

## 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. 2002-78, page 915.**

**CPI adjustment for below-market loans for 2003.** The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987-2003. Rev. Rul. 2001-64 supplemented and superseded.

**Rev. Rul. 2002-79, page 908.**

**Section 1274A — inflation-adjusted numbers for 2003.** This ruling provides the dollar amounts, increased by the 2003 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2001-65 supplemented and superseded.

**T.D. 9020, page 907.**

**REG-141832-02, page 921.**

**Substantiation of incidental expenses.** Final, temporary, and proposed regulations under section 274 of the Code authorize the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost.

**T.D. 9022, page 909.**

**REG-143321-02, page 922.**

Temporary and proposed regulations under section 6043(c) of the Code require information reporting by a corporation if there is an acquisition of control of the corporation or a substantial change in the corporation's capital structure. The regulations require the corporation to file a form reporting the event and to file Forms 1099 with respect to amounts distributed to shareholders. These regulations also require brokers who receive a Form 1099 as the record holder of stock, pursuant to section 6043(c) regulations, to file a Form 1099 with respect to the actual owner of the stock. A public hearing on the proposed regulations is scheduled for March 5, 2003.

### EXEMPT ORGANIZATIONS

**Announcement 2002-107, page 923.**

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

### EMPLOYMENT TAX

**Notice 2002-78, page 919.**

This notice provides tables that show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2003.

### ADMINISTRATIVE

**T.D. 9022, page 909.**

**REG-143321-02, page 922.**

Temporary and proposed regulations under section 6043(c) of the Code require information reporting by a corporation if there is an acquisition of control of the corporation or a substantial change in the corporation's capital structure. The regulations require the corporation to file a form reporting the event and to file Forms 1099 with respect to amounts distributed to shareholders. These regulations also require brokers who receive a Form 1099 as the record holder of stock, pursuant to section 6043(c) regulations, to file a Form 1099 with respect to the actual owner of the stock. A public hearing on the proposed regulations is scheduled for March 5, 2003.

**Notice 2002-76, page 917.**

**Gross income; disaster relief payments.** This notice provides answers to frequently asked questions regarding the tax treatment of Residential Grant Program grants the Lower Manhattan Development Corporation makes to individuals and families who occupy rental units or owner-occupied units in areas near the site of the September 11, 2001, attack on the World Trade Center.

Finding Lists begin on page ii.

Index for July through November begins on page vi.



# 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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

## Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: *Reimbursements and other expense allowance arrangements.*

Rules are set forth authorizing the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost. See REG–141832–02, page 921.

## Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: *Substantiation requirements.*

### T.D. 9020

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

### Substantiation of Incidental Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home. The regulations affect taxpayers who deduct expenses for incidental expenses while traveling away from home. The text of the temporary regulations also serves as text for the proposed regulations set forth in the notice of proposed rule-making (REG–141832–02) on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective November 12, 2002.

*Applicability Date:* For dates of applicability, see § 1.274–5T(m).

FOR FURTHER INFORMATION CONTACT: John Moriarty (202) 622–4930 (not a toll-free call).

### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to deductions under section 162 or 212 for any traveling expense (including meals and lodging) while away from home. Under section 274(d), the Secretary may issue regulations that provide that some or all of the substantiation requirements will not apply to expenses that do not exceed a prescribed amount. Section 1.274–5(j)(1) of the regulations permits the Commissioner to establish a method under which a taxpayer may substantiate the amount of meal expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost of meals.

Under this authority, the Commissioner has provided a method for taxpayers to substantiate deductible costs of business meal and incidental expenses while away from home by means of an allowance. See Rev. Proc. 2001–47, 2001–2 C.B. 332. These temporary regulations amend § 1.274–5T to authorize the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place and business purpose of the travel.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information

and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

#### Drafting Information

The principal author of these regulations is John Moriarty, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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#### 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 in numerical order to read in part as follows:

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

Section 1.274–5 also issued under 26 U.S.C. 274(d). \* \* \*

Par. 2. Section 1.274–5 is amended by adding paragraph (j)(3) to read as follows:

§ 1.274–5 *Substantiation requirements.*

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance, see § 1.274–5T(j)(3).

Par. 3. Section 1.274–5T is amended by revising paragraph (j) and the last sentence of paragraph (m) to read as follows:

§ 1.274–5T *Substantiation requirements (temporary).*

\* \* \* \* \*

(j)(1) and (2) [Reserved]. For further guidance, see § 1.274–5(j)(1) and (2).

(3) *Incidental expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for

incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel.

\* \* \* \* \*

(m) \* \* \* Paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

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

Approved October 31, 2002.

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

(Filed by the Office of the Federal Register on November 8, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 12, 2002, 67 F.R. 68512)

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## Section 483.—Interest on Certain Deferred Payments

*26 CFR 1.483-1: Computation of interest on certain deferred payments.*

As defined by section 1274A, the definitions for both “qualified debt instruments” and “cash method debt instruments” have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 2003 calendar year. See Rev. Rul. 2002-79, on this page.

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## Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

*26 CFR 1.1274A-1: Special rules for certain transactions where stated principal amount does not exceed \$2,800,000.*

As defined by section 1274A, the definitions for both “qualified debt instruments” and “cash method debt instruments” have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 2003 calendar year. See Rev. Rul. 2002-79, on this page.

## Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed \$2,800,000.

*(Also §§ 1274, 483; 1.1274A-1, 1.483-1.)*

**Section 1274A — Inflation adjusted numbers for 2003.** This ruling provides the dollar amounts, increased by the 2003 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2001-65 supplemented and superseded.

### Rev. Rul. 2002-79

This revenue ruling provides the dollar amounts, increased by the 2003 inflation adjustment, for § 1274A of the Internal Revenue Code.

### BACKGROUND

In general, §§ 483 and 1274 determine the principal amount of a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a “qualified debt instrument,” the discount rate used for purposes of §§ 483 and 1274 may not exceed 9 percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is \$2,800,000.

In the case of a “cash method debt instrument,” as defined in § 1274A(c), the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash

method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed \$2,000,000; (B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged; (C) § 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) an election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A-1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of \$100 (or, if the increase is a multiple of \$50 and not of \$100, the increase is increased to the nearest multiple of \$100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

### INFLATION-ADJUSTED AMOUNTS

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

Rev. Rul. 2002-79 Table 1  
Inflation-Adjusted Amounts Under § 1274A

<i>Calendar Year of Sale or Exchange</i>	<i>1274A(b) Amount (qualified debt instrument)</i>	<i>1274A(c)(2)(A) Amount (cash method debt instrument)</i>
1990	\$2,933,200	\$2,095,100
1991	\$3,079,600	\$2,199,700
1992	\$3,234,900	\$2,310,600
1993	\$3,332,400	\$2,380,300
1994	\$3,433,500	\$2,452,500
1995	\$3,523,600	\$2,516,900
1996	\$3,622,500	\$2,587,500
1997	\$3,723,800	\$2,659,900
1998	\$3,823,100	\$2,730,800
1999	\$3,885,500	\$2,775,400
2000	\$3,960,100	\$2,828,700
2001	\$4,085,900	\$2,918,500
2002	\$4,217,500	\$3,012,500
2003	\$4,280,800	\$3,057,700

*Note:* These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982-1984 base, published by the Bureau of Labor Statistics.

**EFFECT ON OTHER DOCUMENTS**

Rev. Rul. 2001-65, 2001-2 C.B. 639, is supplemented and superseded.

**DRAFTING INFORMATION**

The author of this revenue ruling is Avital Grunhaus of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, please contact Mrs. Grunhaus at (202) 622-3930 (not a toll-free call).

**Section 6043.—Liquidating, etc., Transactions**

*26 CFR 1.6043-4T: Information returns relating to certain acquisitions of control and changes in capital structure (temporary)*

**T. D. 9022**

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

**Information Reporting Relating to Taxable Stock Transactions**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations (REG-143321-02) set forth in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on November 18, 2002.

*Applicability Dates:* For dates of applicability, see §§ 1.6043-4T(i) and 1.6045-3T(f).

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622-4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1812. Responses to this collection of information are mandatory.

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 OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rule-making published in this issue of the Bulletin.

Books or records relating to a 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 and Explanation of Provisions**

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

Proposed regulations under section 6043(c) were previously published in the Federal Register on July 5, 1990 (CO-5-90, 1990-2 C.B. 686 [55 FR 27648]) (the 1990 proposed regulations). After considering issues raised in public comments and the reporting burdens placed on corporate taxpayers under the 1990 proposed regulations, the Internal Revenue Service decided to withdraw the 1990 proposed regulations on October 16, 1992 (Notice 92-51, 1992-2 C.B. 381 [57 FR 47428]). At that time, the IRS stated that the value of the information that would be collected under the 1990 proposed regulations did not justify the burden to the public in complying with the rules. The IRS further stated that it might promulgate regulations under section 6043(c) if it became apparent that the information would be needed to administer the tax system properly.

At this time, the IRS believes that information reporting under section 6043(c) for certain large corporate transactions is appropriate. The transactions covered by this reporting requirement are acquisitions of control and substantial changes in the capital structure of a corporation. The temporary regulations require a corporation to attach a form to its income tax return describing these transactions, and to file information returns with respect to certain shareholders in such transactions. Duplicate reporting is not intended; thus, the regulations provide that no reporting is required under this section where reporting is required under another section. The text

of these temporary regulations also serves as the text of the proposed regulations set forth in the cross-referencing notice of proposed rulemaking (REG-143321-02) published in this issue of the Bulletin. The preamble to that notice of proposed rulemaking invites public comments with respect to the potential for duplicate reporting under this section. That preamble also invites comments with respect to the burden of compliance with the reporting requirements.

These temporary regulations require a domestic corporation involved in certain large taxable transactions to file Form 8806 reporting and describing such transactions. The corporation must attach Form 8806 to its timely filed income tax return. If Form 8806 is not available at least 90 days prior to the due date (including extensions) of the corporation's income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the regulation allows a corporation to make the report by attaching an interim statement to its return containing certain required information.

The temporary regulations define an acquisition of control of a corporation as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than \$100,000,000.

Under the temporary regulations, a corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers sub-

stantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e) changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than \$100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The temporary regulations also require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders, a Form 1099-CAP reporting the amount of any cash plus the fair market value of any property (including stock) provided to the shareholder in the transaction. Corporations are not required to report amounts distributed to certain exempt recipients or the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Further, transactions and distributions already reported under other sections are not subject to reporting under these regulations.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011-2). The penalty under section 6652(l) is \$500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed \$100,000. The temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed \$500 per day (\$100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724-1 of this chapter as a guideline for determining reasonable cause.

Section 1.6045-3T requires a broker who, as the record holder of stock, re-

ceives a Form 1099-CAP from a corporation pursuant to the reporting requirements of § 1.6043-4T, to file a Form 1099-CAP with respect to the actual owner and furnish such Form 1099-CAP to the actual owner.

The temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2001, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in this issue of the Bulletin will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rule-making published in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Drafting Information

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

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### 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 continues to read in part as follows:  
Authority: 26 U.S.C. 7805\* \* \*

**Par. 2.** Section 1.6043-4T is added to read as follows:

*§ 1.6043-4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).*

(a) *Information returns for an acquisition of control or a substantial change in capital structure—(1) General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (“reporting corporation”), the reporting corporation must file a completed Form 8806 (or any successor form) in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (v) of this section.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation;

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group;

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (“acquiring corporation”). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503-2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this

section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation’s shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. federal income tax purposes; and

(D) A statement of the aggregate amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation’s shareholders in exchange for their stock.

(2) *Time for making return.* Form 8806 (or an interim statement, as set forth in paragraph (a)(3) of this section) must be attached to the reporting corporation’s timely filed income tax return (taking extensions into account) for the year in which the acquisition of control or substantial change in capital structure occurs.

(3) *Interim statement.* If Form 8806 has not been made available at least 90 days before the due date (including extensions) of the reporting corporation’s income tax return for the year in which the acquisition of control or substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the reporting corporation shall attach a statement to its return containing the information described in paragraphs (a)(1)(i) through (v) of this section.

(4) *Coordination with other sections.* (i) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be filed pursuant to §§ 1.351-3(b), 1.355-5(a), or 1.368-3(a), provided the transaction is properly reported in accordance with those sections.

(ii) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(6) of this section.

(b) *Information returns regarding shareholders—(1) General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section (or an interim statement under paragraph (a)(3) of this section) shall file a return of information on Forms 1096 and 1099-CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(2) *Additional requirement for information returns.* A corporation that would have been required to file Form 8806 pursuant to paragraph (a) of this section (or an interim statement under paragraph (a)(3) of this section) but for the application of paragraph (a)(4)(i) of this section (relating to information provided under §§ 1.351-3(b), 1.355-5(a), or 1.368-3(a)) shall file a return of information on Forms 1096 and 1099-CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(3) *Time for making information returns.* Forms 1096 and 1099-CAP must be

filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(4) *Contents of return.* A separate Form 1099-CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(6) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C)) of this section or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to Form 1099-CAP.

(5) *Furnishing of forms to shareholders.* The Form 1099-CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure.

(6) *Exempt recipients.* A corporation is not required to file a Form 1099-CAP pursuant to this paragraph (b) of this section with respect to the following shareholders:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed \$1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(6)(ii).

(iii) Any shareholder described in paragraphs (b)(6)(iii)(A) through (K) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(6)(iii)(A) through (K) of this section or if the corporation has a prop-

erly completed exemption certificate from the shareholder (as provided in § 31.3406(h)-3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(6)(iii) (A) through (J) of this section based on the applicable indicators described in § 1.6049-4(c)(1)(ii).

(A) A tax-exempt organization, as described in § 1.6049-4(c)(1)(ii)(B)(1).

(B) An individual retirement plan, as described in § 1.6049-4(c)(1)(ii)(C).

(C) The United States, as described in § 1.6049-4(c)(1)(ii)(D).

(D) A state, as described in § 1.6049-4(c)(1)(ii)(E).

(E) A foreign government, as described in § 1.6049-4(c)(1)(ii)(F).

(F) An international organization, as described in § 1.6049-4(c)(1)(ii)(G).

(G) A foreign central bank of issue, as described in § 1.6049-4(c)(1)(ii)(H).

(H) A real estate investment trust, as described in § 1.6049-4(c)(1)(ii)(J).

(I) An entity registered under the Investment Company Act of 1940, as described in § 1.6049-4(c)(1)(ii)(K).

(J) A common trust fund, as described in § 1.6049-4(c)(1)(ii)(L).

(K) A corporation, as defined in section 7701(a)(3) (except for corporations for which an election under section 1362(a) is in effect), if the reporting corporation reasonably determines that such corporation is not a broker (as defined in § 1.6045-1(a)(1)) or a record holder for the actual owner of the stock.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(6)(iv), the provisions in § 1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441-1 shall apply by substituting the terms “corporation” and “shareholder” for the terms “withholding agent” and “payee” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of

§ 1.6049-5(d) shall apply by substituting the terms “corporation” and “shareholder” for the terms “payor” and “payee”. Nothing in this paragraph (b)(6)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(7) *Coordination with other sections.* No reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections.

(c) *Acquisition of control of a corporation—(1) In general.* For purposes of this section, an acquisition of control of a corporation (“first corporation”) occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is \$100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is \$100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation—(1) In general.* A

corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is \$100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation (“transferor”) transfers all or substantially all of its assets to another entity (“transferee”) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed \$500 for each day the failure continues (up to a maximum of \$100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011-2. In addition, criminal penalties under sections 7203, 7206, and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under §§ 1.351-3(b), 1.355-5(a), 1.368-3(a), and sections 6042, 6043(a), or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds \$100,000,000.

*Example 1.* The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly-formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. If a statement is filed in accordance with § 1.351-3(b) with respect to the transaction, X is not required to attach Form 8806 (or an interim statement) to its return. Regardless of whether a statement is filed in accordance with § 1.351-3(b), X must file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099-CAP to that shareholder.

*Example 2.* C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must attach Form 8806 (or an interim statement) to its final income tax return. C (or D as the successor to C) also must file a Form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes (if any) and the fair market value of the D stock

provided to that shareholder, and C (or D) must furnish a copy of the Form 1099-CAP to that shareholder.

*Example 3.* (i) The facts are the same as in Example (2), except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) If a statement is filed in accordance with § 1.368-3(a) with respect to the transaction, C is not required to attach Form 8806 (or an interim statement) to its return under paragraph (a) of this section. Regardless of whether a statement is filed in accordance with § 1.368-3(a), C (or D as the successor to C) must comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C or D must file a Form 1099-CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the Form 1099-CAP to that shareholder. The Form 1099-CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish Forms 1099-CAP with respect to shareholders who receive only D stock in exchange for their C stock.

*Example 4.* The facts are the same as in Example 3, except the C shareholders receive cash instead of short term notes. The C shareholders exchange their shares through a transfer agent. Under section 6045, the transfer agent is required to report the amount of cash paid to the C shareholders in the transaction. C and D are not required to file information returns under paragraph (b) of this section, unless C or D knows or has reason to know that the transfer agent did not file the required information returns under section 6045.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. If a reporting corporation described in the preceding sentence files its income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs on or before January 13, 2003, such reporting corporation (or successor entity) shall file an interim statement (as described in paragraph (a)(3) of this section) on or before January 31, 2003. The applicability of this section expires on November 14, 2005.

**Par 3.** Section 1.6045-3T is added to read as follows:

*§ 1.6045-3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).*

(a) *In general.* Any broker (as defined in § 1.6045-1(a)(1)) who receives a Form 1099-CAP from a corporation pursuant to § 1.6043-4T as the record holder of stock in such corporation but who is not the actual owner thereof shall file a return of information with respect to the actual owner unless the actual owner is an exempt recipient as defined in § 1.6045-1(c)(3)(i).

(b) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096 and 1099-CAP, or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(c) *Contents of return.* A separate Form 1099-CAP must be prepared for each owner showing—

1. The name, address and taxpayer identification number of the actual owner;
2. The number and class of shares in the corporation exchanged by the actual owner;
3. The amount of cash and the fair market value of stock or other property provided to the actual owner in exchange for its stock, that would have been reported by the corporation under § 1.6043-4T if the corporation had provided the Form 1099-CAP directly to the actual owner (rather than to the broker as nominee); and
4. Such other information as may be required by Form 1099-CAP.

(d) *Furnishing of forms to actual owners.* The Form 1099-CAP prepared for each actual owner must be furnished to the actual owner on or before February 28 of the year following the calendar year in which the actual owner receives stock, cash or other property.

(e) *Single Form 1099.* If a broker is required to file a Form 1099 with respect to an owner under both this § 1.6045-3T and § 1.6045-1(b), the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099 that contains all the relevant information, as provided in the instructions to Form 1099-CAP.

(f) *Effective date.* This section applies with respect to any Form 1099-CAP received by a broker after November 13,

2002. The applicability of this section expires on November 14, 2005.

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

**Par 4.** The authority citation for part 602 continues to read in part as follows:

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

**Par 5.** In section 602.101, paragraph (b) is amended by adding the following en-

tries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6043-4T .....	1545-1812
* * * * *	
1.6045-3T .....	1545-1812
* * * * *	

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

Approved November 8, 2002.

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

(Filed by the Office of the Federal Register on November 13, 2002, 4:24 p.m., and published in the issue of the Federal Register for November 18, 2002, 67 F.R. 69468)

**Section 7872.—Treatment of Loans With Below-Market Interest Rates**

**Section 7872(g) — Inflation adjusted numbers for 2003.** This ruling provides the dollar amounts, increased by the 2003 inflation adjustment, for section 7872(g) of the Code. Rev. Rul. 2001-64 supplemented and superseded.

**Rev. Rul. 2002-78**

This revenue ruling publishes the amount that § 7872(g) of the Internal Revenue Code permits a taxpayer to lend to a qualifying continuing care facility without incurring imputed interest. The amount is adjusted for inflation for the years after 1986.

Section 7872 generally treats loans bearing a below-market interest rate as if they bore interest at the market rate.

Section 7872(g)(1) provides that, in general, § 7872 does not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of the year.

Section 7872(g)(2) provides that, in the case of loans made after October 11, 1985, and before 1987, § 7872(g)(1) applies only to the extent that the aggregate outstanding amount of any loan to which § 7872(g) applies (determined without regard to

§ 7872(g)(2)), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which § 7872(g)(1) applies, does not exceed \$90,000.

Section 7872(g)(5) provides that, for loans made during any calendar year after 1986 to which § 7872(g)(1) applies, the \$90,000 limit specified in § 7872(g)(2) is increased by an inflation adjustment. The inflation adjustment for any calendar year is the percentage (if any) by which the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for calendar year 1985. Section 7872(g)(5) states that the CPI for any calendar year is the average of the CPI as of the close of the 12-month period ending on September 30 of that calendar year.

Table 1 sets forth the amount specified in § 7872(g)(2) of the Code. The amount is increased by the inflation adjustment for the years 1987-2003.

<i>Year</i>	<i>Amount</i>
Before 1987	\$ 90,000
1987	\$ 92,200
1988	\$ 94,800
1989	\$ 98,800

REV. RUL. 2002-78 TABLE 1 — Continued  
Limit under 7872 (g) (2)

<i>Year</i>	<i>Amount</i>
1990	\$103,500
1991	\$108,600
1992	\$114,100
1993	\$117,500
1994	\$121,100
1995	\$124,300
1996	\$127,800
1997	\$131,300
1998	\$134,800
1999	\$137,000
2000	\$139,700
2001	\$144,100
2002	\$148,800
2003	\$151,000

*Note:* These inflation adjustments were computed using the All-Urban, Consumer Price Index 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2001-64, 2001-2 C.B. 640, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Avital Grunhaus of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, please contact Mrs. Grunhaus at (202) 622-3940 (not a toll-free call).

## Part III. Administrative, Procedural, and Miscellaneous

### Tax Treatment of Residential Grants Made by the Lower Manhattan Development Corporation to Individuals and Families Affected by the September 11, 2001, Disaster

#### Notice 2002-76

##### PURPOSE

This notice provides answers to frequently asked questions regarding the tax treatment of Residential Grant Program grants the Lower Manhattan Development Corporation (the LMDC) makes to individuals and families who occupy rental units or owner-occupied units in areas near the site of the September 11, 2001, attack on the World Trade Center.

##### BACKGROUND

###### *Residential Grant Program*

The LMDC, a subsidiary of the Empire State Development Corporation, which is a public benefit corporation of the State of New York, was created in the aftermath of the September 11, 2001, attack on the World Trade Center. In cooperation with city, state, and federal agencies, the LMDC developed the Residential Grant Program to offer financial assistance to individuals who reside, or will reside, in areas near the site of the World Trade Center disaster. The LMDC received its funding for the Residential Grant Program from the United States Department of Housing and Urban Development. The LMDC's Partial Action Plan, as amended on September 25, 2002, and implemented on September 26, 2002, describes the Residential Grant Program.

The Partial Action Plan divides the areas closest to the World Trade Center disaster site into three zones (Zone 1, Zone 2, and Zone 3). These three zones correspond generally to the locations of those residents who experienced the most exposure to the effects of the disaster.

The LMDC Residential Grant Program offers three types of grants to families and individuals residing in areas closest to the World Trade Center disaster. The first grant

is a one-time \$1,000 grant available only to residents who occupied a housing unit in Zone 1, 2, or 3 before September 11, 2001, and continue to live there through the date of their application and the date of the award.

The second grant is for families with one or more children under the age of 18 making a 1-year commitment to occupy rental units or owner-occupied housing in Zone 1, 2, or 3 ("family grants"). These grants are available regardless of whether the grant recipient resided in Zone 1, 2, or 3 on September 11, 2001. The one-time grant amount is \$1,500 if the unit is in Zone 1 and \$750 if the unit is in Zone 2 or 3. The Partial Action Plan states that the family grants are intended to compensate families for the extra expenses they incurred or will incur because of the continuing effects of the September 11, 2001, disaster. The family grants are expected to be reasonably commensurate with the extra reasonable and necessary personal, living, and family expenses that grant recipients have incurred or will incur as a result of the September 11, 2001, disaster, from the time they commenced residing in Zone 1, 2, or 3 through the first anniversary after the grant is made, excluding personal, living, or family expenses that are reimbursed from other sources, including the Federal Emergency Management Agency ("FEMA") and private insurance.

The third grant is for individuals making a 2-year commitment to occupy rental units or owner-occupied housing in Zone 1 or 2 ("2-year commitment grant program"). These grants are available regardless of whether the grant recipient resided in Zone 1 or 2 on September 11, 2001. In general, these grants equal 30 percent of monthly rent or, for owner-occupied units, 30 percent of mortgage payments, maintenance, and real estate and related taxes. The maximum grant amount is \$12,000 over 2 years for Zone 1 units, and \$6,000 over 2 years for Zone 2 units. The minimum grant amount is \$4,000 over 2 years for units in Zone 1 and \$2,000 over 2 years for units in Zone 2.

The Partial Action Plan states that the minimum grants (\$4,000 per unit in Zone 1 and \$2,000 per unit in Zone 2) are intended to compensate those residents who incurred or will incur extra expenses be-

cause of the continuing effects of the September 11, 2001, disaster. The minimum grant amounts are expected to be reasonably commensurate with the extra reasonable and necessary personal, living, or family expenses that grant recipients have incurred or will incur as a result of the September 11, 2001, disaster, from the time they commenced residing in Zone 1 or 2 through the second anniversary after the initial grant payment is made, excluding personal, living, or family expenses that are reimbursed from other sources, including FEMA and private insurance.

###### *Overview of the General Welfare Exclusion and Information Reporting Requirements*

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. The Internal Revenue Service, however, has consistently held that payments by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in a recipient's gross income (general welfare exclusion). *See e.g.*, Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840. To qualify under the administrative general welfare exclusion, the payments must (i) be made from a governmental fund, (ii) be for the promotion of general welfare (based on need), and (iii) not represent compensation for services. Rev. Rul. 75-246, 1975-1 C.B. 24; Rev. Rul. 82-106, 1982-1 C.B. 16.

Governmental payments to help individuals and families meet disaster-related expenses are based on need. For example, Rev. Rul. 76-144, 1976-1 C.B. 17, holds that grants made under the Disaster Relief Act of 1974 to help individuals or families affected by a disaster meet extraordinary disaster-related necessary expenses or serious needs in the categories of medical, dental, housing, personal property, transportation, or funeral expenses (and not in the categories of nonessential, decorative, or luxury items) are excluded from gross income under the general welfare exclusion. In this context, because "need" is not defined in terms of financial need, the general welfare exclusion applies equally to all residents of an affected area regardless of

their income levels. In the absence of a disaster, however, governmental payments made without regard to financial status, health, educational background, or employment status are not based on need and, thus, do not qualify under the general welfare exclusion. See Rev. Rul. 76-131, 1976-1 C.B. 16; and Rev. Rul. 85-39, 1985-1 C.B. 21.

The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2001), added § 139 to the Code. Section 139(b)(4) codifies (but does not supplant) the administrative general welfare exclusion for certain disaster relief payments to individuals. Because “of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred.” Joint Committee on Taxation Staff, *Technical Explanation of the “Victims of Terrorism Tax Relief Act of 2001,” as Passed by the House and Senate on December 20, 2001*, 107th Cong., 1st Sess. (2001). As under § 139, the Service will not require individuals to account for actual disaster-related expenses for governmental payments to qualify under the administrative general welfare exclusion if the amount of the payments can be reasonably expected to be commensurate with the expenses incurred.

Under § 6041 and the regulations thereunder, any person (including an agency of a state or its political subdivisions) engaged in a trade or business and making payments in the course of such trade or business to another person of fixed or determinable gains, profits, or income of \$600 or more during a calendar year must provide an information return setting forth the amount of such gains, profits, and income, and the name and address of the recipient of the payment.

## QUESTIONS AND ANSWERS

*Q-1. Are the one-time \$1,000 grants excluded from gross income?*

A-1. Yes. The one-time \$1,000 grants are excluded from grant recipients’ gross income under the general welfare exclusion. These grants are intended to compensate individuals for the extra reasonable and necessary personal, living, and family expenses they incur as a result of the ef-

fects of residing in the area of the World Trade Center disaster and are expected to be commensurate with the expenses incurred. The \$1,000 one-time grants also qualify for exclusion from gross income under § 139.

*Q-2. Are the family grants and the minimum grants under the 2-year commitment grant program excluded from gross income?*

A-2. Yes. The family grants (\$1,500 for units in Zone 1 and \$750 for units in Zone 2 or 3) and the minimum grant amounts (\$4,000 for units in Zone 1 and \$2,000 for units in Zone 2) under the 2-year commitment grant program are excluded from gross income under the general welfare exclusion. These grants qualify under the general welfare exclusion because these grants are intended to compensate individuals for unreimbursed extra reasonable and necessary personal, living, and family expenses they incur as a result of the continuing effects of the World Trade Center disaster and are expected to be commensurate with the expenses incurred. The family grants and the minimum grant amounts also qualify for exclusion from gross income under § 139.

*Q-3. Are the payments in excess of the minimum grant amounts under the 2-year commitment grant program excluded from gross income?*

A-3. No. The payments in excess of \$4,000 for Zone 1 units and in excess of \$2,000 for Zone 2 units under the 2-year commitment grant program do not qualify for exclusion from gross income under the general welfare exclusion or any other provision of law. These payments are distinguishable from the other grant payments under the Residential Grant Program because these payments are not intended to compensate individuals for the extra reasonable and necessary personal, living, and family expenses they incur as a result of residing in the area of the World Trade Center disaster. In addition, these payments are made regardless of any other needs-based criterion (for example, financial status, health, educational background, or employment status of the individual recipient). Grant recipients must include the remaining grant amounts under the 2-year commitment grant program in gross income under § 61(a).

*Q-4. Must grant recipients maintain records of the extra personal, living, and family disaster-related expenses they in-*

*curred to exclude from gross income under the general welfare exclusion payments of the one-time \$1,000 grants, the family grants, and the minimum grant amounts under the 2-year commitment grant program?*

A-4. No. Grant recipients are not required to maintain records of the extra personal, living, and family disaster-related expenses they incurred to exclude from gross income under the general welfare exclusion payments of the one-time \$1,000 grants, the family grants, and the minimum grant amounts under the 2-year commitment grant program.

*Q-5. Are payments of the one-time \$1,000 grants, the family grants, and the minimum grants under the 2-year commitment grant program subject to information reporting by the LMDC?*

A-5. No. Payments of the following grants:

- (1) the one-time \$1,000 grants;
- (2) the family grants (\$1,500 for units in Zone 1 and \$750 for units in Zone 2 or 3); and

(3) the minimum grant amounts under the 2-year commitment grant program (\$4,000 for units in Zone 1 and \$2,000 for units in Zone 2) are not subject to information reporting because these payments are excluded from gross income under the general welfare exclusion.

*Q-6. Are the payments in excess of the minimum grant amounts under the 2-year commitment grant program subject to information reporting?*

A-6. Yes. Because payments in excess of the minimum grant amounts under the 2-year commitment grant program must be included in gross income, LMDC must file with the Service and furnish to a grant recipient a Form 1099-G, *Certain Government Payments*, if the grant recipient receives \$600 or more of such payments during a calendar year.

## DRAFTING INFORMATION

The principal author of this notice is Shareen Soltanzadeh Pflanz of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Shareen Pflanz at (202) 622-4920 (not a toll-free call).

**Tables for Figuring Amount Exempt from Levy on Wages, Salary, and Other Income**

**1. Table for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income (Forms 668–W(c) and 668–W(c)(DO)) 2003**

dividual’s income that is exempt from a notice of levy used to collect delinquent tax in 2003.

(Amounts are for each pay period.)

Publication 1494, shown below, provides tables that show the amount of an in-

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<b>Filing Status: Single</b>							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	30.00	41.73	53.46	65.19	76.92	88.65	18.27 plus 11.73 for each exemption
Weekly	150.00	208.65	267.31	325.96	384.62	443.27	91.35 plus 58.65 for each exemption
Biweekly	300.00	417.31	534.62	651.92	769.23	886.54	182.69 plus 117.31 for each exemption
Semi-Monthly	325.00	452.08	579.17	706.25	833.33	960.42	197.92 plus 127.08 for each exemption
Monthly	650.00	904.17	1158.33	1412.50	1666.67	1920.83	395.83 plus 254.16 for each exemption

<b>Filing Status: Unmarried Head of Household</b>							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	38.65	50.38	62.12	73.85	85.58	97.31	26.92 plus 11.73 for each exemption
Weekly	193.27	251.92	310.58	369.23	427.88	486.54	134.62 plus 58.65 for each exemption
Biweekly	386.54	503.85	621.15	738.46	855.77	973.08	269.23 plus 117.31 for each exemption
Semi-Monthly	418.75	545.83	672.92	800.00	927.08	1054.17	291.67 plus 127.08 for each exemption
Monthly	837.50	1091.67	1345.83	1600.00	1854.17	2108.33	583.33 plus 254.16 for each exemption

<b>Filing Status: Married Filing Joint Return (and Qualifying Widow(er)s)</b>							
Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	42.31	54.04	65.77	77.50	89.23	100.96	30.58 plus 11.73 for each exemption
Weekly	211.54	270.19	328.85	387.50	446.15	504.81	152.88 plus 58.65 for each exemption
Biweekly	423.08	540.38	657.69	775.00	892.31	1009.62	305.77 plus 117.31 for each exemption
Semi-Monthly	458.33	585.42	712.50	839.58	966.67	1093.75	331.25 plus 127.08 for each exemption
Monthly	916.67	1170.83	1425.00	1679.17	1933.33	2187.50	662.50 plus 254.16 for each exemption

**Filing Status: Married Filing Separate Return**

Pay Period	Number of Exemptions Claimed on Statement						
	1	2	3	4	5	6	More Than 6
Daily	27.02	38.75	50.48	62.21	73.94	85.67	15.29 plus 11.73 for each exemption
Weekly	135.10	193.75	252.40	311.06	369.71	428.37	76.44 plus 58.65 for each exemption
Biweekly	270.19	387.50	504.81	622.12	739.42	856.73	152.88 plus 117.31 for each exemption
Semi-Monthly	292.71	419.79	546.88	673.96	801.04	928.13	165.62 plus 127.08 for each exemption
Monthly	585.42	839.58	1093.75	1347.92	1602.08	1856.25	331.25 plus 254.16 for each exemption

**2. Table for Figuring Additional Exempt Amount for Taxpayers at Least 65 Years Old and/or Blind**

Additional Exempt Amount

Filing Status	*	Daily	Wkly	Bi-Wkly	Semi-Mo	Monthly
Single or Head of Household	1	4.42	22.12	44.23	47.92	95.83
	2	8.85	44.23	88.46	95.83	191.67
Any Other Filing Status	1	3.65	18.27	36.54	39.58	79.17
	2	7.31	36.54	73.08	79.17	158.33
	3	10.96	54.81	109.62	118.75	237.50
	4	14.62	73.08	146.15	158.33	316.67

\* ADDITIONAL STANDARD DEDUCTION claimed on Parts 3, 4, & 5 of levy.

**Examples**

These tables show the amount exempt from a levy on wages, salary, and other income.

1. A single taxpayer who is paid weekly and claims three exemptions (including one for the taxpayer) has \$267.31 exempt from levy.

2. If the taxpayer in number 1 is over 65 and writes 1 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy, \$289.43 is exempt from this levy (\$267.31 plus \$22.12).

3. A taxpayer who is married, files jointly, is paid biweekly, and claims two exemptions (including one for the taxpayer) has \$540.38 exempt from levy.

4. If the taxpayer in number 3 is over 65 and has a spouse who is blind, this taxpayer should write 2 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, & 5 of the levy. Then, \$613.46 is exempt from this levy (\$540.38 plus \$73.08).

## Part IV. Items of General Interest

### Notice of Proposed Rule-making by Cross-Reference to Temporary Regulations

#### Substantiation of Incidental Expenses

##### REG-141832-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses away from home. In T.D. 9020 in this issue of the Bulletin, the IRS is issuing temporary regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home under section 274 of the Internal Revenue Code. The text of those regulations also serves as text for these proposed regulations. This document also contains proposed regulations amending the regulations under section 62 to conform the cross-reference to the regulations under section 274.

DATES: Written or electronic comments and requests for a public hearing must be received by February 6, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-141832-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-141832-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regu-

lations, John Moriarty, (202) 622-4930; concerning submissions of comments and/or requests for a public hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Final and temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 274. The temporary regulations authorize the Commissioner to establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The text of the temporary regulations also serves, in part, as text for these proposed regulations. The preamble to the temporary regulations explains the amendment.

##### 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

##### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS.

The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

##### Drafting Information

The principal author of these regulations is John Moriarty, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

##### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 \* \* \*

Section 1.274-5 also issued under 26 U.S.C. 274(d). \* \* \*

Par. 2. Section 1.62-2 is amended by removing the last three sentences of paragraph (e)(2) and adding two sentences in their place to read as follows:

*§ 1.62-2 Reimbursements and other expense allowance arrangements.*

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \* See § 1.274-5(g) and (j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274-5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

\* \* \* \* \*

Par. 3. Section 1.274-5 is amended by:  
1. Adding paragraph (j)(3).

2. Adding a new sentence at the end of paragraph (m).

The additions read as follows:

*§ 1.274-5 Substantiation requirements.*

[The text of proposed § 1.274-5(j)(3) and the proposed new sentence at the end of § 1.274-5(m) are the same as the text of § 1.274-5T(j)(3) and the last sentence of § 1.274-5T(m) published elsewhere in this issue of the **Federal Register**].

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

(Filed by the Office of the Federal Register on November 8, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 12, 2002, 67 F.R. 68539)

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

### Information Reporting Relating to Taxable Stock Transactions

#### REG-143321-02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, IRS is issuing temporary regulations (T.D. 9022) relating to information reporting relating to taxable stock transactions. This document contains proposed regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the

text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 18, 2003. Outlines of topics to be discussed at the public hearing scheduled for March 5, 2003, at 10 a.m., must be received by February 12, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-143321-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-143321-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments 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 proposed regulations, Nancy L. Rose (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622-7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of informa-

tion should be received by January 17, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 1.6043-4(a) and (b) and in 26 CFR 1.6045-3. The information is required be reported to ensure that shareholders properly recognize gain from corporate acquisitions and changes in capital structure. The collection of information is mandatory. The likely respondents are large corporations. The estimated total annual reporting and recordkeeping burden in proposed § 1.6043-4(a), requiring the filing of Form 8806, is 2 hours. The estimated total annual reporting and recordkeeping burden in proposed §§ 1.6043-4(b) and 1.6045-3 is 15 minutes for each Form 1099-CAP and 10 minutes for Form 1096.

The estimated annual burden per respondent and/or recordkeeper will vary dependent on the number of Forms 1099-CAP required to be filed.

The estimated number of respondents under the proposed regulations is 350. The estimated number of respondents under the temporary regulations, for transactions occurring after December 31, 2001, is 5.

The estimated annual frequency of reporting on Form 8806 and Form 1096 is 1. The estimated annual frequency of reporting on Form 1099-CAP is 1 for each shareholder.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless

it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a 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 and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to sections 6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

As set forth in the preamble to the temporary regulations, public comments are specifically invited with regard to the potential for duplicate reporting under these proposed regulations and with regard to the burden of compliance with the reporting requirements under the proposed regulations.

### Proposed Effective Date

The provisions of these regulations under section 6043 are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations. The provisions of these regulations under section 6045 are proposed to be applicable for any Form 1099-CAP received by a broker after the date on which these regulations are published in the **Federal Register** as final regulations.

### 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not im-

pose 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 Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or 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 rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 5, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. 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 portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments by February 18, 2003, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 12, 2003. 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 reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.6043-4 is added to read as follows:

*§ 1.6043-4 Information returns relating to certain acquisitions of control and changes in capital structure.*

[The text of proposed § 1.6043-4 is the same as the text of § 1.6043-4T published elsewhere in this issue of the **Federal Register**]

**Par. 3.** Section 1.6045-3 is added to read as follows:

*§ 1.6045-3 Information reporting for acquisitions of control or substantial changes in capital structure.*

[The text of proposed § 1.6045-3 is the same as the text of § 1.6045-3T published elsewhere in this issue of the **Federal Register**]

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

(Filed by the Office of the Federal Register on November 13, 2002, 4:24 p.m., and published in the issue of the Federal Register for November 18, 2002, 67 F.R. 69496)

### Foundations Status of Certain Organizations

#### Announcement 2002-107

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

status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

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

Actions Community Development Corporation, Houston, TX  
African-American Advocacy Education and Training Consultant Group, Incorporated, Syracuse, NY  
All Helping Hands, Inc., Lake City, FL  
Alpha Pi Chi Sorority Theta Lamdda Rho Chapter, St. Louis, MO  
American-Somali Council, Manassas, VA  
Beacon Trace Community Corporation, Pittsford, NY  
Bear Mountain Learning Community, Waterford, ME  
Bia House, Palm Desert, CA  
Bob Epperson Ministries, Springville, AL  
Caleb Development Corporation, Swampscott, MA  
Canon McMillan Baseball Association, Canonsburg, PA  
Carolina Housing Partnership Association, Jacksonville, FL  
Center for Security and Social Progress, Inc., Waban, MA  
Changing Faces, Inc., Santa Maria, CA  
Children of Christ Outreach, Burien, WA  
Coats Heritage House, Inc., Elkland, PA  
Communities With Vision, Inc., Sorrento, FL  
Eagle Vision Society, Oklahoma City, OK  
Edisto Haven, Orangeburg, SC  
Episcopal Church of the Nativity Trust, Huntsville, AL  
Extended Harvest, Vancouver, WA  
Eye Foundation, Readfield, ME  
Fields Center, Inc., Louisville, KY  
Fire Fighters Memorial Foundation, Inc., Omaha, NE

Flatbush Institute for Torah Study, Inc., Brooklyn, NY  
Fourth Unity, Inc., Brooklyn, NY  
Fresh Bread Productions, Brooklyn, NY  
Gods Child Senior Care Pavilion, Inc., Stone Mountain, GA  
Greater San Diego Health Education, Inc., San Diego, CA  
Healing Center, Candler, NC  
Hearts to Feel Hands to Serve, Inc., New York, NY  
Highway to Education Trust of Worth Township, Oaklawn, IL  
Honey Bear Child Care and Learning Centers, Inc., Swartz Creek, MI  
Hopeville Institution, San Antonio, TX  
Housing Enablement and Access to Land, Inc., Central Falls, RI  
Indus Foundation, Sudbury, MA  
Institute for Veteran Transition II, Fresno, CA  
Joshua Foundation, Inc., Penn Valley, CA  
Kansas Foundation for Clinical Pharmacology, Inc., Overland Park, KS  
Kira Institute, Inc., Amherst, MA  
Los Angeles County Bomberos, Incorporated, Montebello, CA  
Meals 4 U, Grosse Pointe Woods, MI  
Mercy Place Ministries, Shippenburg, PA  
Mid-Maine Global Forum, Waterville, ME  
Milwaukee Institute for Biblical Studies, Inc., Milwaukee, WI  
Minnesota Precision Manufacturing Association Educational Opportunities, Plymouth, MN  
Mound Bayou Community Development Corporation, Incorporated, Mound Bayou, MS  
Mystery Weavers, Red Bluff, CA  
National Floor Safety Institute, Bedford, TX  
Noble Charitable Center, Agoura Hills, CA  
North Star Land Foundation, Inc., Edgartown, MA  
Ocean Adventures, Ltd., Prior Lake, MN  
On Gods Behalf Ministries, Inc., Grand Rapids, MI  
Peluso Family Foundation, Stockton, CA

Port Gamble S'Klallam Foundation, Kingston, WA  
Project Helping Hand, Inc., Tyler, TX  
Rainbow Alliance Challenge of Northern Rhode Island, Inc., Central Falls, RI  
Rainbow Alliance Challenge of Southern Rhode Island, Inc., Central Falls, RI  
Rich Tryon Ministries, Fort Royal, SC  
School Foundation of Community Unit School Dist. 3 Pike and Calhoun Counties IL, Pleasant Hill, IL  
Second Chance Community Development, Inc., Lauderhill, FL  
Silent Teens Organization, Canoga Park, CA  
Siskiyou County Job Council, Yreka, CA  
Special Touch Day Care Center, Brooklyn, NY  
Starlight Deaf Association of Alton Illinois, Alton, IL  
Stonehenge Foundation, Incorporated, Gladwyne, PA  
Stuart C. Dodd Institute for Social Innovation, Seattle, WA  
Tower of Faith Economic Development Corporation, Compton, CA  
Universal Street Academy Community Development Association, Pittsburgh, PA  
Vanderbilt Asthma Sinus Allergy Program, Inc., Nashville, TN  
Western Somali Relief Agency, Inc., San Diego, CA  
Wishes of Life, Inc., Snellville, GA  
Yonkers Housing Development Corporation, Yonkers, 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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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
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### Proposed Regulations:

26 CFR 1.61–2, amended; 1.61–22, added; 1.83–1, –3, –6, amended; 1.301–1(q), added; 1.1402(a)–18, added; 1.7872–15, added; 31.3121(a), 31.3231(e), 31.3306(b), 31.3401(a), amended; split-dollar life insurance arrangements (REG–164754–01) 30, 212

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26 CFR 1.302–2(c), removed 1.302–5, added; 1.304–1, revised; 1.304–2, –3, –5, amended; 1.304–6, added; 1.704–1, amended; 1.861–12, added; 1.861–12T, amended; 1.1371–1, added; 1.1374–5(a), –10(a), revised; 1.1502–13, –19, revised; redemptions taxable as dividends (REG–150313–01) 44, 777

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26 CFR 1.897 –1, –2, –3, –5T, –6T, amended; 1.897–5, added; 1.1445–1 through –6, amended; 1.1445–9T, removed; 301.6109–1, amended; use of taxpayer identifying numbers on submissions under sections 897 and 1445 (REG–106876–00) 34, 392

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26 CFR 1.6049–4, –6, –8, revised; 31.3406(g)–1, revised; guidance on reporting of deposit interest paid to nonresident aliens (REG–133254–02) 34, 412

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26 CFR 1.702-1, amended; 1.952-1(g), added; 1.954-1(g), -2(a)(5), -3(a)(6), -4(b)(2)(iii), added; 1.956-2(a)(3), added; guidance under subpart F relating to partnerships (TD 9008) 33, 335

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