. 945) was published in the **Federal Register** (66 FR 3888) on January 17, 2001, with correction dated March 29, 2001 (66 FR 17130). Several comment letters were received, and three of the commentators spoke at the public hearing on May 30, 2001. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

## Summary of Comments and Explanation of Revisions

### 1. Section 1.6015-1

Section 1.6015-1 of the proposed regulations contains general provisions that apply to all three types of relief from joint and several liability.

#### A. Types of relief considered

Section 1.6015-1 of the proposed regulations provides that if a requesting spouse only requests equitable relief under section 6015(f) and does not elect relief under section 6015(b) or (c), the IRS may not grant relief under either section 6015(b) or (c). Several commentators suggested that, regardless of the type of relief requested, the regulations should require that the IRS consider all three types of relief.

Relief under section 6015(b) and (c) must be elected by the requesting spouse. When an election is made, the statute of limitations on collection of the requesting spouse's liability relating to such election is suspended. In addition, the IRS is statutorily prohibited from pursuing certain collection activities until the claim for relief under section 6015(b) or (c) is resolved. When, however, a requesting spouse only requests equitable relief under section 6015(f), the statute of limitations on collection is not suspended, and the IRS is not prohibited from collecting the liability from the requesting spouse. The IRS cannot assume, absent an election under section 6015(b) or (c), that a requesting spouse, in only requesting relief under section 6015(f), would have elected relief under section 6015(b) or (c). Such an assumption would improperly suspend the requesting spouse's statute of limitations on collection when the requesting spouse did not elect relief under section 6015(b) or (c). Thus, the final regulations do not adopt this recommendation.

If, in the course of reviewing a request for relief only under section 6015(f), the IRS determines that the requesting spouse may qualify for relief under section 6015(b) or (c) instead of section 6015(f), the IRS will contact the requesting spouse to see if he or she wishes to amend the claim for relief by affirmatively electing

relief under section 6015(b) or (c). If the requesting spouse so chooses, he or she may submit a statement that amends the claim for relief and elects relief under section 6015(b) or (c). The final regulations provide that the amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

#### B. Duress

Section 1.6013-4(d) of the proposed regulations provides that if an individual asserts and establishes that he or she signed a return under *legal duress*, the return is not a joint return, and the individual is not jointly and severally liable for the tax shown on the return, or any deficiency in tax with respect to the return.

Two commentators suggested that § 1.6013-4(d) of the proposed regulations improperly denies the benefits of section 6015 to those individuals who establish that they signed returns under duress. The rule in § 1.6013-4(d) reflects well established case law regarding the consequences of filing a joint return under duress. Compare *Stanley v. Commissioner*, 45 T.C. 555 (1966), with *Brown v. Commissioner*, 51 T.C. 116 (1968). Under section 6013, married taxpayers may elect to file a joint return. If such an election is made, section 6013(d)(3) provides that both spouses are jointly and severally liable for the combined liability of both spouses. The election under section 6013 must be voluntarily made by both spouses. If either spouse involuntarily makes the election under duress, then the election is invalid with respect to both spouses.

One commentator suggested that the invalidation of the joint election when one spouse signs a return under duress inappropriately denies such spouse the benefits of certain credits (*e.g.*, the earned income credit) and the joint filing rates. An allegation that a spouse was forced to sign a joint return against his or her will indicates that, in the absence of the threat, the spouse would have filed a separate return. In order to qualify for the earned income credit or the joint return rates, the Code mandates that the spouse file a joint return. If the spouse filed a joint return in order to benefit from the earned income credit, the joint return rates, or other ben-

efits flowing from a joint return, and not due to duress, then the election to file the joint return was voluntary and valid. If the requesting spouse raises the issue of duress and it is determined that the requesting spouse would owe more tax if he or she filed a married filing separately return, then the requesting spouse may choose not to pursue the issue of duress.

Both commentators suggested that the rule regarding the treatment of returns signed under duress was inconsistent with the language of section 6015(c)(3)(C). Section 6015(c)(3)(C) provides that the limitation on relief under section 6015(c), when the requesting spouse has actual knowledge of the item giving rise to the deficiency, does not apply if the requesting spouse establishes that he or she signed the return under duress. Neither the limitation of section 6015(c)(3)(C), nor any portion of section 6013 or 6015 applies to a return signed under duress, *i.e.*, a return for which no valid joint return election was made. To interpret the rule to allow the benefits of a joint return in the absence of a valid joint return election, as the commentators suggest, would require that the IRS treat joint return elections as valid for purposes of section 6015(c), but invalid for purposes of sections 6015(b) and (f), when the requesting spouse establishes that the return was signed under duress. Placing the duress rule in the regulations under section 6013 results in consistent treatment of a claim of duress that would apply to the three relief provisions under section 6015.

One commentator suggested that, the Treasury and IRS refer to *duress* as opposed to *legal duress* because the term *legal duress* suggests that something more specific than *duress* is intended. In particular, the commentator noted that in some cases courts have declined to define *legal duress* to include domestic abuse. Although the final regulations use the term, *duress* rather than *legal duress*, Treasury and the IRS believe the terms are synonymous, and *duress* continues to provide a basis for invalidating the joint return election.

Nonetheless, Treasury and the IRS have taken these comments into consideration in interpreting the specific duress provision in section 6015(c)(3)(C). See the discussion of the abuse exception to

actual knowledge (§ 1.6015-3(c)(2)(v)) in section 3.B. of this preamble.

### C. Prior closing agreement or offer in compromise

Section 1.6015-1(c) of the proposed regulations provides that relief is not available if the requesting spouse signed a closing agreement or entered into an offer in compromise with the IRS for the same tax year for which he or she seeks relief under section 6015. One commentator suggested that there was no support for this position in the statute. Section 6015(g)(1) provides that “[e]xcept as provided in paragraphs (2) and (3), notwithstanding any other law or rule of law (other than section 6511, 6512(b), 7121, 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section.” (Emphasis added). Sections 7121 and 7122 deal with closing agreements and offers in compromise, respectively. Section 301.7121-1(c) of the Regulations on Procedure and Administration provides that a closing agreement is final and will not be set aside in the absence of fraud, malfeasance, or misrepresentation. Section 301.7122-1T(d)(5) of the Temporary Regulations on Procedure and Administration provides a similar rule for the finality of offers in compromise. Thus, the statute and the regulations directly support the position in the proposed regulations that relief under section 6015 is not available if the requesting spouse signed a closing agreement or offer in compromise disposing of the same liability that is the subject of the claim for relief.

Another commentator suggested that the requesting spouse should be given an opportunity to establish that he or she was not a party to the closing agreement or offer in compromise and that such signed documents should not preclude relief. In *Hopkins v. Commissioner*, 146 F.3d 729 (9th Cir. 1998), the United States Court of Appeals for the Ninth Circuit held that a claim for relief from joint and several liability under section 6013(e) was precluded if a closing agreement was signed by the requesting spouse for the tax year in question. Nothing in section 6015 nor the legislative history indicates that Congress intended to change the rules regarding the finality of such documents when

relief is requested under section 6015. If the requesting spouse did not sign the closing agreement or offer in compromise, then the requesting spouse is not bound by that document, and relief under section 6015 would be available. Thus, there is no need to amend the final regulations to incorporate this comment.

### D. Fraudulent scheme and fraud

Section 1.6015-1(d) of the proposed regulations provides that if the Secretary establishes that one spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015. Section 1.6015-3(d)(2)(ii) of the proposed regulations provides that the Service may allocate any item between the spouses if the Service establishes that the allocation is appropriate due to fraud by one or both spouses. Two commentators requested that the Treasury and IRS provide examples to distinguish between a fraudulent scheme and fraud.

*Fraudulent scheme* in § 1.6015-1(d) refers to a fraudulent transfer of assets. The final regulations clarify that a fraudulent scheme is a scheme to defraud the IRS or another third party, including, but not limited to, creditors, ex-spouses, and business partners. In contrast, *fraud* in § 1.6015-3(d)(2)(ii) encompasses any fraud of either spouse including, but not limited to, the fraudulent alteration of documents, the fraudulent filing of a return or claim for relief, or any other fraud that may be relevant to the claim for relief. The fraudulent scheme and fraud exceptions are very broad and might overlap in some circumstances. It would be misleading to provide discrete examples that attempt to distinguish between a fraudulent scheme and fraud. Thus, the final regulations do not adopt this recommendation.

### E. Definition of item

Section 1.6015-1(g)(3) of the proposed regulations defines *item* as that which is required to be separately listed on an individual income tax return or any required attachments, subject to one exception. The exception provides that interest and dividend income from the same source would be treated as one item. Several commentators suggested

that this rule be eliminated because the source of the income should not be relevant. The requesting spouse’s ability to receive partial relief from the deficiency relating to an erroneous item when the requesting spouse knew of part but not all of the item addresses the concern for which this rule was originally drafted. Thus, the final regulations adopt this recommendation.

### F. Definition of “erroneous item”

Section 1.6015-1(g)(4) of the proposed regulations defines *erroneous item* as any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. One commentator suggested that it was improper to include items that were improperly characterized on the return as erroneous items. The commentator suggested that such a rule would require a requesting spouse to know the proper characterization of an item in order for the spouse to receive relief. The proposed regulations, however, do not require a requesting spouse to know the proper characterization of an item for the item to be “erroneous.” To the contrary, if the requesting spouse knew of the item that gave rise to an understatement or deficiency, regardless of whether the requesting spouse also knew the item was improperly characterized, the item is “erroneous” under § 1.6015-1(g)(4). To remove improper characterization from the definition of erroneous item might create an inference that requesting spouses are not entitled to relief for an item that was improperly characterized on a return. Such a rule would be inconsistent with the statutory language. Therefore, the final regulations do not adopt this recommendation.

This provision was also amended to clarify that penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, then relief from such penalty will be determined based on whether the requesting spouse was relieved of liability from the erroneous item.

## G. Collection

Section 1.6015-1(h) of the proposed regulations provides that the relief provisions of section 6015 do not negate liability that arises under the operation of other laws. One commentator suggested that the regulations adopt a rule that the IRS would not look to community property as a collection source when a requesting spouse with an interest in such community property is granted relief under section 6015. A federal tax lien arising under section 6321 attaches to all property and rights to property of the taxpayer. Whether a taxpayer has an interest in property to which the lien can attach is determined by state law. *Aquilino v. United States*, 363 U.S. 509 (1960). Once that property interest is defined, federal law alone determines the consequences resulting from the attachment of the federal lien on the property. *United States v. Drye*, 528 U.S. 49 (1999). If under the law of the community property state in which the spouses reside, the IRS can look to community property to collect a liability of one of the spouses, the determination that the other spouse is entitled to relief under section 6015 does not affect the Service's ability to collect the nonrequesting spouse's liability from the community property. See, e.g., *United States v. Stolle*, 2000-1 U.S.T.C. ¶50,329 (C.D. Cal. 2000); *Hegg v. IRS*, 28 P.3d 1004 (Idaho 2001). The final regulations do not adopt this recommendation because it goes beyond the scope of the statute.

## H. Res judicata

Section 6015(g)(2) provides that, in the case of any election under section 6015(b) or (c), if a decision of a court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the requesting spouse for relief which was not at issue in that proceeding. This exception does not apply if the court determines that the requesting spouse participated meaningfully in the prior proceeding. In other words, a requesting spouse who participated meaningfully in a prior court proceeding concerning the underlying liability for which relief is sought is precluded by section 6015(g)(2) from electing relief under sec-

tion 6015(b) or (c) after the decision becomes final, whether or not the requesting spouse's eligibility for relief under section 6015(b) or (c) was at issue in the prior proceeding. In addition, under section 6015(g)(2) if the requesting spouse's entitlement to relief from liability under section 6015 for the same tax year was at issue in a prior proceeding, then, regardless of the extent of the requesting spouse's participation in such proceeding, the requesting spouse would be precluded from electing relief under section 6015(b) or (c) after the decision in such proceeding has become final. Thus, § 1.6015-1(e) of the final regulations was amended to emphasize that *res judicata* will apply if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in the prior proceeding.

### I. Scope of section 6015

The final regulations add § 1.6015-1(g), and redesignate § 1.6015-1(g) and (h) of the proposed regulations as § 1.6015-1(h) and (j), respectively. Section 1.6015-1(g) of the final regulations clarifies that relief under section 6015 will not be available for any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of any law or rule of law.

### 2. Section 1.6015-2

Section 1.6015-2 of the proposed regulations provides the rules regarding relief from joint and several liability under section 6015(b) that are applicable to all qualifying joint filers.

#### A. Knowledge or reason to know

Section 1.6015-2(a)(3) of the proposed regulations provides that one of the requirements of relief under section 6015(b) is that the requesting spouse establish that he or she had no knowledge or reason to know of the *item giving rise to the understatement*. Two commentators pointed out that the underlined language is not consistent with section 6015(b)(1)(C), which articulates the requirement as knowledge or reason to know of the *understatement*. Both commentators suggested that the rules regarding knowledge under section 6015(b)

should be consistent with the knowledge standard developed under former section 6013(e).

The language in § 1.6015-2(a)(3) of the proposed regulations was not intended to reflect a new standard of knowledge in section 6015(b) cases. Indeed, the standards for knowledge or reason to know that were developed under former section 6013(e) should be used in determining a requesting spouse's knowledge or reason to know under section 6015(b). The Treasury and IRS did not intend to suggest a harsher standard of knowledge under section 6015(b) than that which existed under section 6013(e). Therefore, the final regulations adopt this recommendation by amending the language of § 1.6015-2(a)(3) of the proposed regulations to be consistent with the language of section 6015(b)(1)(C).

#### B. Inequity

Section 1.6015-2(d) of the proposed regulations provides that all of the facts and circumstances are considered in determining whether it was inequitable to hold a requesting spouse liable for the understatement attributable to the nonrequesting spouse. Among the factors considered is whether the requesting spouse significantly benefitted, in excess of normal support, either directly or indirectly from the understatement. Such significant benefit may include transfers of property or rights to property, including transfers that may be received several years after the year of the understatement (e.g., life insurance proceeds) that are traceable to items omitted from gross income.

Two commentators suggested that the Treasury and IRS define *normal support* for purposes of this section. Normal support depends on the taxpayer's particular circumstances, including the cost of living, which varies across the country. Thus, a general definition in the final regulations would not be useful. Rules regarding normal support have been developed in case law under section 6013(e) and are applicable to section 6015(b) as well. The final regulations do not adopt this recommendation.

Another commentator questioned the conclusion in the example within § 1.6015-2(d) of the proposed regulations that life insurance proceeds that are traceable to items of omitted income of the

nonrequesting spouse are considered a significant benefit. The commentator pointed to the legislative history as suggesting that Congress intended widows to benefit from the relief provided by the statute, and it is likely that widows would receive such a benefit. The reference to widows in the legislative history to section 6015 is contained in a footnote to the legislative history for section 6015(c). The footnote provides that *no longer married* for purposes of that section includes widowed. The reference to widows is not in the legislative history for section 6015(b) with respect to the rules regarding equity under section 6015(b).

The courts have recognized that the rules regarding knowledge or reason to know and equity under section 6015(b) are consistent with the rules regarding knowledge or reason to know that were developed under section 6013(e). See, e.g., *Von Kalinowski v. Commissioner*, T.C. Memo. 2001–21. The rule regarding significant benefit from life insurance proceeds was contained in the regulations under § 1.6013–5. As life insurance proceeds traceable to items of omitted income were considered a significant benefit for purposes of section 6013(e), they are also considered a significant benefit for purposes of section 6015(b). While, the final regulations do not adopt this recommendation, they do clarify that the receipt of property, such as insurance proceeds or the value of life insurance, traceable to items omitted by the nonrequesting spouse must be beyond normal support before they are considered a significant benefit.

One commentator suggested that the final regulations provide that the IRS should consider the entire property settlement, if any, in order to determine whether the requesting spouse significantly benefitted from the understatement. The commentator suggested that if the requesting spouse did not receive an equitable distribution of assets during the divorce proceedings, the Service should not consider any items received by the requesting spouse that are traceable to items of omitted income as a significant benefit. Such a rule, however, would require the IRS to make a determination of whether the distribution of assets was fair in a divorce proceeding, which may have taken place years before and to

which the IRS was not a party. Many factors, including equity, are typically considered under state and local laws in determining the distribution of assets in a divorce proceeding. It would be inappropriate for the IRS to pass judgment on the equity of such determinations. The final regulations do not adopt this recommendation.

One commentator suggested that the final regulations adopt a *de minimis* exception to significant benefit. However, if the benefit was *de minimis*, it would not be significant. Thus, the final regulations do not adopt this recommendation.

Section 1.6015–2(d) of the proposed regulations also provides a list of factors that may be considered in determining whether it would be inequitable to hold the requesting spouse liable for an understatement. Such factors include the fact that the nonrequesting spouse has not fulfilled support obligations, or that the spouses are divorced, legally separated, or have not been members of the same household for the 12 months directly preceding the election. One commentator suggested that whether the spouses are divorced or legally separated, and the duration of the spouses' separation, should not be relevant to a determination of equity. The language in the proposed regulations was used in an attempt to be consistent with the marital status determination in section 6015(c). After further consideration, the Treasury and IRS have determined that, as the rules regarding equity under section 6015(b) are the same as those developed under section 6013(e), the final regulations should adopt the language that was used in former § 1.6013–5 regarding the couple's marital status. Thus, although the final regulations do not adopt the commentator's recommendation, the final regulations amend the language of § 1.6015–2(d) of the proposed regulations to be consistent with the language regarding equity under former § 6013–5, which provided that facts relevant to the determination of equity include whether the requesting spouse was abandoned by the nonrequesting spouse and whether the spouses are divorced or separated.

Section 1.6015–2(d) of the proposed regulations cross-references Rev. Proc. 2000–15 (2000–1 C.B. 447), for additional guidance on the definition of *ineq-*

*uitable*. Two commentators suggested that this cross-reference was inappropriate because the public did not have an opportunity to comment on the procedures in Rev. Proc. 2000–15. The procedures in Rev. Proc. 2000–15 were originally published in Notice 98–61 (1998–2 C.B. 756). Notice 98–61 was published on December 21, 1998, and the Treasury and IRS specifically requested comments on the procedures prescribed therein. The comment period was extended from April 30, 1999, to June 30, 1999, by Notice 99–29 (1999–1 C.B. 1101). Those procedures were finalized, with minor changes, in Rev. Proc. 2000–15, in January 2000. In addition, as the proposed regulations cross-referenced Rev. Proc. 2000–15, the procedures prescribed therein were again subject to comment during the comment period for the proposed regulations. No such comments were received.

Both §§ 1.6015–2 and 1.6015–4 require a determination of whether it was inequitable to hold a requesting spouse liable, and such a determination should be consistent under both relief provisions. Thus, it is appropriate for the final regulations to cross-reference the procedures for determining whether it is inequitable to hold a requesting spouse liable as outlined in Rev. Proc. 2000–15. The final regulations do not adopt this recommendation.

### 3. Section 1.6015–3

Section 1.6015–3 of the proposed regulations provides the rules regarding the allocation of a deficiency under section 6015(c) for spouses who are no longer married, legally separated, or not members of the same household.

#### A. Marital status

Section 1.6015–3(a) of the proposed regulations provides that spouses who are no longer married, legally separated, or who have not been members of the same household for the 12 months preceding the election may allocate a deficiency between the spouses in proportion to each spouse's share of the deficiency. Section 1.6015–3(b)(1) of the proposed regulations defines *divorced* as a requesting spouse having a decree of divorce that is recognized in the jurisdiction in which the requesting spouse resides. Section

1.6015-3(b)(2) defines *legally separated* as a separation that is recognized under the laws of the jurisdiction in which the requesting spouse resides. Several commentators suggested that the final regulations cross-reference the rules of section 7703, and the regulations thereunder, for a determination of whether a requesting spouse is divorced or legally separated. The final regulations adopt this recommendation.

Section 1.6015-3(b)(3)(i) of the proposed regulations defines *members of the same household* and provides that spouses are considered members of the same household if one of the spouses is temporarily absent from the household, and the household is maintained in anticipation of that spouse's return. Such temporary absences include, but are not limited to, incarceration, hospitalization, business travel, vacation travel, military service, or education away from home. One commentator suggested that the inclusion of incarceration and hospitalization as temporary absences was inappropriate under the circumstances of a typical case where a spouse is requesting relief from joint and several liability. Section 6015(c), however, provides relief to spouses who are divorced, widowed, legally separated, or who were not members of the same household for the 12 months preceding the election. H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess. 252 (1998); S. Rep. No. 105-174 (1998). The Treasury and IRS have interpreted "not members of the same household" as meaning that the spouses live apart and are estranged. Thus, if the spouses live apart due to a temporary absence, but the household is being maintained in anticipation of the absent spouse's return, then the spouses are still considered members of the same household. The exceptions regarding temporary absences are also consistent with the regulations under section 152, regarding temporary absences for purposes of a dependency exemption. The election to allocate liability is not available to spouses who are not divorced, widowed, legally separated, or living apart and estranged. Although the language in the final regulations was modified to more closely track the language of the regulations under section 152, the final regulations do not adopt this recommendation.

One commentator suggested that, because the election to allocate liability was meant to address the situation where spouses were divorced, widowed, or estranged, the final regulations should adopt a rule that spouses who indefinitely maintain separate households (the spouses have jobs in different cities, for example) but who are not estranged are considered members of the same household for purposes of this provision. This clarification is adopted in the final regulations.

In addition, § 1.6015-3(a) of the final regulations clarifies that, for purposes of section 6015(c), the marital status of a deceased requesting spouse is determined on the earlier of the date of the election or the date of the requesting spouse's death in accordance with section 7703(a)(1).

#### B. Actual knowledge

Section 1.6015-3(c)(2) of the proposed regulations provides that relief under section 6015(c) is not available if the IRS demonstrates that the requesting spouse had actual knowledge of the item giving rise to the deficiency at the time he or she signed the return. The proposed regulations adopt the holding in *Cheshire v. Commissioner*, 115 T.C. 183 (2000), *aff'd*, 282 F.3d 326 (5th Cir. 2002), that, in an omission of income case, the relevant inquiry is whether the requesting spouse had actual knowledge of the item, rather than whether the requesting spouse had actual knowledge of the tax consequences of the item. Several commentators suggested that the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item. The legislative history to section 6015(c) provides an example of a requesting spouse who had actual knowledge of a portion of the non-requesting spouse's self-employment income that was omitted from the return. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 253 (1998). The example provides that the requesting spouse remains liable for the portion of the income tax and self-employment tax deficiency attributable to the portion of the self-employment income of which the requesting spouse had actual knowledge. *Id.* Nothing in the example indicates that the IRS would have to establish that such spouse had actual knowledge that self-

employment income was subject to income tax and self-employment tax in order to invalidate the requesting spouse's section 6015(c) election under section 6015(c)(3)(C). In addition, in many cases, neither spouse may know the proper tax treatment of an item, and both spouses may have equal knowledge regarding the item. The fact that the spouse to whom the item is not attributable does not understand the intricacies of tax law should not be relevant to a determination of whether the spouse had actual knowledge of the item. Therefore, the final regulations do not adopt the recommendation to have the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item.

The Tax Court also held that, in an erroneous deduction case, the relevant inquiry is whether the requesting spouse had actual knowledge of the factual circumstances which made the item unallowable as a deduction, rather than whether the requesting spouse knew the proper tax consequences of the item. *King v. Commissioner*, 116 T.C. 198 (2001). The final regulations adopt the standard for erroneous deductions set forth in *King* in § 1.6015-3(c)(2)(i)(B)(I).

Section 1.6015-3(c)(2)(i)(B)(2) of the final regulations also clarifies that if a deduction or credit is fictitious or inflated, the relevant inquiry is whether the requesting spouse had actual knowledge that the expense was not incurred, or not incurred to that extent.

Section 1.6015-3(c)(2)(iii) of the proposed regulations provides that one factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an item giving rise to a deficiency is whether the requesting spouse deliberately avoided learning about the item. Several commentators suggested that this factor was inappropriate in that it would harm those individuals who do not pay attention to the family finances, or who are afraid to confront the nonrequesting spouse about financial matters. This rule, however, addresses situations where the requesting spouse makes a deliberate effort to avoid learning about an item in an attempt to be shielded from liability. For an example of deliberate avoidance, see *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992).



(Criminal money laundering case where the Fourth Circuit found that a finding of knowledge may be made by inferences drawn when a party deliberately closes his or her eyes to what would otherwise be obvious, *i.e.*, willful blindness to the existence of a fact).

As discussed above in section 1.B. of this preamble, section 6015(c)(3)(C) provides that the limitation on a requesting spouse's ability to allocate an erroneous item to the nonrequesting spouse when the requesting spouse had actual knowledge of that item does not apply if the requesting spouse establishes that he or she signed the return under duress. When a requesting spouse signs a return under duress, it is not that spouse's return, and accordingly, the spouse is not jointly and severally liable for the tax on that return. Thus, such spouse does not need the relief from joint and several liability provided by section 6015. The final regulations interpret the "duress" provision in section 6015(c)(3)(C) to mean that a requesting spouse in an abusive situation who does not establish that he or she signed the joint return under duress and elects relief from joint and several liability can receive such relief regardless of the requesting spouse's knowledge of the erroneous item at the time the return was signed. Although the requesting spouse may have voluntarily signed the joint return without a direct threat of abuse from the nonrequesting spouse, he or she may have not challenged the content of the joint return due to a long history of abuse from the nonrequesting spouse, resulting in a general fear of the nonrequesting spouse's reprisal. Thus, § 1.6015-3(c)(2)(v) of the final regulations provides that if a requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's reprisal, the actual knowledge limitation in § 1.6015-3(c)(2) will not apply.

### C. Disqualified assets

Section 1.6015-3 of the proposed regulations provides that the portion of a deficiency for which a requesting spouse remains liable will be increased (up to the

entire amount of the deficiency) by the value of any disqualified asset that is transferred to the requesting spouse. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Any asset transferred from the date that is 1 year prior to the date the first letter of proposed deficiency (30-day letter) is mailed, is presumed disqualified. The presumption will not apply if the asset is transferred pursuant to a divorce decree or separate maintenance agreement. Two commentators suggested that the use of the terms *divorce decree* and *separate maintenance agreement* is inconsistent with the language of the statute. The final regulations adopt this recommendation by amending the language of the regulation to read "decree of divorce or separate maintenance or written instrument incident to such decree."

One commentator suggested that there should be a *de minimis* exception to the disqualified asset limitation of \$5,000. The Treasury and IRS have determined that a *de minimis* exception to the disqualified asset rule is inappropriate. The disqualified asset rule limits relief under section 6015(c) when an asset is transferred to the requesting spouse for the purpose of avoidance of tax or payment of tax. The requesting spouse's participation in the attempt to avoid tax or the payment of tax should prevent the spouse from obtaining relief no matter how small the value of the asset. Thus, the final regulations do not adopt this recommendation for a *de minimis* exception.

One commentator suggested that an example of when a requesting spouse overcomes the disqualified asset presumption in § 1.6015-3(c)(3)(iii) be included in the final regulations. The final regulations adopt this recommendation.

One commentator suggested that some assets should be disqualified, even if they are transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree, if it can be shown that the assets are transferred for the purpose of avoidance of tax or payment of tax. The final regulations adopt this recommendation by clarifying the rule. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Regardless of the situation, if

the asset is transferred for that purpose, it is a disqualified asset. The rule regarding a transfer pursuant to a decree of divorce or separate maintenance provides that the "presumption" that an asset is disqualified will not apply if the asset is transferred pursuant to a decree unless the IRS can establish that the asset was transferred for the purpose of avoidance of tax or the payment of tax. If, however, in the absence of a decree, the requesting spouse cannot establish that the purpose of the transfer was not the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable.

### D. Burden of proof for allocation

Section 1.6015-3(d)(3) of the proposed regulations provides that a requesting spouse seeking to allocate liability under section 6015(c) has the burden of proof to establish the proper allocation of items. One commentator suggested that the final regulations provide an exception to this rule for cases where the requesting spouse is unable to locate the appropriate documents to establish the proper allocation. Section 6015(c)(2) places the burden on the requesting spouse. The final regulations do not adopt this recommendation.

### E. Other comments on allocation of items

Section 1.6015-3(d)(4)(ii) of the proposed regulations provides that any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or addition to tax (other than a tax imposed by section 1 or 55) is allocated separately to that spouse. One commentator suggested that such items should be allocated proportionately between the spouses instead of solely to one spouse or the other. Section 6015(d)(2) provides that if a deficiency is attributable to the disallowance of a credit, or any tax (other than tax imposed by section 1 or 55) required to be included with the joint return, and the item is allocated to one individual, the deficiency shall be allocated to that individual. The item will not be subject to the proportionate allocation in section 6015(d)(1). The statutory language of

section 6015(d)(2) suggests that separate treatment of items is only appropriate when the item is allocable solely to one spouse or the other. Thus, the final regulations adopt this recommendation by providing that the allocation of taxes and credits attributable to both spouses will be determined by the IRS on a case-by-case basis.

#### F. Child's liability

Section 1.6015-3(d)(4)(iii) of the proposed regulations provides that any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse will be allocated jointly to both spouses. If one of the spouses has sole custody of the child, the proposed regulations provided that the liability will be allocated solely to that spouse. One commentator suggested that the liability should be allocated based on the child's residence; another commentator suggested that the liability be allocated based on which parent is in control of the child's finances; and a third commentator suggested that it is not clear to which spouse a child's liability should be allocated. The final regulations address these recommendations, in part, by removing the exception to allocating the child's liability jointly to both parents when only one parent has custody of the child.

#### 4. Section 1.6015-4

Section 1.6015-4 of the proposed regulations provides the rules regarding equitable relief from joint and several liability under section 6015(f). Section 1.6015-4(b) of the proposed regulations provides that relief under § 1.6015-4 is not available to circumvent the "no refund" rule of § 1.6015-3(c)(1). Several commentators suggested that this rule be removed. Under Rev. Proc. 2000-15, refunds under section 6015(f) are generally limited to amounts paid pursuant to an installment agreement, on which the requesting spouse is not in default, from the date the claim for relief is filed until a final determination is made. The rule regarding installment payments is intended to encourage individuals to remain current on their installment agreements. Therefore, the Treasury and IRS determined that limited refunds would be

appropriate to encourage such compliance. Section 6015(g)(3), however, precludes the allowance of a credit or refund under section 6015(c). It would be inappropriate to circumvent the rule of section 6015(g)(3) by giving equitable relief in the form of a refund when the requesting spouse qualifies for relief under section 6015(c). Thus, the final regulations do not adopt this recommendation.

#### 5. Section 1.6015-5

Section 1.6015-5(b)(2) of the proposed regulations defines *collection activity* as, among other things, an administrative levy or seizure described by section 6331. Section 1.6015-5(b)(2) of the final regulations provides that the term *collection activity* includes a collection due process (CDP) notice under section 6330. That notice, which occurs in all cases before levy or seizure except in the case of levies on state tax refunds and in jeopardy situations, provides taxpayer notice of the Service's intent to levy and the taxpayer's right to a pre-levy CDP hearing. This change is consistent with the legislative history of section 6015(e). See H.R. Conf. Rep. No. 599, 105th Cong. 2d Sess. 250-251 (1998).

#### 6. Section 1.6015-6

Section 1.6015-6 of the proposed regulations provides rules regarding the nonrequesting spouse's right to notice and to participate in the administrative determination of whether the requesting spouse is entitled to relief under any of the provisions of section 6015. Some commentators suggested that the proposed regulations are overly broad in providing rights to the nonrequesting spouse, while other commentators suggested that the proposed regulations unnecessarily limit the rights of the nonrequesting spouse. One commentator suggested that the IRS have minimal contact with the nonrequesting spouse and that the nonrequesting spouse not be automatically notified at the administrative level. This commentator also suggested that all of the information submitted by the nonrequesting spouse be shared with the requesting spouse, but not vice versa. The commentator suggested that the nonrequesting spouse should only be given information submitted by the requesting spouse if the

nonrequesting spouse files his or her own request for relief. Section 6015 specifically provides the nonrequesting spouse with two opportunities to participate in the determination of whether the requesting spouse is entitled to relief (once at the administrative level under section 6015(h)(2), and once when the petition has been filed in the Tax Court under section 6015(e)(4)). The nonrequesting spouse's participation is necessary to ensure that relief is only granted in meritorious cases. The final regulations do not adopt these recommendations.

Section 1.6015-6(a)(1) of the proposed regulations provides that, at the request of one spouse, the IRS will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably identify the spouse's location. One commentator suggested that this information always be omitted from shared documents regardless of whether a spouse requests such treatment. The final regulations do not adopt this recommendation. Instead, this statement is removed from the final regulations. To address this concern, however, the Internal Revenue Manual provides that the IRS will omit from shared documents any information that could reasonably identify a spouse's location.

A commentator made several suggestions to help ensure that the nonrequesting spouse will have a meaningful opportunity to participate in the administrative determination. One suggestion is that the nonrequesting spouse have access to all information submitted by the requesting spouse, including the basis for relief. Under the proposed regulations, the IRS has the discretion to share information submitted by one spouse with the other spouse. It is the Service's practice to share information at the request of one of the spouses. The final regulations adopt this recommendation by clarifying that information will be shared on request as long as the information would not impair tax administration.

Another suggestion was that the nonrequesting spouse be afforded administrative appeal rights if the nonrequesting spouse disagrees with the Service's determination that the requesting spouse is entitled to relief. The nonrequesting spouse's participation is essential to a

proper determination of relief. The nonrequesting spouse may participate during the preliminary determination of relief, and if the requesting spouse files an administrative appeal or a petition in court, the nonrequesting spouse may participate in those proceedings as well. In addition, if a requesting spouse files a petition in Tax Court, the IRS is precluded from settling with the requesting spouse unless the nonrequesting spouse agrees to the settlement. See *Corson v. Commissioner*, 114 T.C. 354 (2000). The nonrequesting spouse is afforded a meaningful opportunity to participate in the administrative determination of relief, as well. Thus, the final regulations do not prohibit the nonrequesting spouse from administratively appealing the IRS's determination that the requesting spouse is entitled to relief from joint and several liability.

#### 7. Section 1.6015-7

Section 1.6015-7 of the final regulations reflects changes to section 6015 that were made by section 313 of the CRA with respect to waivers and the 90-day period for filing a Tax Court petition.

Section 1.6015-7(c)(1) of the final regulations reflects the fact that when the requesting spouse elects relief under § 1.6015-2 or 1.6015-3, the IRS is restricted from taking collection actions until a decision of the Tax Court becomes final. Section 1.6015-7(c)(1) also reflects the fact that section 6015(e)(1)(B)(i) provides that rules similar to the rules of section 7485 will apply with respect to collection actions. Section 7485 provides that the IRS may begin collection activity upon the filing of a notice of appeal from a Tax Court decision unless the taxpayer files an appeal bond. Because refunds may be limited under section 6015, a requesting spouse may be denied a refund of amounts collected during the pendency of an appeal proceeding, even if he or she is granted relief on appeal. Therefore, the IRS has determined that at this time it will not begin any collection activities against the requesting spouse upon the filing of a notice of appeal unless the expiration of the statute of limitations on collection is imminent, or that collection will be jeopardized by delay.

### Special Analyses

It has been determined that these final regulations are 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 the regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

### Drafting Information

The principal authors of the regulations are Bridget E. Finkenaur and Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

\* \* \* \* \*

### Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Section 1.6015-1 also issued under 26 U.S.C. 6015(h).

Section 1.6015-2 also issued under 26 U.S.C. 6015(h).

Section 1.6015-3 also issued under 26 U.S.C. 6015(h).

Section 1.6015-4 also issued under 26 U.S.C. 6015(h).

Section 1.6015-5 also issued under 26 U.S.C. 6015(h).

Section 1.6015-6 also issued under 26 U.S.C. 6015(h).

Section 1.6015-7 also issued under 26 U.S.C. 6015(h).

Section 1.6015-8 also issued under 26 U.S.C. 6015(h).

Section 1.6015-9 also issued under 26 U.S.C. 6015(h). \* \* \*

Par. 2. In § 1.6013-4, paragraph (d) is added to read as follows:

§ 1.6013-4 *Applicable rules.*

\* \* \* \* \*

(d) *Return signed under duress.* If an individual asserts and establishes that he or she signed a return under duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

### § 1.6013-5 [Removed]

Par. 3. Section 1.6013-5 is removed.

Par. 4. Sections 1.6015-0 through 1.6015-9 are added to read as follows:

§ 1.6015-0 *Table of contents.*

This section lists captions contained in §§ 1.6015-1 through 1.6015-9.

§ 1.6015-1 *Relief from joint and several liability on a joint return.*

- (a) In general.
- (b) Duress.
- (c) Prior closing agreement or offer in compromise.
  - (1) In general.
  - (2) Exception for agreements relating to TEFRA partnership proceedings.
  - (3) Examples.
  - (d) Fraudulent scheme.
  - (e) *Res judicata* and collateral estoppel.
  - (f) Community property laws.
    - (1) In general.
    - (2) Example.
  - (g) Scope of this section and §§ 1.6015-2 through 1.6015-9.
  - (h) Definitions.
    - (1) Requesting spouse.
    - (2) Nonrequesting spouse.
    - (3) Item.
    - (4) Erroneous item.
    - (5) Election or request.
      - (i) [Reserved]
      - (j) Transferee liability.
        - (1) In general.
        - (2) Example.

*§ 1.6015-2 Relief from liability applicable to all qualifying joint filers.*

- (a) In general.
- (b) Understatement.
- (c) Knowledge or reason to know.
- (d) Inequity.
- (e) Partial relief.
  - (1) In general.
  - (2) Example.

*§ 1.6015-3 Allocation of liability for individuals who are no longer married, are legally separated, or are not members of the same household.*

- (a) Election to allocate liability.
- (b) Definitions.
  - (1) Divorced.
  - (2) Legally separated.
  - (3) Members of the same household.
    - (i) Temporary absences.
    - (ii) Separate dwellings.
  - (c) Limitations.
    - (1) No refunds.
    - (2) Actual knowledge.
      - (i) In general.
        - (A) Omitted income.
        - (B) Deduction or credit.
          - (1) Erroneous deductions in general.
          - (2) Fictitious or inflated deduction.
        - (ii) Partial knowledge.
        - (iii) Knowledge of the source not sufficient.
        - (iv) Factors supporting actual knowledge.
        - (v) Abuse exception.
      - (3) Disqualified asset transfers.
        - (i) In general.
        - (ii) Disqualified asset defined.
        - (iii) Presumption.
      - (4) Examples.
      - (d) Allocation.
        - (1) In general.
        - (2) Allocation of erroneous items.
          - (i) Benefit on the return.
          - (ii) Fraud.
          - (iii) Erroneous items of income.
          - (iv) Erroneous deduction items.
        - (3) Burden of proof.
        - (4) General allocation method.
          - (i) Proportionate allocation.
          - (ii) Separate treatment items.
          - (iii) Child's liability.
          - (iv) Allocation of certain items.
            - (A) Alternative minimum tax.
            - (B) Accuracy-related and fraud penalties.
        - (5) Examples.
        - (6) Alternative allocation methods.

- (i) Allocation based on applicable tax rates.
- (ii) Allocation methods provided in subsequent published guidance.
- (iii) Example.

*§ 1.6015-4 Equitable relief.*

*§ 1.6015-5 Time and manner for requesting relief.*

- (a) Requesting relief.
- (b) Time period for filing a request for relief.
  - (1) In general.
  - (2) Definitions.
    - (i) Collection activity.
    - (ii) Section 6330 notice.
    - (3) Requests for relief made before commencement of collection activity.
    - (4) Examples.
    - (5) Premature requests for relief.
  - (c) Effect of a final administrative determination.

*§ 1.6015-6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.*

- (a) In general.
- (b) Information submitted.
- (c) Effect of opportunity to participate.

*§ 1.6015-7 Tax Court review.*

- (a) In general.
- (b) Time period for petitioning the Tax Court.
- (c) Restrictions on collection and suspension of the running of the period of limitations.
  - (1) Restrictions on collection under § 1.6015-2 or 1.6015-3.
  - (2) Waiver of the restrictions on collection.
  - (3) Suspension of the running of the period of limitations.
    - (i) Relief under § 1.6015-2 or 1.6015-3.
    - (ii) Relief under § 1.6015-4.
  - (4) Definitions.
    - (i) Levy.
    - (ii) Proceedings in court.
    - (iii) Assessment to which the election relates.

*§ 1.6015-8 Applicable liabilities.*

- (a) In general.
- (b) Liabilities paid on or before July 22, 1998.

- (c) Examples.

*§ 1.6015-9 Effective date.*

*§ 1.6015-1 Relief from joint and several liability on a joint return.*

(a) *In general.* (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. A spouse or former spouse may be relieved of joint and several liability for Federal income tax for that year under the following three relief provisions:

(i) Innocent spouse relief under § 1.6015-2.

(ii) Allocation of deficiency under § 1.6015-3.

(iii) Equitable relief under § 1.6015-4.

(2) A requesting spouse may submit a single claim electing relief under both or either §§ 1.6015-2 and 1.6015-3, and requesting relief under § 1.6015-4. However, equitable relief under § 1.6015-4 is available only to a requesting spouse who fails to qualify for relief under §§ 1.6015-2 and 1.6015-3. If a requesting spouse elects the application of either § 1.6015-2 or 1.6015-3, the Internal Revenue Service will consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under § 1.6015-4. If a requesting spouse seeks relief only under § 1.6015-4, the Secretary may not grant relief under § 1.6015-2 or 1.6015-3 in the absence of an affirmative election made by the requesting spouse under either of those sections. If in the course of reviewing a request for relief only under § 1.6015-4, the IRS determines that the requesting spouse may qualify for relief under § 1.6015-2 or 1.6015-3 instead of § 1.6015-4, the Internal Revenue Service will correspond with the requesting spouse to see if the requesting spouse would like to amend his or her request to elect the application of § 1.6015-2 or 1.6015-3. If the requesting spouse chooses to amend the claim for relief, the requesting spouse must submit an affirmative election under § 1.6015-2 or 1.6015-3. The amended claim for relief

will relate back to the original claim for purposes of determining the timeliness of the claim.

(3) Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) *Duress*. For rules relating to the treatment of returns signed under duress, see § 1.6013-4(d).

(c) *Prior closing agreement or offer in compromise*—(1) *In general*. A requesting spouse is not entitled to relief from joint and several liability under § 1.6015-2, 1.6015-3, or 1.6015-4 for any tax year for which the requesting spouse has entered into a closing agreement with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability under § 1.6015-2, 1.6015-3, or 1.6015-4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(2) *Exception for agreements relating to TEFRA partnership proceedings*. The rule in paragraph (c)(1) of this section regarding the unavailability of relief from joint and several liability when the liability to which the claim for relief relates was the subject of a prior closing agreement entered into by the requesting spouse, shall not apply to an agreement described in section 6224(c) with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) that is entered into while the requesting spouse is a party to a pending partnership-level proceeding conducted under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding). If, however, a requesting spouse enters into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to adjustments to partnership items, at a time when the requesting spouse is not a party to a pend-

ing TEFRA partnership proceeding (e.g., in connection with an affected items proceeding), then the provisions of paragraph (c)(1) shall apply. Similarly, if a requesting spouse enters into a closing agreement with respect to both partnership items (including affected items) and nonpartnership items, while the requesting spouse is a party to a pending TEFRA partnership proceeding, the provisions of paragraph (c)(1) shall apply to the portion of the closing agreement that relates to nonpartnership items and the provisions of this paragraph (c)(2) shall apply to the remainder of the closing agreement.

(3) *Examples*. The following examples illustrate the rules of this paragraph (c):

*Example 1*. H and W file joint returns for taxable years 2002-2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002-2004 taxable years, and sends H and W a notice under section 6223(a)(1). In September 2007, H files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge in April 2008. In August 2008, H and W enter into a closing agreement with the Internal Revenue Service, in which H and W agree to the disallowance of some of the claimed losses from Partnership A for taxable years 2002 through 2007. W may not later claim relief from joint and several liability under section 6015 as to the disallowed losses attributable to Partnership A for taxable years 2002 to 2007. This is because at the time W entered into the closing agreement, H's partnership items attributable to Partnership A had converted to nonpartnership items as a result of H's filing of the bankruptcy petition. The conversion of H's items also terminated W's status as a partner in the TEFRA partnership proceeding regarding Partnership A. Consequently, the closing agreement did not pertain to partnership items and W was not a party to a pending partnership-level proceeding regarding Partnership A when she entered into the closing agreement. Accordingly, the exception in paragraph (c)(2) of this section for agreements relating to TEFRA partnership proceedings does not apply.

*Example 2*. H and W file a joint return for taxable year 2002, on which they claim \$25,000 in losses attributable to H's general partnership interest in Partnership B. In November 2003, the Service proposes a deficiency in tax relating to H's and W's 2002 joint return arising from omitted taxable interest income in the amount of \$2,000 that is attributable to H. In July 2005, the Internal Revenue Service commences a TEFRA partnership proceeding regarding Partnership B's 2002 and 2003 taxable years, and sends H and W a notice under section 6223(a)(1). In March 2006, H and W enter into a closing agreement with the Service. The closing agreement provides for the disallowance of the claimed losses from Partnership B in excess of H's and W's out-of-pocket expenditures relating to Part-

nership B for taxable year 2002 and any subsequent year(s) in which H and W claimed losses from Partnership B. In addition, H and W agree to the imposition of the accuracy-related penalty under section 6662 with respect to the disallowed losses attributable to partnership B. In the closing agreement, H and W also agree to the deficiency resulting from the omitted interest income for taxable year 2002. W may not later claim relief from joint and several liability under section 6015 as to the deficiency in tax attributable to the omitted income of \$2,000 for taxable year 2002, because this portion of the closing agreement pertains to nonpartnership items. In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See § 1.6015-5(b)(5) relating to premature claims).

(d) *Fraudulent scheme*. If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Res judicata and collateral estoppel*. A requesting spouse is barred from relief from joint and several liability under section 6015 by *res judicata* for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised relief under section 6015. A requesting spouse has not meaningfully participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive and the requesting spouse may be collaterally estopped from relitigating those issues.

(f) *Community property laws*—(1) *In general*. In determining whether relief is available under § 1.6015-2, 1.6015-3, or 1.6015-4, items of income, credits, and deductions are generally allocated to the

spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See § 1.6015-3(d)(2).

(2) *Example.* The following example illustrates the rule of this paragraph (f):

*Example.* (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a \$17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to \$20,000 of H's unreported interest income from his individual bank account. The remainder of the deficiency is attributable to \$30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the \$20,000 unreported interest income is allocable to H, and the \$30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) *Scope of this section and §§ 1.6015-2 through 1.6015-9.* This section and §§ 1.6015-2 through 1.6015-9 do not apply to any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of law or rule of law.

(h) *Definitions—(1) Requesting spouse.* A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under § 1.6015-2 or 1.6015-3, or requests relief from Federal income tax liability arising from that return under § 1.6015-4.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) *Item.* An item is that which is required to be separately listed on an individual income tax return or any required attachments. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) *Erroneous item.* An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an

investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. In addition, a deduction for an expense that is personal in nature that results in an understatement or deficiency in tax is an erroneous item of deduction. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return). Penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see § 1.6015-3(d)(4)(iv)(B).

(5) *Election or request.* A qualifying election under § 1.6015-2 or 1.6015-3, or request under § 1.6015-4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under § 1.6015-3 when the additional qualifications of paragraphs (h)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under § 1.6015-3 when the Internal Revenue Service considered the first election solely because the qualifications of § 1.6015-3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under § 1.6015-3(a) are satisfied.

(i) [Reserved]

(j) *Transferee liability—(1) In general.* The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under § 1.6015-2, 1.6015-3, or 1.6015-4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In

addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) *Example.* The following example illustrates the rule of this paragraph (j):

*Example.* H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's will transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under section 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property laws.

### § 1.6015-2 Relief from liability applicable to all qualifying joint filers.

(a) *In general.* A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§ 1.6015-1(h)(5) and 1.6015-5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) *Understatement.* The term *understatement* has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. For rules relating to a requesting spouse's actual knowledge, see § 1.6015-3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the

erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) *Inequity*. All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000-15, 2000-1 C.B. 447, or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(e) *Partial relief*—(1) *In general*. If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse

may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example*. The following example illustrates the rules of this paragraph (e):

*Example*. H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling \$2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during 2004, H transferred an additional \$10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities. However, W did have knowledge and reason to know of \$120,000 of the \$2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from \$1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from \$120,000 of the unreported embezzlement income of which she knew and had reason to know.

§ 1.6015-3 *Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.*

(a) *Election to allocate deficiency*. A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. For purposes of this section, the marital status of a deceased requesting spouse will be determined on the earlier of the date of the election or the date of death in accordance with section 7703(a)(1). Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§ 1.6015-1(h)(5) and 1.6015-5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses

filing the joint return if each spouse is eligible for and elects the application of this section.

(b) *Definitions*—(1) *Divorced*. A determination of whether a requesting spouse is divorced for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(2) *Legally separated*. A determination of whether a requesting spouse is legally separated for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(3) *Members of the same household*—

(i) *Temporary absences*. A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education.

(ii) *Separate dwellings*. A husband and wife who reside in the same dwelling are considered members of the same household. In addition, a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds*. Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*—(i) *In general*. If, under section 6015(c)(3)(C), the Secretary demonstrates that, at the time the return was signed, the requesting spouse had actual knowledge of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. The IRS, having

both the burden of production and the burden of persuasion, must establish, by a preponderance of the evidence, that the requesting spouse had actual knowledge of the erroneous item in order to invalidate the election.

(A) *Omitted income.* In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume W received \$5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received \$5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (*i.e.*, \$5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. This rule applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash (*e.g.*, dividend reinvestment or a distributive share from a flow-through entity shown on Schedule K-1, “Partner’s Share of Income, Credits, Deductions, etc.”).

(B) *Deduction or credit*—(1) *Erroneous deductions in general.* In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit.

(2) *Fictitious or inflated deduction.* If a deduction is fictitious or inflated, the IRS must establish that the requesting spouse actually knew that the expenditure was not incurred, or not incurred to that extent.

(ii) *Partial knowledge.* If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received \$1,000 of dividend income and did not know that W received an additional \$4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the \$1,000 of dividend income of which H had actual knowledge. A requesting spouse’s actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W’s dividend

income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under this section. In addition, a requesting spouse’s knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W’s dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this section.

(iii) *Knowledge of the source not sufficient.* Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H’s knowledge of W’s ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse’s actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H’s knowledge of W’s ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H’s reason to know. Similarly, the IRS need not establish that a requesting spouse knew of the source of an erroneous item in order to establish that the requesting spouse had actual knowledge of the item itself. For example, assume H knew that W received \$1,000, but he did not know the source of the \$1,000. W and H omit the \$1,000 from their joint return. H has actual knowledge of the item giving rise to the deficiency (\$1,000), and relief is not available under this section.

(iv) *Factors supporting actual knowledge.* To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the IRS may rely upon all of the facts and circumstances. One factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the

requesting spouse had actual knowledge of the item, and the requesting spouse’s election would be invalid with respect to that entire item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse’s name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns ½ of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iv) because the account is not held in her name and there is no other indication that she asserted dominion and control over the item.

(v) *Abuse exception.* If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse’s retaliation, the limitation on actual knowledge in this paragraph (c) will not apply. However, if the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013-4(d) applies.

(3) *Disqualified asset transfers*—(i) *In general.* The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the



deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined.* A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) *Presumption.* Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. The presumption does not apply, however, if the requesting spouse establishes that the asset was transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree. If the presumption does not apply, but the Internal Revenue Service can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable. If the presumption applies, a requesting spouse may still rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) *Examples.* The following examples illustrate the rules in this paragraph (c):

*Example 1. Actual knowledge of an erroneous item.* (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. H and W divorce in July 2003. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not

know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

*Example 2. Actual knowledge not inferred from a requesting spouse's reason to know.* (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a \$100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the \$100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item (i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the \$100,000 deficiency to H is valid.

*Example 3. Actual knowledge and failure to review return.* (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to \$100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the \$100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

*Example 4. Actual knowledge of an erroneous item of income.* (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H's and W's 2002 joint Federal income tax return that is attributable to \$30,000 of unreported income from H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether H received any income from the business. W's election to allocate to H the defi-

ciency attributable to the \$30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W knew that H received \$20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the \$20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the \$10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least \$8,000 of plumbing income. W's election to allocate to H the deficiency attributable to \$8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining \$22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported \$26,000 of plumbing income on the return and omitted \$4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than \$26,000 that year. W's election to allocate to H the deficiency attributable to the \$4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of \$26,000.

(v) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported only \$20,000 of plumbing income on the return and omitted \$10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least \$26,000 that year as a plumber. However, W did not know that, in reality, H earned \$30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the \$6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the \$4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

*Example 5. Actual knowledge of a deduction that is an erroneous item.* (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint Federal income tax return. The deficiency is attributable to a disallowed \$1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that, at the time W signed the return, W did not know whether H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 6* except that the Internal Revenue Service disallowed \$400 of the \$1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than \$600.

(iv) Assume the same facts as in paragraph (i) of this *Example 6* except that H claims a medical expense deduction of \$10,000 and the Internal Revenue Service disallows \$9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than \$1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge (\$9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge (\$600) is valid.

*Example 6. Disqualified asset presumption.* (i) H and W are divorced. In May 1999, W transfers \$20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a \$40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that \$30,000 of the deficiency be allocated to W and \$10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the \$20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the \$20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable (\$10,000) is increased by the value of the disqualified asset (\$20,000). H is relieved of liability for \$10,000 of the \$30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining \$30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

*Example 7. Disqualified asset presumption inapplicable.* On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to a decree of divorce, H must transfer 1/2 of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of 1/2 of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified

asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

*Example 8. Overcoming the disqualified asset presumption.* (i) H and W are married for 25 years. Every September, on W's birthday, H gives W a gift of \$500. On February 28, 2002, H and W receive a 30-day letter from the Internal Revenue Service relating to their 1998 joint individual Federal income tax return. The deficiency relates to H's Schedule C business, and W had no knowledge of the items giving rise to the deficiency. H and W are legally separated in June 2003, and, despite the separation, H continues to give W \$500 each year for her birthday. H is not required to give such amounts pursuant to a decree of divorce or separate maintenance.

(ii) On January 27, 2004, W files an election to allocate the deficiency to H. The \$1,500 transferred from H to W from February 28, 2001 (a year before the 30-day letter was mailed) to the present is presumed disqualified. However, W may overcome the presumption that such amounts were disqualified by establishing that such amounts were birthday gifts from H and that she has received such gifts during their entire marriage. Such facts would show that the amounts were not transferred for the purpose of avoidance of tax or payment of tax.

(d) *Allocation*—(1) *In general.* (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this section remains liable for the entire amount of the deficiency. Even if both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) *Allocation of erroneous items.* For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) *Benefit on the return.* An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) *Fraud.* The Internal Revenue Service may allocate any item between the spouses if the Internal Revenue Service establishes that the allocation is appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income.* Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse

who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (c)(2)(iv) of this section. For rules regarding the effect of community property laws, see § 1.6015-1(f) and paragraph (c)(2)(iv) of this section.

(iv) *Erroneous deduction items.* Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Deduction items unrelated to a business or investment are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof.* Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) *General allocation method*—(i) *Proportionate allocation.* (A) The portion of a deficiency allocable to a spouse is

the amount that bears the same ratio to the deficiency as the net amount of erro-

neous items allocable to the spouse bears to the net amount of all erroneous items.

This calculation may be expressed as follows:

$$X = (\text{deficiency}) \quad \times \quad \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse.

(B) The proportionate allocation applies to any portion of the deficiency other than—

(1) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(2) Any portion of the deficiency attributable to separate treatment items (as defined in paragraph (d)(4)(ii) of this section);

(3) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(4) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(5) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(6) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph (d)(6) of this section.

(ii) *Separate treatment items.* Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. If such credit or tax is attributable in whole or in part to both spouses, then the IRS will determine on a case by case basis how such item will be allocated. Once the

proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) *Child's liability.* Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is allocated jointly to both spouses. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

(iv) *Allocation of certain items—(A) Alternative minimum tax.* Any portion of a deficiency relating to the alternative minimum tax under section 55 will be allocated appropriately.

(B) *Accuracy-related and fraud penalties.* Any accuracy-related or fraud penalties under section 6662 or 6663 are allocated to the spouse whose item generated the penalty.

(5) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as follows:

*Example 1. Allocation of erroneous items.* (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency—

(A) Unreported interest income, of which W had actual knowledge, from H's and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C; and

(C) A disallowed Lifetime Learning Credit for W's post-secondary education, paid for by W.

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated 1/2 to H and 1/2 to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

*Example 2. Proportionate allocation.* (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a \$54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed \$15,000 business deduction allocable to H;

(B) \$20,000 of unreported income allocable to H;

(C) A disallowed \$5,000 deduction for educational expense allocable to H;

(D) A disallowed \$40,000 charitable contribution deduction allocable to W; and

(E) A disallowed \$40,000 interest deduction allocable to W.

(ii) In total, there are \$120,000 worth of erroneous items, of which \$80,000 are attributable to W and \$40,000 are attributable to H.

<u>W's items</u>
\$40,000 charitable deduction
<u>\$40,000</u> interest deduction
\$80,000

<u>H's items</u>
\$15,000 business deduction
\$20,000 unreported income
<u>\$ 5,000</u> education deduction
\$40,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 2/3 (\$80,000/\$120,000). W's liability is limited to \$36,000 of the deficiency (2/3 of \$54,000). The Internal Revenue Service may collect up to \$36,000 from W and up to \$54,000 from H (the total amount collected, however, may not exceed \$54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would be permitted to collect \$36,000 from W and \$18,000 from H.

*Example 3. Proportionate allocation with joint erroneous item.* (i) On September 4, 2001, W elects to allocate a \$3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency—

(A) Unreported interest in the amount of \$4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of \$2,000 attributable to H's business; and

(C) Unreported wage income in the amount of \$6,000 attributable to W's second job.

(ii) The erroneous items total \$12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is \$1,000. W may allocate the remaining \$2,000 of the deficiency.

H's items	W's items
\$2,000 business deduction	\$6,000 wage income
Total allocable items: \$8,000	

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 3/4 (\$6,000/\$8,000). W's liability is limited to \$1,500 of the deficiency (3/4 of \$2,000) allocated to her. The Internal Revenue Service may collect up to \$2,500 from W (3/4 of the total allocated deficiency plus \$1,000 of the deficiency attributable to the joint bank account interest) and up to \$3,000 from H (the total amount collected, however, cannot exceed \$3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for 3/4 of the deficiency, which is allocated to W. H's relief totals \$1,500 (3/4 of \$2,000). H remains liable for \$1,500 of the deficiency (1/4 of the allocated deficiency

plus \$1,000 of the deficiency attributable to the joint bank account interest).

*Example 4. Separate treatment items (STIs).* (i) On September 1, 2006, a \$28,000 deficiency is assessed with respect to H's and W's 2003 joint return. The deficiency is the result of 4 erroneous items—

(A) A disallowed Lifetime Learning Credit of \$2,000 attributable to H;

(B) A disallowed business expense deduction of \$8,000 attributable to H;

(C) Unreported income of \$24,000 attributable to W; and

(D) Unreported self-employment tax of \$14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The \$2,000 Lifetime Learning Credit and the \$14,000 self-employment tax are STIs totaling \$16,000. The amount of erroneous items included in computing the proportionate allocation ratio is \$32,000 (\$24,000 unreported income and \$8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs (\$28,000-\$16,000 = \$12,000).

(iv) Of the \$32,000 of proportionate allocation items, \$24,000 is allocable to W, and \$8,000 is allocable to H.

W's share of allocable items	H's share of allocable items
3/4 (\$24,000/\$32,000)	1/4 (\$8,000/\$32,000)

(v) W's liability for the portion of the deficiency subject to proportionate allocation is limited to \$9,000 (3/4 of \$12,000) and H's liability for such portion is limited to \$3,000 (1/4 of \$12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each

spouse's allocated share of the deficiency.

W's share of total deficiency	H's share of total deficiency
\$ 9,000 allocated deficiency	\$3,000 allocated deficiency
<u>\$14,000</u> self-employment tax	<u>\$2,000</u> Lifetime Learning Credit
\$23,000	\$5,000

(vii) Therefore, W's liability is limited to \$23,000 and H's liability is limited to \$5,000.

*Example 5. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item.* (i) In 2001, H reports gross income of \$4,000 from his business on Schedule C, and W reports \$50,000 of wage income. On their 2001 joint Federal income tax return, H deducts \$20,000 of business expenses resulting in a net loss from his business of \$16,000. H and W divorce in September 2002, and on May 22, 2003, a \$5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's \$20,000 of deductions.

(ii) Since H used only \$4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other \$16,000 of the disallowed deductions used to offset her wage income. Therefore, \$4,000 of the disallowed deductions are allocable to H and \$16,000 of the disallowed deductions are allocable to W. W's liability is limited to \$4,160 (4/5 of \$5,200). If H also elected to allocate the deficiency, H's election to allocate the \$4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

*Example 6 . Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed.* Assume the same facts as in Example 6, except that

H deducts \$18,000 for business expenses on the joint return, of which \$16,000 are disallowed. Since H used only \$2,000 of the \$16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other \$14,000 of the disallowed deductions used to offset her wage income. Therefore, \$2,000 of the disallowed deductions are allocable to H and \$14,000 of the disallowed deductions are allocable to W. W's liability is limited to \$4,550 (7/8 of \$5,200).

(6) *Alternative allocation methods—(i) Allocation based on applicable tax rates.*

If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency will be allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance.* Additional alternative methods for allocating erroneous items under section 6015(c) may be prescribed by the Treasury and IRS in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(6):

*Example. Allocation based on applicable tax rates.* H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a \$5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, \$2,000 results from unreported capital gain of \$6,000 that is attributable to W and \$4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining \$3,100 of the deficiency is attributable to \$10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items (\$10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the \$2,000 deficiency attributable to these items (or \$1,200) is allocated to W. The remaining 40% of this portion of the deficiency (\$800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for \$3,900 of the deficiency (\$800 + \$3,100), and W is liable for the remaining \$1,200.

#### § 1.6015-4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015-2 or 1.6015-3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequi-

table to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015-3(c)(1) (i.e., no refunds under § 1.6015-3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000-15, 2000-1 C.B. 447, or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

#### § 1.6015-5 Time and manner for requesting relief.

(a) *Requesting relief.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief—(1) In general.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions—(i) Collection activity.* For purposes of this paragraph (b), collection activity means a section 6330 notice; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting

spouse. Collection activity does not include a notice of deficiency; the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term *property of the requesting spouse*, for purposes of this paragraph (b), means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the Service's intent to levy and of their right to a collection due process (CDP) hearing.

(3) *Requests for relief made before commencement of collection activity.* An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return or a demand for payment, or pursuant to the CDP hearing procedures under sections 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

*Example 1.* On January 11, 2000, a section 6330 notice is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's employer on June 5, 2000. The Internal Revenue Service levies on H's employer on July 10, 2000. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

*Example 2.* The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

*Example 3.* Assume the same facts as in Example 2, except that the Internal Revenue Service sends a section 6330 notice on January 22, 1999. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

*Example 4.* H and W do not remit full payment with their timely filed joint Federal income tax

return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly-held business property on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

*Example 5.* W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the proof of claim in W's bankruptcy case.

(5) *Premature requests for relief.* The Internal Revenue Service will not consider premature claims for relief under § 1.6015-2, 1.6015-3, or 1.6015-4. A premature claim is a claim for relief that is filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under § 1.6015-1(h)(5).

(c) *Effect of a final administrative determination—(1) In general.* A requesting spouse is entitled to only one final administrative determination of relief under § 1.6015-1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in § 1.6015-1(h)(5).

(2) *Example.* The following example illustrates the rule of this paragraph (c):

*Example.* In January 2001, W becomes a limited partner in partnership P, and in February 2001, she starts her own business from which she earns \$100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim \$20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service

sends him a notice of computational adjustment or assesses the liability resulting from the TEFRA partnership proceeding before he files a claim for relief with respect to any such liability. The assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

*§ 1.6015-6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.*

(a) *In general.* (1) When the Internal Revenue Service receives an election under § 1.6015-2 or 1.6015-3, or a request for relief under § 1.6015-4, the Internal Revenue Service must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. Upon the request of either spouse, the Internal Revenue Service will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.

(2) The Internal Revenue Service must notify the nonrequesting spouse of the Service's preliminary and final determinations with respect to the requesting spouse's claim for relief under section 6015.

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§ 1.6015-2(d) and 1.6015-4, to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) *Effect of opportunity to participate.* The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

*§ 1.6015-7 Tax Court review.*

(a) *In general.* Requesting spouses may petition the Tax Court to review the denial of relief under § 1.6015-1.

(b) *Time period for petitioning the Tax Court.* Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under § 1.6015-1 within 90 days after the date notice of the Service's final determination is mailed by certified or registered mail (90-day period). If the IRS does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under § 1.6015-2 or 1.6015-3, the requesting spouse may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day

period. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(c) *Restrictions on collection and suspension of the running of the period of limitations*—(1) *Restrictions on collection under § 1.6015-2 or 1.6015-3.* Unless the Internal Revenue Service determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse electing the application of § 1.6015-2 or 1.6015-3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding the above, if the requesting spouse appeals the Tax Court's decision, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Waiver of the restrictions on collection.* A requesting spouse may, at any time (regardless of whether a notice of the Service's final determination of relief is mailed), waive the restrictions on collection in paragraph (c)(1) of this section.

(3) *Suspension of the running of the period of limitations*—(i) *Relief under § 1.6015-2 or 1.6015-3.* The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under § 1.6015-2 or 1.6015-3 relates is suspended for the period during

which the Internal Revenue Service is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. However, if the requesting spouse signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the Internal Revenue Service.

(ii) *Relief under § 1.6015-4.* If a requesting spouse seeks only equitable relief under § 1.6015-4, the restrictions on collection of paragraph (c)(1) of this section do not apply. Accordingly, the request for relief does not suspend the running of the period of limitations on collection.

(4) *Definitions*—(i) *Levy.* For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) *Proceedings in court.* For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Internal Revenue Service or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) *Assessment to which the election relates.* For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with respect to only part of that deficiency.

#### § 1.6015-8 Applicable liabilities.

(a) *In general.* Section 6015 applies to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) *Liabilities paid on or before July 22, 1998.* A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* H and W file a joint Federal income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

*Example 2.* H and W file their 1995 joint Federal income tax return on April 15, 1996. On October 14, 1997, a deficiency of \$5,000 is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on the \$3,000 in W's bank account in partial satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998. Section 6015 is applicable to the \$2,000 that remained unpaid as of July 22, 1998, and section 6013(e) is applicable to the \$3,000 that was paid prior to July 22, 1998.

#### § 1.6015-9 Effective date.

Sections 1.6015-0 through 1.6015-9 are applicable for all elections under § 1.6015-2 or 1.6015-3 or any requests for relief under § 1.6015-4 filed on or after July 18, 2002.

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

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to read as follows:

#### § 602.101 OMB Control Numbers.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

1.6015-5 ..... 1545-1719

\* \* \* \* \*

Robert E. Wenzel, Deputy Commissioner of Internal Revenue.

T.D. 9006

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 601

Notice to Interested Parties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the notice to interested parties requirement. Before the IRS can issue an advance determination regarding the qualification of a retirement plan, a plan sponsor must provide evidence that it has notified all persons who qualify as interested parties that an application for an advance determination will be filed with the IRS. These regulations set forth standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations affect retirement plan sponsors, plan participants and other interested parties with respect to a determination letter application, and certain representatives of interested parties.

DATES: Effective Date: These regulations are effective on July 19, 2002.

Applicability Date: These regulations apply to applications made on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1 and 601 under section 7476 of the Internal Revenue Code of

1986 (Code). On May 21, 1976, final regulations (T.D. 7421, 1976-1 C.B. 405) under section 7476 were published in the Federal Register (41 FR 20874). These final regulations provide guidance on the nature and method of giving notice to interested parties. On January 17, 2001, a notice of proposed rulemaking (REG-129608-00, 2001-1 C.B. 1011) was published in the Federal Register (66 FR 3954), setting forth the proposed new standards for delivery of the notice to interested parties. No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. Overview

Section 7476(b)(2) provides that, with respect to a pleading filed by a petitioner for a request for a determination on the qualified status of a retirement plan under section 7476(a), the United States Tax Court may find the pleading to be premature unless the petitioner establishes to the satisfaction of the Court that he has complied with the requirements prescribed by the regulations of the Secretary regarding the notice to interested parties of the filing of the request for a determination. Section 3001(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provides that before issuing an advance determination regarding the qualification of a retirement plan, the Secretary of Treasury shall require that an applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party of the application for a determination. The final regulations

Approved July 3, 2002.

Pamela F. Olson, Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 17, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 18, 2002, 67 F.R. 47278)

Section 6416.—Certain Taxes on Sales and Services

26 CFR 48.6416(b)(2)-2: Exportations, uses, sales, and resales included.

When is an aircraft "actually engaged in foreign trade" within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, page 292.

Section 6421.—Gasoline Used for Certain Nonhighway Purposes, Used by Local Transit Systems, or Sold for Certain Exempt Purposes

When is an aircraft "actually engaged in foreign trade" within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, page 292.

Section 6427.—Fuels Not Used for Taxable Purposes

When is an aircraft "actually engaged in foreign trade" within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, page 292.

Section 7476.—Declaratory Judgments Relating to Qualification of Certain Retirement Plans

26 CFR 1.7476-2: Notice to interested parties.



amend §§ 1.7476-2 and 601.201 regarding the nature and method of giving notices to interested parties. The final regulations generally adopt the standards in the proposed regulations. These final regulations provide that the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for determination. Whether a particular method of delivery satisfies this standard is determined on the basis of all the facts and circumstances. The final regulations retain the safe harbor provided in the proposed regulations for plans using an electronic medium to deliver the notice to interested parties. Under that safe harbor, a plan sponsor will be treated as satisfying the requirements under § 1.7476-2(c)(1) if the plan sponsor delivers the notice using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1 Q&A-5.

#### *B. Application of the Notification Requirement to Governmental Plans*

Section 1.7476-1(b)(7) provides that § 1.7476-1(b), relating to the definition of interested parties, applies only to retirement plans filing an application for advance determination with the IRS that are subject to the requirements under section 410. Section 1.7476-1(c)(5) provides that in the case of an organization described in section 410(c)(1), which includes governmental plans within the meaning of section 414(d), section 410 will be considered to apply to a plan year of such organization for any plan year in which section 410(c)(2) applies to the plan.

Section 410(c)(1)(A) provides that the provisions of section 410 (other than section 410(c)(2)) do not apply to governmental plans within the meaning of section 414(d). Section 410(c)(2) provides that a governmental plan will be treated as meeting the requirements under section 410 for purposes of section 401(a). Prior to 1997, section 410(c)(2) provided that, in order to be treated as satisfying the requirements of section 410, a governmental plan must meet the requirements under section 401(a)(3) as in effect on September 1, 1974, relating to minimum participation standards. Section 1505(a)(1) of the Taxpayer Relief Act of 1997 (TRA '97) (Public Law 105-34, 111

Stat. 788) added section 401(a)(5)(G), which provides that the nondiscrimination and minimum participation requirements under section 401(a)(3) and (4) do not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof). Thus, section 410 no longer applies to such governmental plans.

One commentator requested clarification that the notice to interested parties requirement under section 7476 no longer applies to governmental plans after TRA '97. Section 1.7476-1(b)(7) of the regulations limits the applicability of the notice to interested parties requirement to retirement plans that are subject to section 410 of the Code. Because a governmental plan established and maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) is not subject to section 410 of the Code, it is also not subject to the notice to interested parties requirement.

#### *C. Miscellaneous Comments*

Proposed regulations under § 601.201(o)(3)(xv) provide that when the notice is given other than by mailing, it should be given not less than 7 days nor more than 21 days prior to the date that the application for a determination is made. When the notice is provided by mailing, prior final regulations under § 601.201(o)(3)(xv) provide that the notice be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. One commentator requested clarification on whether the time period for providing notice by electronic mail is the same time period for when notice is given by a means other than postal mailing. In the interest of simplification, the final regulations provide a single time period for providing the notice. Under these final regulations, the notice must be given not less than 10 days nor more than 24 days prior to the date that the application for a determination is made. This time period applies to all methods of delivering the notice to interested parties. Taxpayers may continue to rely on the prior time periods until the applicability date of this Treasury decision.

Section 601.201(o)(3)(xvii) describes the procedures for providing additional informational material required by § 601.201(o)(3)(xviii), (xix), and (xx), to the extent that such information is not provided in the notice to interested parties. Such materials may include an updated copy of the plan and related trust agreement or the determination letter application. One commentator suggested that § 601.201(o)(3)(xvii) be revised to provide that any reasonable delivery method should be available for providing additional information to interested parties. The final regulations amend § 601.201(o)(3)(xvii) to clarify that the procedure for making materials related to an application for determination available to interested parties may include any delivery method or a combination thereof that reasonably ensures accessibility to all interested parties.

Section 601.201(o)(3)(xxi) provides that the notice to interested parties will be deemed given when it is given in person, posted as prescribed in the regulations under section 7476, or received through the mail. One commentator suggested that § 601.201(o)(3)(xxi) be revised to reflect the new standards by which a plan sponsor may satisfy the notice to interested parties requirement. The final regulations amend § 601.201(o)(3)(xxi) to clarify that the notice to interested parties required by § 601.201(o)(3)(xiv) shall be deemed given when the notice is posted or sent to the person in the manner prescribed in the regulations under section 7476.

#### **Effective date**

These regulations apply to applications made on or after January 1, 2003. For applications made prior to that date, taxpayers may continue to rely on the standards set forth in the prior final regulations or the proposed regulations published in the **Federal Register** on January 17, 2001 (66 FR 3954).

#### **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 also has 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 these 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 author of these regulations is Pamela R. Kinard, 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 parts 1 and 601 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. Section 1.7476-1 is amended by adding paragraph (e) to read as follows:

#### § 1.7476-1 *Interested parties.*

\* \* \* \* \*

(e) *Effective date.* The provisions of this section apply to applications referred to in paragraph (a) of this section made on or after June 21, 1976.

Par. 3. Section 1.7476-2 is amended as follows:

1. Paragraphs (b), (c), and (d) are revised.

2. Paragraph (e) is added.

The revisions and addition read as follows:

#### § 1.7476-2 *Notice to interested parties.*

\* \* \* \* \*

(b) *Nature of notice.* The notice required by this section shall—

(1) Contain the information and be given within the time period prescribed in § 601.201(o)(3) of this chapter; and

(2) Be given in a manner prescribed in paragraph (c) of this section.

(c) *Method of giving notice.* (1) In the case of a present employee, former employee, or beneficiary who is an interested party, the notice may be provided by any method reasonably calculated to ensure that each interested party is notified of the application for a determination. If an interested party who is a present employee is in a unit of employees covered by a collective-bargaining agreement between employee representatives and one or more employers, notice shall also be given to the collective-bargaining representative of such interested party by any method that satisfies this paragraph. Whether the notice is provided in a manner that satisfies the requirements of this paragraph is determined on the basis of all the relevant facts and circumstances. Because the facts and circumstances differ depending on the interested party, it may be necessary to use more than one method of delivery in order to ensure timely and adequate notice to all interested parties.

(2) If the notice to interested parties is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1 Q&A-5, the notice is deemed to be provided in a manner that satisfies the requirements of paragraph (c)(1).

(d) *Examples.* The principles of this section are illustrated by the following examples:

*Example 1.* (i) Employer A is amending Plan C and applying for a determination letter. Plan C is not maintained pursuant to one or more collective bargaining agreements and is not being terminated. As part of the determination letter application process, Employer A provides the notice required under this section to interested parties. For present employees, Employer A provides the notice by posting the notice at those locations within the principal places of employment of the interested parties which are customarily used for employer notices to employees with regard to employment and employee benefit matters.

(ii) In this *Example 1*, Employer A satisfies the notice to interested parties requirement described in this section.

*Example 2.* (i) Employer B is amending Plan D and applying for a determination letter. As part of the determination letter application process, Employer B provides the notice required under this section to interested parties.

(ii) Employer B has multiple worksites. Employer B's employees located at worksites 1 through 4 have reasonable access to computers at their workplace. However, Employer B's employees located at worksite 5 do not have access to computers.

(iii) For present employees with reasonable access to computers (worksites 1 through 4), Employer B provides the notice by posting the notice on Employer B's web site (Internet or intranet). Employees at worksites 1 through 4 customarily receive employer notification with regard to employment and employee benefit matters from the Employer B's web site. For present employees without access to computers (worksite 5), Employer B provides the notice by posting the notice at worksite 5 in a location that is customarily used for employer notices to employees with regard to employment and employee benefit matters.

(iv) Employer B also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer B covered by a collective-bargaining agreement between employee representatives and Employer B, using the e-mail address previously provided to Employer B by such collective-bargaining representative.

(v) In this *Example 2*, Employer B satisfies the notice to interested parties requirement described in this section.

*Example 3.* (i) Employer C is terminating Plan E and applying for a determination letter as to whether the plan termination affects the continuing qualification of Plan E. As part of the determination letter application process, Employer C provides the notice required under this section to interested parties.

(ii) All of Employer C's employees have reasonable access to computers. Each employee has an e-mail address where he or she can receive messages from Employer C. Employees of Employer C customarily receive employer notices regarding employment and employee benefit matters by e-mail.

(iii) For present employees, Employer C provides the notice by sending the notice by e-mail.

(iv) Employer C also sends the notice by e-mail to each collective-bargaining representative of interested parties who are present employees of Employer C covered by a collective-bargaining agreement between employee representatives and Employer C, using the e-mail address previously provided to Employer C by such collective-bargaining representative.

(v) In addition, Employer C sends the notice by e-mail to each interested party who is a former employee or beneficiary, using the e-mail address previously provided to Employer C by such interested party. For any former employee or beneficiary who did not provide an e-mail address, Employer C sends the notice by regular mail to the last known address of such former employee or beneficiary.

(vi) In this *Example 3*, Employer C satisfies the notice to interested parties requirement described in this section.

(e) *Effective date.* (1) The provisions of this section shall apply to applications referred to in § 1.7476-1(a) made on or after January 1, 2003.

(2) For applications made on or after June 21, 1976 and before January 1, 2003, § 1.7476-2 (as it appeared in the April 1, 2002 edition of 26 CFR part 1) applies.

**PART 601—STATEMENT OF PROCEDURAL RULES**

Paragraph 4. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 601.201 is amended as follows:

1. In paragraph (o)(3)(xv), the first two sentences are removed and a new sentence is added in their place.

2. In paragraph (o)(3)(xvi), the introductory text is revised.

3. Paragraph (o)(3)(xvii) is revised.

4. In paragraph (o)(3)(xxi), the second sentence is revised.

The revisions and addition read as follows:

*§ 601.201 Rulings and determination letters.*

\* \* \* \* \*

(o) \* \* \*

(3) \* \* \*

(xv) When the notice referred to in paragraph (o)(3)(xiv) of this section is given in the manner set forth in § 1.7476-2(c) of this chapter, such notice must be given not less than 10 days nor more than

24 days prior to the date the application for a determination is made. \* \* \*

(xvi) The notice referred to in paragraph (o)(3)(xiv) of this section shall be given in the manner prescribed in § 1.7476-2 of this chapter and shall contain the following information:

\* \* \* \* \*

(xvii) The procedure referred to in paragraph (o)(3)(xvi)(i) of this section whereby the additional informational material required by paragraphs (o)(3)(xviii), (xix), and (xx) of this section will (to the extent not included in this notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials. The procedure referred to in paragraph (o)(3)(xvi)(i) of this section must be immediately available to all interested parties and must be designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and must be available until the earlier of the filing of a pleading commencing a declaratory judgment action under section 7476 with respect to the qualification of the plan or the ninety-

second day after the day the notice of final determination is mailed to the applicant.

\* \* \* \* \*

(xxi) \* \* \* The notice to interested parties required by paragraph (o)(3)(xiv) of this section shall be deemed given when the notice is posted or sent to the person in the manner prescribed in § 1.7476-2 of this chapter. \* \* \*

\* \* \* \* \*

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

Approved July 10, 2002.

Pamela F. Olson,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on July 18, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 19, 2002, 67 F.R. 47454)

**Section 7805.—Rules and Regulations**

*26 CFR 301.7805-1: Rules and regulations.*

When is an aircraft “actually engaged in foreign trade” within the meaning of § 4221(d)(3)? See Rev. Rul. 2002-50, page 292.

## Part III. Administrative, Procedural, and Miscellaneous

### Qualified Public Educational Facility Bonds—2002 Calendar Year Resident Population Estimates

#### Notice 2002-56

This notice informs states and other issuers of qualified exempt facility bonds described in § 142(a)(13) of the Internal Revenue Code (“Qualified Public Educational Facility Bonds”) of the proper population figures to be used for calculating the 2002 calendar year limitation under § 142(k)(5) on the annual aggregate face amount of tax-exempt bonds described in § 142(a)(13).

Section 142(k)(5) provides that an issue shall not be treated as an issue described in § 142(a)(13) if the aggregate face amount of bonds issued by the state pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year)

exceeds an amount equal to the greater of (i) \$10 multiplied by the state population, or (ii) \$5,000,000.

There is no definition of “state population” under § 142(k)(5). However, the volume limitation under § 142(k)(5) is analogous to the volume cap under § 146. Section 146(j) provides generally that, for purposes of § 146, determinations of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the Bureau of the Census before the beginning of such calendar year. The same population figures are to be used for purposes of § 142(k)(5). The 2002 calendar year population figures to be used for purposes of § 146 were published in Notice 2002-13, 2002-8 I.R.B. 547 (February 25, 2002). In future years, the population figures for purposes of § 142(k)(5) and § 146 will be published in the same notice.

The proper population figures for calculating the volume limitation under § 142(k)(5) for the 2002 calendar year are the estimates of the resident population of the 50 states and the District of Columbia, released by the Bureau of the Census on December 28, 2001, in Press Release CB01-203. The proper population figures for calculating the volume limitation under § 142(k)(5) for the 2002 calendar year for Puerto Rico are the estimates of the resident population for July 1, 2001, released by the Bureau of the Census on December 31, 2001, in Press Release CB01-205. The proper population figures for calculating the volume limitation under § 142(k)(5) for the 2002 calendar year for the insular areas (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands) are the figures released by the Bureau of the Census on July 3, 2001, in press release CB01-CN.1. For convenience, these estimates are reprinted below.

#### *Resident Population Figures*

Alabama .....	4,464,356
Alaska .....	634,892
American Samoa.....	57,291
Arizona.....	5,307,331
Arkansas.....	2,692,090
California .....	34,501,130
Colorado.....	4,417,714
Connecticut .....	3,425,074
Delaware .....	796,165
District of Columbia.....	571,822
Florida.....	16,396,515
Georgia.....	8,383,915
Guam.....	154,805
Hawaii .....	1,224,398
Idaho .....	1,321,006
Illinois .....	12,482,301
Indiana.....	6,114,745
Iowa.....	2,923,179
Kansas .....	2,694,641
Kentucky .....	4,065,556

*Resident Population Figures*

Louisiana.....	4,465,430
Maine .....	1,286,670
Maryland.....	5,375,156
Massachusetts .....	6,379,304
Michigan .....	9,990,817
Minnesota.....	4,972,294
Mississippi .....	2,858,029
Missouri .....	5,629,707
Montana .....	904,433
Nebraska .....	1,713,235
Nevada .....	2,106,074
New Hampshire .....	1,259,181
New Jersey.....	8,484,431
New Mexico .....	1,829,146
New York .....	19,011,378
North Carolina .....	8,186,268
North Dakota .....	634,448
Northern Mariana Islands .....	69,221
Ohio.....	11,373,541
Oklahoma.....	3,460,097
Oregon.....	3,472,867
Pennsylvania .....	12,287,150
Puerto Rico .....	3,839,810
Rhode Island .....	1,058,920
South Carolina .....	4,063,011
South Dakota .....	756,600
Tennessee .....	5,740,021
Texas .....	21,325,018
U.S. Virgin Islands .....	108,612
Utah.....	2,269,789
Vermont.....	613,090
Virginia .....	7,187,734
Washington .....	5,987,973
West Virginia .....	1,801,916
Wisconsin.....	5,401,906
Wyoming.....	494,423

The principal authors of this notice are Michael P. Brewer and Timothy L. Jones of the Office of Assistant Chief Counsel (Tax Exempt and Governmental Entities). For further information regarding this notice, contact Mr. Brewer at (202) 622-3980 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

#### Net Gift Treatment Under Section 2519

REG-123345-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to the amount treated as a transfer under section 2519 of the Internal Revenue Code when there is a right to recover gift tax under section 2207A(b) and the related gift tax consequences if the right to recover the gift tax is not exercised. The proposed regulations will affect donee spouses who make lifetime dispositions of all or part of a qualifying income interest in qualified terminable interest property. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for Tuesday, October 15, 2002, at 10 a.m., must be received by Tuesday, September 24, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-123345-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-123345-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations,

DeAnn K. Malone, (202) 622-7830; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

A marital deduction for qualified terminable interest property is allowed for estate tax purposes under section 2056(b)(7) and for gift tax purposes under section 2523(f). Qualified terminable interest property is property transferred by the decedent or donor spouse, in which the donee spouse has a qualifying income interest for life, and for which an election has been made. If the donee spouse makes a lifetime disposition of all or a portion of the qualifying income interest, section 2519 provides that the donee spouse is treated for estate and gift tax purposes as transferring all interests in the property other than the qualifying income interest. Under section 2207A(b), the donee spouse is entitled to recover any gift tax paid with respect to a transfer under section 2519 from the person receiving the transferred property.

Proposed regulations under several sections including sections 2519 and 2207A(b) were issued on May 21, 1984 (LR-211-76, 1984-1 C.B. 598 [49 FR 21350]). The proposed regulations provided that the amount of the gift under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b) and that the donee spouse makes an additional gift if the donee spouse fails to exercise the right to recover the gift tax. These two provisions were not included in the regulations when they were finalized (T.D. 8522, 1994-1 C.B. 236). The preamble to the final regulations stated that these issues would be the subject of future proposed regulations. Sections 25.2519-1(c)(4) and 25.2207A-1(b) were reserved for those provisions.

##### Explanation of Provisions

Section 2207A(b) statutorily shifts the burden for paying the gift tax imposed on

a transfer under section 2519 from the donee spouse to the person receiving the transferred property. The payment of gift tax by the person receiving the property benefits the donee spouse because the donee spouse is liable for the payment of this tax and, absent the right of recovery, would be required to pay the tax from the donee spouse's own assets.

The proposed regulations will amend the regulations under section 2519 to provide that the amount of the transfer under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b). The amount of gift tax recoverable and the amount of the remainder interest treated as transferred under section 2519 are determined by using the interrelated computation applicable to other transfers in which the transferee agrees to pay the gift tax. See Rev. Rul. 81-223, 1981-2 C.B. 189.

In addition, the proposed regulations will amend the regulations under section 2207A(b) to provide that if the donee spouse fails to exercise the right to recover the gift tax, the donee spouse makes a gift in the amount of the unrecovered gift tax to the person from whom the recovery of gift tax could have been obtained.

##### Proposed Effective Date

The regulations will apply to any transfer under section 2519 where there is a right to recover gift tax under section 2207A(b) that occurs on or after the date final regulations are published in the **Federal Register**.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory

Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 15, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, September 24, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these proposed regulations is DeAnn K. Malone, Office of the Chief Counsel, IRS. Other person-

nel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

**PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954**

Par. 1. The authority citation for part 25 continues to read in part as follows:

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

Par. 2. Section 25.2207A-1 is amended by adding the text of paragraph (b) to read as follows:

*§ 25.2207A-1 Right of recovery of gift taxes in the case of certain marital deduction property.*

\* \* \* \* \*

(b) *Failure of a person to exercise the right of recovery.* The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery could have been obtained. See § 25.2511-1. The transfer is considered to be made when the right to recovery is no longer enforceable and is treated as a gift even if recovery is impossible. Any delay in the exercise of the right of recovery shall be treated as an interest-free loan with the appropriate gift tax consequences.

\* \* \* \* \*

Par. 3. Section 25.2519-1 is amended as follows:

1. Paragraph (c)(1) is amended by adding a sentence to the end of the paragraph.

2. The paragraph heading for paragraph (c)(4) is revised and the text of paragraph (c)(4) is added.

3. Paragraph (g) introductory text is revised.

The additions and revisions read as follows:

*§ 25.2519-1 Disposition of certain life estates.*

\* \* \* \* \*

(c) \* \* \*(1) \* \* \* See paragraph (c)(4) of this section for the effect of gift tax that the donee spouse is entitled to recover under section 2207A.

\* \* \* \* \*

(4) *Effect of gift tax entitled to be recovered under section 2207A on the amount of the transfer.* The amount treated as a transfer under paragraph (c)(1) of this section is further reduced by the amount the donee spouse is entitled to recover under section 2207A(b) (relating to the right to recover gift tax attributable to the remainder interest). If the spouse is entitled to recover gift tax under section 2207A(b), the amount of gift tax recoverable and the value of the remainder interest treated as transferred under section 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A-1(b).

\* \* \* \* \*

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, that section 2503(e) is not applicable to the amount deemed transferred, and that the gift taxes on the amount treated as transferred under paragraph (c) are offset by S's unified credit. The examples are as follows:

\* \* \* \* \*

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

(Filed by the Office of the Federal Register on July 19, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2002, 67 F.R. 47755)

# Treaty Guidance Regarding Payments With Respect to Domestic Reverse Hybrid Entities; Correction

## Announcement 2002-71

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8999, 2002-28 I.R.B. 78) that were published in the **Federal Register** on Wednesday, June 12, 2002 (67 FR 40157) relating to the eligibility for treaty benefits of items of income paid by domestic entities.

DATES: This correction is effective June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth U. Karzon (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### Background

The final regulations that are the subject of these corrections is under section 894 of the Internal Revenue Code.

### Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

### Correction of Publication

Accordingly, the publication of final regulations (T.D. 8999), that were the subject of FR Doc. 02-14506, is corrected as follows:

1. On page 40159, column 1, in the preamble under the paragraph heading “III. Comments and Changes to § 1.894-1(d)(2)(ii)(B)(3): Definition of Related”, first paragraph, line 1, the language “constructive ownership rules of sections” is corrected to read “constructive ownership rules of section”.

2. On page 40159, column 1, in the preamble under the paragraph heading “III. Comments and Changes to § 1.894-

1(d)(2)(ii)(B)(3): Definition of Related”, third paragraph, line 3, the language “(d)(2)(ii)(B)(ii) of the final regulations” is corrected to read “(d)(2)(ii)(B)(1)(ii) of the final regulations”.

3. On page 40159, column 2, in the preamble the paragraph heading “IV. Comments and Changes to § 1.894-1(d)(2)(ii)(C): Commissioner’s discretion.” is corrected to read “IV. Comments and Changes to § 1.894-1(d)(2)(ii)(C): Commissioner’s discretion”.

4. On page 40159, column 2, in the preamble under the paragraph heading “IV. Comments and Changes to § 1.894-1(d)(2)(ii)(C): Commissioner’s discretion, second paragraph, line 14, the language “following conditions are met: (1) A” is corrected to read “following conditions are met: (1) a”.

5. On page 40162, column 2, second signature block, the language “Assistant Secretary of the Treasury (Tax Policy).” is corrected to read “Acting Assistant Secretary of the Treasury (Tax Policy).”

Cynthia E. Grigsby,  
Chief, Regulations Unit,  
*Associate Chief Counsel*  
(*Income Tax and Accounting*).

(Filed by the Office of the Federal Register on July 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for July 17, 2002, 67 F.R. 46855)

## Foundations Status of Certain Organizations

### Announcement 2002-72

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 pri-

vate foundations described in section 509(a) of the Code) are now classified as private foundations:

14 Karat Steppers, Philadelphia, PA  
Absalom Jones Foundation,  
Philadelphia, PA  
African American Students in Africa,  
Los Angeles, CA  
Ahavah Respite Services, Inc.,  
Lake Worth, FL  
Amarillo Wildlife Refuge, Inc.,  
Amarillo, TX  
American Council for Greater  
Understanding, San Francisco, CA  
American Flyers Volleyball Club,  
Long Beach, CA  
American Folk Art Foundation,  
Salt Lake City, UT  
American Veterans Housing &  
Rehabilitation Project,  
Redwood City, CA  
Arizona Gymnastics Boosters, Inc.,  
Scottsdale, AZ  
Art Museum of Southeast Texas Fund  
Raising Foundation, Inc.,  
Beaumont, TX  
Art of Dove Healing Through Art &  
Sailing, Inc., Volcano, HI  
Art Resources Trust Fund,  
Washington, DC  
Artskate, Houston, TX  
Ashe Village, Akron, OH  
Ask the Angels Foundation, Carmel, CA  
Assist Foundation, Inc., Atlanta, GA  
Association of the Variety Clubs of the  
United States, Los Angeles, CA  
Atlantis Healing Center, Inc.,  
Jacksonville, FL  
Autaugaville Volunteer Fire Department,  
Inc., Autaugaville, AL  
Bartlett Youth League, Bartlett, TX  
Basic Skills Foundation, Chicago, IL  
Basketball Tournament Escrow Fund,  
Sharon, MA  
Bayview Hunters Point Contractors  
Association, San Francisco, CA  
Benton Conservation District,  
Prosser, WA  
Black Attorney General Employees of  
Texas, Inc., Buda, TX  
Blaze Junior Volleyball Club, Inc.,  
Middleburg, FL  
Blessed Children, Chicago, IL  
Blocked Flock Repertory Company, Inc.,  
Long Island City, NY  
Bnei Reuven Organization, Inc.,  
Brooklyn, NY



Brown County Fair Building  
 Association, Brownwood, TX  
 California Indian Museum & Cultural  
 Center, Petaluma, CA  
 Capital Slavik Center,  
 Citrus Heights, CA  
 Caring Consumer Connection,  
 Greensboro, NC  
 Caring Place, Broadview, IL  
 Carteret Sports Leadership, Inc.,  
 Morehead City, NC  
 Center for American Indian Research  
 and Education, Inc., Carson City, NV  
 Century Corner Committee, Pittsfield, IL  
 Changes Behavioral Services,  
 Oak Park, IL  
 Charitable Merchants, Inc., Sarasota, FL  
 Cheer Foundation, Georgetown, DE  
 Chester Blazers Track and Field Team,  
 Brookhaven, PA  
 Chester Swarthmore College Community  
 Coalition, Swarthmore, PA  
 Children of the Earth, Inc.,  
 Coral Gables, FL  
 Christian Community Center of Calumet  
 Region, Inc., Hammond, IN  
 Christians Involved With Today's Youth,  
 Inc., Marrero, LA  
 Circle of the People, Inc., Chandler, IN  
 Civil Defense Corps, Inc., Gilford, NH  
 Clay Connection, Merrifield, VA  
 Communities in Schools of New  
 Mexico, La Cruces, NM  
 Communities in Schools of Texas, Inc.,  
 Austin, TX  
 Community Alliance for Responsible  
 Museum Development, Inc.,  
 New York, NY  
 Community Outreach for the Homeless,  
 Birmingham, AL  
 Concho Valley Disabled Sports  
 Association, Inc., San Angelo, TX  
 Congregation Eizer L'Nitzrochim, Inc.,  
 Spring Valley, NY  
 Consortium on Substance Abuse Free  
 Environment, El Paso, TX  
 Consumer Coalition of New Mexico,  
 Albuquerque, NM  
 Crosbyton CISD Foundation for  
 Academic Excellence, Crosbyton, TX  
 Cycle Messenger World Championship  
 96, San Francisco, CA  
 Dawn House, Inc., Bay Minette, AL  
 Dayton Rodeo Team, Dayton, TX  
 D C Housing Education Foundation,  
 Inc., Washington, DC  
 Del Norte Amateur, Crescent City, CA  
 Desert Institute of the Environment,  
 Skull Valley, AZ  
 Digs for Dogs, Bethesda, MD  
 Dolphin Aquatics Team, Inc.,  
 Farmington, MN  
 Dress for Success Los Angeles,  
 Los Angeles, CA  
 Eagle Foundation, Inc., Ashland, MO  
 Eagle Spirit Academy Parent  
 Organization, Cody, WY  
 Eagles Mickey Mantle Baseball Team,  
 Brier, WA  
 East Valley Softball League,  
 San Jose, CA  
 Elmhurst Youth Tennis Center,  
 Oakland, CA  
 Enable Scholarship Project, Chicago, IL  
 Environmental Center of Dallas, Inc.,  
 Dallas, TX  
 Epsom Elderly Housing, Inc.,  
 Concord, NH  
 Everyone Deserves Enough, Inc.,  
 Dorchester, MA  
 Executive Nutritional Management, Inc.,  
 Baton Rouge, LA  
 Fabra Elementary School PTO,  
 Boerne, TX  
 Fayetteville Vocational Center, Inc.,  
 Fayetteville, NC  
 Florida Main Street Association, Inc.,  
 Quincy, FL  
 Folks, Pomona, CA  
 Food for Life-Colorado, Inc.,  
 Denver, CO  
 Forest & Agricultural Reserve  
 Management, Waterford, VA  
 Fort Wayne Music Fest, Inc.,  
 Fort Wayne, IN  
 Foundation for Enhancing Education and  
 Literacy, Inc., Northfield, VT  
 Fund for Millennium House, Inc.,  
 New York, NY  
 Gabriels Passage, Inc., Memphis, TN  
 Gate City Thunderbirds, Nashua, NH  
 Gathering Ministries-Austin, Austin, TX  
 German-American Memorial Foundation,  
 Norco, LA  
 Ghetto Productions, Chicago, IL  
 Gift to Generation, San Francisco, CA  
 Global World Development Foundation,  
 Beverly Hills, CA  
 Greater Dallas Arts Consortium, Inc.,  
 Dallas TX  
 Groom Volunteer Ambulance Service,  
 Inc., Groom, TX  
 Groveland Neighborhood Center, Inc.,  
 Groveland, FL  
 Harvest Fund, Inc., New York, NY  
 Heart of the City Neighborhood  
 Association Beaumont Texas,  
 Beaumont, TX  
 Heartland Ministries, Inc., Loomis, CA  
 Heartright Foundation, Inc.,  
 Norman, OK  
 Heath Youth Athletic Association, Inc.,  
 W. Paducah, KY  
 Help for Haiti Mission, Cleveland, OH  
 Help One Help All Missionary Help  
 Center, Detroit, MI  
 Helping Unite Mothers and Children,  
 Detroit, MI  
 Hempstead Kiwanis Foundation, Inc.,  
 Hempstead, NY  
 Highlands Iron Conservancy, Inc.,  
 Rockaway, NJ  
 Hillside Education Association  
 Philanthropic Fund, Inc., Hillside, NJ  
 Holystar Music Foundation, Inc.,  
 Monterey, CA  
 In-Choir-er, Inc., Braintree, MA  
 Infinite Spirit Museum, Inc.,  
 Marietta, GA  
 Inner-City Childrens Foundation, Inc.,  
 Miami, FL  
 Institute for the Study of Families in  
 Transition, Houston, TX  
 Interfaith Initiative With Persons With  
 Disabilities, Inc., Boston, MA  
 Inter-National Foundation for the Living  
 Arts, Inc., Miami, FL  
 International Heart to Heart Foundation,  
 Cleveland, OH  
 Irvington International Parents  
 Association, Irvington, NJ  
 It's Time, Inc., Springfield, IL  
 Jamaica Plain Symphony Orchestra, Inc.,  
 Jamaica Plain, MA  
 James R. Coulter Memorial Educational  
 Assistance Fund, Inc.,  
 Collingswood, NJ  
 Jessamine County Youth Softball  
 Association, Inc., Nicholasville, KY  
 Jewish Community Foundation of the  
 North Shore, Inc., Marblehead, MA  
 Jimmy Dickens Family Ministries, Inc.,  
 Cedar Bluff, VA  
 Kalamazoo City Comics Commission,  
 Kalamazoo, MI  
 Keith Alan Copeland Memorial  
 Scholarship Fund, Inc., Edmond, OK  
 Kids Helping Kids, Inc., Wellington, FL  
 Kids Voting Northern Illinois, Inc.,  
 Springfield, IL  
 Kimball Glassco Residential Center, Inc.,  
 Greenville, MS

Lakes Area Penguin Swimmers,  
Perham, MN

Las Casitas De Socorro, Inc.,  
Socorro, NM

Latria, Inc., Indianapolis, IN

Laura Jepson Institute, Inc.,  
Tallahassee, FL

Leaves of Learning, Milwaukee, WI

Lincoln Magic Softball, Lincoln, NE

Little Rock Citizens Police Academy  
Alumni Association, Little Rock, AR

Llama Community Development  
Corporation, Salinas, CA

Lost Tribe Theatre Company, Inc.,  
New York, NY

Love M' Thrift II, Inc., Mineola, NY

Marcus Garvey Youth Development  
Institute, Southborough, MA

Maritime Youth Ministries, Inc.,  
Oklahoma City, OK

Matthews Challenge Biking Across  
America for Alzheimers, Inc.,  
New York, NY

Maya Society of Minnesota, Inc.,  
St. Paul, MN

McDowell County Board of Parks &  
Recreation, Gary, WV

McDowell County Commission on  
Aging, Inc., Welch, WV

Mem Group, Inc., Vallejo, CA

Mens Fathers Hotline, Austin, TX

Mercedes Affordable Housing Corp.,  
Mercedes, TX

Miami Philharmonic Steel & Percussion  
Orchestra, Inc., North Miami, FL

Mid-South Speakers Association,  
Memphis, TN

Military Women of New York City &  
Friends, Inc., Jamaica, NY

Millport Regional Resource Foundation,  
Millport, AL

Mindanet, Inc., Little Rock, AR

Minnesota Professional Athletes Youth  
Charity, Minneapolis, MN

Minority Economic Development, Inc.,  
Chattanooga, TN

MMM Comprehensive Learning Center,  
Inc., Riverdale, IL

Mokelumne Manor Thornton Homes  
Resident Council, Thornton, CA

Mr. Muscle Foundation, Houston, TX

National Academy of Alternative  
Education, New York, NY

National Brachial Plex-Erbs Palsy  
Association, Inc., Larsen, WI

National Coalition of 100 Black Women  
of Greater Charlotte, Inc.,  
Fort Mill, SC

Nations of the World Interfaith  
Ministries, Inc., Wewoka, OK

New Century Foundation, Ltd.,  
Manhattan, NY

New Jersey Personal Assistance Services  
Cooperative, Inc., Long Branch, NJ

New Milford Youth Baseball,  
New Milford, CT

New Village Community Public Charter  
School of the East Bay, Hayward, CA

New York Skyriders, Inc.,  
Springfield Gardens, NY

Newberry Community Day Care Center,  
Inc., Newberry, FL

North Texas Criminal Justice Ministries  
Network, Garland, TX

Northeast Organization Allied for Hope,  
Detroit, MI

Northern California Girls Athletics  
Foundation, Petaluma, CA

Northwest Community Housing, Inc.,  
Dodge City, KS

Northwest Polymer Clay Guild,  
Seattle, WA

NSAA, Inc., Detroit, MI

Oak Lawn Library Friends, Inc.,  
Dallas, TX

Oakland Jr. Olympic Softball  
Association, Oakland, CA

Occasional Theater, Anniston, AL

Ohio Bulldogs, Reynoldsburg, OH

Old Town-Buda Association, Inc.,  
Buda, TX

Orangemen Youth Basketball  
Organization, Gurnee, IL

Pacific-West Associates, Inc.,  
Bothell, WA

Parents Academic and Athletic  
Community Career Counsel,  
Pomona, CA

Park View Development Corporation,  
Washington, DC

Pathfinder Historians,  
W. Bloomfield, MI

People Effectively Assisting Kids to  
Succeed, Inc., Lititz, PA

Persian Schools Network, Inc.,  
Yonkers, NY

Pewaukee Fire Fighters Auxiliary, Inc.,  
Waukesha, WI

Phenix, Incorporated, Westland, MI

Pinetree High School Crime Stoppers,  
Longview, TX

Pink Ribbon, Inc., Bogart, GA

Pinnacle Park Association, Inc.,  
Houston, TX

Playground Partners, Borger, TX

Prairie Family Chautauqua, Inc.,  
Casper, WY

Prince Georges County Community  
Development Corporation,  
Forestville, MD

Project Respect, San Francisco, CA

Rafiki AIDS Ministry, Inc.,  
Columbus, OH

Ramsey International Fine Arts Center  
Foundation, Minneapolis, MN

Real Lewin Torah Research Int'l Fund,  
Inc., Brooklyn, NY

Resources International, Inc.,  
Cambridge, MA

Ride & Stride, Honolulu, HI

R I S E Educational Services, Inc.,  
Seaside, CA

Roanoke Valley Adoptive-Foster Care  
Association, Vinton, VA

Robert L. Reed Tap Heritage Inst.,  
St. Louis, MO

ROCK, St. Peter, MN

Rockwood Area Community  
Organization, Rockwood, MI

Roslyn Booster Basketball Club, Inc.,  
Roslyn Heights, NY

Sacramento Helping Professionals R  
Entertaining, Sacramento, CA

Safety Village, Inc., Daytona Beach, FL

Salem Community Skating Rink, Inc.,  
Salem, NH

Salinas Valley Aquatics Development  
Foundation, Salinas, CA

San Angelo Housing Support, Inc.,  
San Angelo, TX

Schutz American Schools of Alexandria  
Foundation, Pittsburgh, PA

Section 8 Resident Council of New  
Orleans, Inc., New Orleans, LA

Service Management, Incorporated,  
Taylor, MI

Shades of Youth Foundation,  
Tollhouse, CA

Shaw Neighborhood Improvement  
Council, Washington, DC

Shelter the World, Inc., San Diego, CA

Short North Dallas Community  
Development Corporation, Dallas, TX

Silver Spring Youth Baseball Assoc.,  
New Kingston, PA

Simon Bolivar Institute, Inc., Miami, FL

Sioux Land Teens Encounter Christ,  
Newcastle, NE

South Valley AIDS Network, Visalia, CA

Southeast Center for Ecological  
Awareness, Inc., Chattanooga, TN

Southern Cal School Foundation,  
Lake City, IA

Southern York County Arena,  
Sanford, ME  
Sports, Inc., Detroit, MI  
St. Bernard Resident Council,  
New Orleans, LA  
Stone-Hays Center for Independent  
Living, Galesburg, IL  
Stop-Students that Officially Patrol,  
Little Rock, AR  
Strake Jesuit Art Museum, Houston, TX  
Sunrise Optimist Club of Appleton  
Foundation, Inc., Neenah, WI  
SW Florida Fibromyalgia Group, Inc.,  
Fort Meyers, FL  
Take-a-Break Respite Care, Inc.,  
Sarasota, FL  
Talamo, Silver Spring, MD  
Tallahassee Youth Council Initiative,  
Inc., Tallahassee, FL  
Tecumseh Area Communities in Schools,  
Tecumseh, MI  
Tennessee Business Roundtable  
Foundation, Nashville, TN  
Texas Inmate Families Association,  
San Antonio, TX  
Texas Vocabulary Institute, Inc.,  
San Antonio, TX  
Therapeutic and Educational Animal  
Center of Southwest Louisiana, Inc.,  
Lake Charles, LA  
TIPAAA Foundation, Inc., Oakland, CA  
Turkmen Association, Inc.,  
Franklin Park, NJ  
Tuscaloosa Volleyball Club,  
Tuscaloosa, AL

UPPCP-Unidos Para El Progreso De  
Cameron Park, Brownsville, TX  
US Falun-Buddhism Society,  
Torrance, CA  
Vacaville Pony Association,  
Vacaville, CA  
Victim Offender Reconciliation Program  
of Sacramento County, Inc.,  
Sacramento, CA  
V M & R Home Services, Inc.,  
Washington, MI  
Wabash County Youth Baseball and  
Softball, Inc., Mount Carmel, IL  
Walkers Elderly Home Care Services,  
Inc., New Orleans, LA  
Waretown Education Association  
Philanthropic Fund, Inc.,  
Waretown, NJ  
Washington Area Softball Association,  
Inc., Washington, IA  
West Point Society of the Piedmont,  
Greensboro, NC  
West Side Human Services Corporation,  
Inc., Hollywood, FL  
Westview PAC, Longmont, CO  
Willamette Youth Chorusee Northwest,  
Lake Oswego, OR  
Williamson County Aquatic Team,  
Franklin, TN  
Willis Youth Council, Inc., Willis, TX  
Wings A Positive Social Opportunities  
Network, Commerce TWP, MI  
WNC Retreat Center, Inc., Asheville, NC  
Wolfpack Instrumental Music Support  
Group, Van Nuys, CA

Women and Environmental Degradation,  
Takoma Park, MD  
Womens Outdoor Challenges, Inc.,  
Grantham, NH  
Wood Family International Foundation  
for Multiple Sclerosis,  
Ft. Lauderdale, FL  
Woodlands Indian Community Center,  
Lansing, MI  
Woodlawn Park Parents Club,  
Indian Mound, TN  
Wynton M. Blount Cultural Park,  
Montgomery, AL  
Yonkers Sponsoring Committee,  
Yonkers, NY  
Youth Into Adulthood Corp.,  
Brooklyn, NY

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 classification of foundation status in the Internal Revenue Bulletin.

# 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

applies 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.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.