

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.

SPECIAL ANNOUNCEMENT

Announcement 2002-110, page 970.

The Service has extended the time to apply to participate in the settlement initiative for Contingent Liability Transactions, the procedures for which were prescribed in Rev. Proc. 2002-67, 2002-43 I.R.B. 733. In order to allow taxpayers a longer opportunity to consider the settlement initiative, the settlement methodology they wish to select, and to assemble the necessary information, the Service has extended the application date from January 2, 2003, to March 5, 2003.

INCOME TAX

Rev. Rul. 2002-70, page 958.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2003, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

T.D. 9023, page 955.

Final regulations under section 1441 of the Code provide rules to allow withholding agents, who are also acceptance agents, to rely on a beneficial owner withholding certificate that does not contain an individual taxpayer identifying number (ITIN), in limited circumstances when the IRS is not issuing ITINs. Specifically, the regulations have the effect of: (1) allowing certain withholding agents to obtain ITINs on an expedited basis for foreign individuals receiving unexpected payments and claiming tax treaty benefits with respect to those payments; and (2) allowing withholding agents to make unexpected payments to foreign individuals, who do not possess ITINs, when the use of the expedited process is unavailable.

Finding Lists begin on page ii.



REG-127380-02, page 969.

Proposed regulations provide guidance regarding the application of section 367(e)(2) of the Code to certain outbound liquidations. The regulations amend the anti-abuse rule of section 1.367(e)-2(d) by narrowing the scope of the rule to apply only to outbound transfers to a foreign corporation in a complete liquidation of a domestic corporation in which a principal purpose of the liquidation is the avoidance of U.S. tax. A public hearing is scheduled for March 3, 2003.

Notice 2002-79, page 964.

Gross income; advance payments. This notice proposes a revenue procedure that, if finalized, will modify and supersede Rev. Proc. 71-21, 1971-2 C.B. 549, and allow taxpayers using an accrual method of accounting to defer the inclusion of advance payments in gross income for federal income tax purposes in certain limited situations.

EMPLOYEE PLANS

Rev. Rul. 2002-84, page 953.

Overpayment, offset and repayment. This ruling describes three situations where there are overpayments of benefits from a qualified plan within the meaning of section 401(a) of the Code, the tax consequences of those overpayments, and the subsequent offsets by the plan or repayment to the plan.

ADMINISTRATIVE

Announcement 2002-111, page 971.

This document contains a correction to the date of the public hearing on proposed regulations (REG-143321-02, 2002-48 I.R.B. 922) under section 6043(c) of the Code relating to information reporting of taxable stock transactions. The hearing is rescheduled from March 5, 2003, to March 25, 2003.

Announcement 2002-112, page 971.

This document contains corrections to final regulations (T.D. 9016, 2002-40 I.R.B. 628) under section 141 of the Code relating to the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments for output facilities.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 165.—Losses

Whether under the described facts, overpayments from qualified plans are deductible if the overpayment is offset or repaid to the qualified plan. See Rev. Rul. 2002-84, on this page.

Section 402.—Taxability of Beneficiary of Employees' Trust

(Also: §§ 165 and 1341.)

Overpayment; offset and repayment. This ruling describes three situations where there are overpayments of benefits from a qualified plan within the meaning of section 401(a) of the Code, the tax consequences of those overpayments, and the subsequent offsets by the plan or repayment to the plan.

Rev. Rul. 2002-84

ISSUES

(1) Under the facts described below, what amount is required to be treated as a distribution in a year in which payments made to an individual by a qualified retirement plan described in § 401(a) of the Internal Revenue Code are reduced because, in a prior year, the individual received payments in excess of the amounts due to the individual?

(2) Under the facts described below, is an individual entitled to a deduction to reflect a payment to a qualified retirement plan described in § 401(a) to repay the plan for payments made by the plan to the individual in a prior year in excess of the amounts due to the individual in that prior year?

FACTS

Situation (1). Employer X maintains Plan A, a qualified defined benefit plan described in § 401(a). Plan A does not provide for employee contributions. At the beginning of 2001, Employee D retired and started to receive a straight life annual annuity of \$36,000 from Plan A. Employee D included \$36,000 in gross income in 2001. In June 2002, it was determined that Employee D's annuity benefit had been

misculated and the annuity payment for 2001 should have been \$35,000. Under the administrative procedures of Plan A, which are in accordance with the relevant correction procedures of the Employee Plans Compliance Resolution System ("EPCRS"), Rev. Proc. 2002-47, 2002-29 I.R.B. 133, erroneous payments from the plan can be corrected by recouping the entire excess payment made in 2001 from Employee D's remaining benefit payments for 2002. Thus, Employee D's annual straight life annuity benefit for 2002 of \$35,000 is reduced to \$33,940 to reflect the excess benefit amounts (increased by interest) that were paid from Plan A to Employee D during 2001.

Situation (2). Employer Y maintains Plan B, a qualified defined benefit plan described in § 401(a). Plan B does not provide for employee contributions. Employee E, who is a participant in Plan B, retired in 1992 and started to receive an annual straight life annuity of \$14,000 from Plan B. In November 2002, it was determined that Employee E's annuity benefit had been miscalculated and that the annual payment for 1992 through 2001 should have been \$13,000. Thus, Plan B overpaid Employee E by \$1,000 per year for 10 years and Employee E included these amounts in gross income in the years received. Under the administrative procedures of Plan B, erroneous payments from the plan can be recouped by reducing future payments so that the actuarial present value of the reduction is equal to the erroneous overpayments plus interest attributable to the overpayment based on Plan B's interest rate factors. Plan B's correction method is consistent with the procedures of EPCRS. The administrator of Plan B determines that to recoup the overpayment, future payments should be reduced \$900 annually for life commencing in 2002. Plan B adjusts Employee E's annuity accordingly so that Employee E's annual straight life annuity benefit of \$13,000 is reduced for 2002 and subsequent years to \$12,100 to reflect the excess benefit amounts (increased by interest) that were paid from Plan B to Employee E.

Situation (3). The facts are the same as in Situation (1), except that the benefit was paid to Employee F in a single-sum distribution in 2001. The amount of the single-sum distribution exceeded the amount that

was due Employee F by \$2,000. Employee F included the entire amount of the single-sum distribution in gross income in 2001. In 2002, Plan A's administrator discovered the overpayment to Employee F. Pursuant to the plan's procedures, the administrator of Plan A notified Employee F of the overpayment and demanded repayment with appropriate interest. In 2002, Employee F repaid \$2,120 (the \$2,000 overpayment plus \$120 interest) to Plan A.

LAW AND ANALYSIS

Section 61(a) provides that, except as otherwise provided, gross income means all income from whatever source derived.

Section 402(a) provides that any amount actually distributed to any distributee from a qualified plan described in § 401(a) will be taxable to the distributee in the taxable year of distribution under § 72 (relating to annuities).

Section 165(a) provides that there shall be allowed as a deduction any loss sustained during the taxable year that is not compensated by insurance or otherwise. Section 165(c) limits the deduction under § 165(a) for individuals to losses incurred in a trade or business, losses incurred in transactions entered into for profit, and casualty losses. The performance of services as an employee is the carrying on of a trade or business. (See Rev. Rul. 79-322, 1979-2 C.B. 76, and Rev. Rul. 82-178, 1982-2 C.B. 59.)

Section 67(a) provides that in the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2-percent of adjusted gross income.

Section 451(a) provides that the amount of any item of gross income shall be included in the taxable year in which received by the taxpayer unless the amount is to be properly accounted for in a different period.

Section 1.451-1(a) of the Income Tax Regulations provides that under the cash receipts and disbursements method of accounting, an item of income is included in gross income for the taxable year in which such item is actually or constructively received.

Section 1341(a) provides rules for the computation of tax where a taxpayer is en-

titled to a deduction in excess of \$3,000 as a result of restoring an amount included in gross income for a prior taxable year because it appeared that the taxpayer had an unrestricted right to such amount. The amount of the tax imposed on the taxpayer under § 1341 is the lesser of the tax for the taxable year computed with the deduction or an amount equal to the tax for the taxable year computed without the deduction but minus the decrease in tax for the prior tax year or years after excluding the income. Under § 67(b)(9), a deduction under § 1341 is not a miscellaneous itemized deduction subject to the 2-percent adjusted gross income floor of § 67(a).

Rev. Rul. 67-350, 1967-2 C.B. 58, which addresses the income tax treatment of a reduction in military retirement pay to offset a previously received lump-sum readjustment payment, holds that only the remainder of the retired reservist's military retirement pay is includible in the retiree's gross income. Thus, the retiree included in gross income only amounts that he actually or constructively received based on the principles of §§ 61 and 451.

Rev. Rul. 80-9, 1980-1 C.B. 11, holds that a taxpayer who had amounts withheld from his disability pay to repay a lump-sum readjustment payment is considered as never having received the amounts withheld. The ruling concluded that there was no constructive receipt of the withheld disability pay.

Rev. Rul. 82-178 holds that repayment of amounts by a rehired employee in order that certain employee benefits would be restored to the level that they were at the time the rehired employee was laid off is a loss incurred under § 165(c)(1).

Rev. Rul. 79-322 holds that a repayment of amounts received by an employee for sick leave that was includible in the employee's gross income in a prior taxable year is deductible as a business loss under § 165.

Sections 402(a) and 403(a) specifically address the tax treatment of distributions from qualified retirement plans. Under these provisions, amounts payable under a qualified retirement plan are included in gross income of the participant in the taxable year of distribution. The amounts are taxable to a distributee at the time of receipt, even though the distributee may be later obligated to repay amounts attributable to a plan overpayment in subsequent taxable years,

either by direct payment or by payment reduction. Consequently, in Situations (1), (2), and (3), the amounts attributable to a plan overpayment are distributions taxable under § 402(a) in the year of receipt.

In years after the year of the plan overpayment, under the facts presented in Situations (1) and (2), only the amounts received by the distributee after the plan's required reduction to recoup an earlier plan overpayment are included in the distributee's gross income in the taxable year of distribution. This ruling is consistent with Rev. Ruls. 67-350 and 80-9, which held that there was no constructive receipt of withheld military retirement pay that was used to offset amounts previously received as a lump-sum readjustment pay for reserve officers.

Consequently, the qualified retirement plan participants in Situations (1) and (2) who received distributions that included overpayments, and included the full amount of these distributions in gross income in the year of distribution, are in subsequent years only required to treat as distributions taxable under § 402(a) amounts distributed by the plan after offset or adjustment to correct for the prior overpayments. Because the participants in Situations (1) and (2) are not treated as receiving the amounts attributable to the offset or adjustment, these participants cannot take a loss deduction under § 165(a) as a result of such offset or adjustment. *See* Rev. Rul. 80-9. The tax result for Situations (1) and (2) is limited to situations in which the amount of the plan overpayment was included in the gross income of the participant for the year the overpayment was distributed to the participant and the qualified retirement plan has demanded the adjustment or offset to recoup the plan overpayment.

In contrast to Situations (1) and (2), in Situation (3), the overpayment is not recouped by a reduction in the amount of benefits paid to a participant but instead is repaid by the taxpayer directly in a single-sum payment. For overpayments repaid to a qualified retirement plan in the same taxable year as the overpayment, the amount repaid reduces the taxable amount received as a distribution by the participant from the plan in the taxable year. For overpayments repaid to a qualified retirement plan in a taxable year or years subsequent to the year of the overpayment, a participant would be entitled to a deduction under § 165(a) be-

cause the amount of the plan overpayment is attributable to compensation for services rendered to the employer. The deduction is allowable in the year that the single-sum repayment is paid by the taxpayer, but only if the taxpayer itemizes his deductions. A deduction under § 165(a) for an individual with losses that are incurred in a trade or business is considered a miscellaneous itemized deduction and, thus, is subject to the 2-percent floor established under § 67(a) for miscellaneous itemized deductions.

If the amount of the distribution in Situation (3) had instead exceeded the amount that was due Employee F by more than \$3,000, the rules of § 1341 would apply in determining the taxpayer's income tax liability for 2002. In applying the rules of § 1341, the deduction is determined without regard to the 2-percent floor as provided under § 67(b)(9).

HOLDINGS

Issue 1:

Under Situations (1) and (2), in which an individual's payments from a qualified retirement plan are reduced in one or more taxable years to recoup overpayments made in prior taxable years and properly included in gross income in such prior years, only the amounts received by the individual after the plan's required reduction to recoup an earlier plan overpayment are includible in the individual's gross income in the taxable year of distribution. The individuals under Situations (1) and (2), with respect to the offset or adjustment, are not eligible for a deduction under § 165(a) for a loss incurred in a trade or business. Accordingly, in Situation (1), Employee D includes \$33,940 as a distribution from Plan A under § 402(a) for 2002. Similarly, in Situation (2), Employee E includes \$12,100 as a distribution from Plan B under § 402(a) for 2002 and for each subsequent year in which a distribution is received.

Issue 2:

Under Situation (3), when an individual repays in the current year an overpayment made by a qualified retirement plan in a previous year, the amount actually paid in the previous year was properly included in gross income. The amount of the repayment is deductible under § 165(a). Accord-

ingly, the \$2,120 repaid to Plan A is deductible for 2002, subject to the rules of § 67(a).

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Rubin may be reached at 1-202-283-9888 (not a toll-free number).

Section 1341.—Computation of Tax Where Taxpayer Restores Substantial Amount Held Under Claim of Right

Whether under the described facts, an overpayment from a qualified plan is deductible as a claim of right when the overpayment from the qualified plan is offset. See Rev. Rul. 2002-84, page 953.

Section 1441.—Withholding of Tax on Nonresident Aliens

26 CFR 1.1441-1: Requirement for the deduction and withholding of tax on payments to foreign persons.

T.D. 9023

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

Taxpayer Identification Number Rule Where Taxpayer Claims Treaty Rate and Is Entitled to an Unexpected Payment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide additional guid-

ance needed to comply with the withholding rules under section 1441 and conforming changes to the regulations under section 6109. Specifically, these final regulations provide rules that facilitate compliance by withholding agents where foreign individuals who are claiming reduced rates of withholding under an income tax treaty receive an unexpected payment from the withholding agent and do not possess the required individual taxpayer identification number.

DATES: *Effective date:* These regulations are effective November 22, 2002.

Applicability date: For dates of applicability, see §§ 1.1441-6(h)(1) and 301.6109-1(g)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2002, the IRS and Treasury published a notice of proposed rulemaking by cross reference to temporary regulations (REG-159079-01, 2002-6 I.R.B. 493) in the **Federal Register** (67 FR 2387), and temporary regulations in T.D. 8977, 2002-6 I.R.B. 463 (67 FR 2327), under section 1441 and conforming changes to the regulations under section 6109 of the Internal Revenue Code (Code). Written comments and requests for a public hearing were solicited. Several comments were received and are discussed below. No public hearing was requested. After consideration of all the comments, the proposed and temporary regulations under sections 1441 and 6109 are adopted as final regulations with no changes.

Summary of Public Comments and Explanation of Revisions

A. § 1.1441-6(c) Exemption from Requirement to Furnish a Taxpayer Identifying Number

Section 1.1441-6(c) provides an exemption from the requirement to furnish a taxpayer identifying number (TIN) for certain types of income.

One commentator suggested that a foreign individual receiving a distribution of a death benefit from a U.S. retirement plan

should be allowed to claim treaty benefits without obtaining an individual taxpayer identification number (ITIN).

This comment is not directly related to these proposed regulations. Exemptions from the requirement to furnish a TIN were addressed in final regulations promulgated under section 1441 (T.D. 8734, 1997-2 C.B. 109). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-6(c).

B. § 1.1441-1(e)(4)(ii)(B)(1) Indefinite Validity of a Withholding Certificate Provided Certain Conditions are Met

Under § 1.1441-1(e)(4)(ii)(A), a Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*, generally will expire either at the end of the third calendar year following the date the certificate was signed or when a change in circumstances occurs that makes any information on the Form W-8BEN incorrect, whichever is earlier. Section 1.1441-1(e)(4)(ii)(B)(1) permits a Form W-8BEN to remain valid indefinitely, provided the withholding agent reports at least one payment annually and the certificate contains a TIN.

One commentator requested that a Form W-8BEN remain valid indefinitely without regard to the requirement that it contain a TIN. The commentator also proposed that a Form W-8BEN remain valid indefinitely, even if the withholding agent reports no annual payments to the beneficial owner.

This comment is not directly related to these proposed regulations. The period of validity of a beneficial owner's withholding certificate was addressed in final regulations promulgated under section 1441 (T.D. 8734). The IRS and Treasury do not believe that there has been any change in circumstances that warrants a change of the rules contained in § 1.1441-1(e)(4)(ii)(B)(1). The IRS and Treasury continue to believe that it is important for taxpayers to recertify status periodically when no payments are reported because withholding agents would be unaware of any change in the taxpayer's status.

C. § 1.1441-6(h)(2)(i) Special Acceptance Agent Requirement

The proposed regulations provide that a withholding agent, who is also an accep-

tance agent, may enter into an agreement with the IRS that permits the acceptance agent to request an ITIN on an expedited basis because of the circumstances of payment or the unexpected nature of payments required to be made by the payor (special acceptance agent agreement). One commentator requested that certifying acceptance agents, as described in Rev. Proc. 96-52 (1996-2 C.B. 372), be permitted to utilize the expedited process, described in § 1.1441-6(h)(2), without entering into a special acceptance agent agreement with the IRS.

The commentator's suggestion was not adopted. The purpose of entering into a special acceptance agent agreement with the IRS is to provide notice to the IRS that the acceptance agent is seeking to utilize the expedited process and to have the acceptance agent agree to follow the special procedures necessary to complete that process. In contrast, a certifying acceptance agent agreement permits the acceptance agent to review and certify the applicant's ability to qualify for an ITIN. Because the purpose and scope of a certifying acceptance agent agreement differ from the purpose and scope of the special acceptance agent agreement, a separate agreement permitting the use of the expedited process must be entered into between the acceptance agent and the IRS.

D. § 1.1441-6(h)(2)(ii) Unexpected Payment Requirement

In order to lessen the administrative burden on foreign individuals receiving unexpected payments, the proposed regulations provide a limited exception to the requirement that a foreign individual provide a TIN to the withholding agent before obtaining a reduced rate of withholding tax under an income tax treaty. One commentator requested that the IRS should eliminate the unexpected payment requirement of § 1.1441-6(h)(2)(ii) and permit the use of the expedited process by any foreign individual regardless of whether the payor or payee knows of the impending payment.

The commentator's suggestion was not adopted. The expedited process has been initiated in limited circumstances in order to lessen the administrative burden on foreign individuals receiving unexpected payments. Although the IRS is continuing to consider increasing the availability of this expedited process in the future, the par-

ticular administrative issue addressed in these regulations generally does not exist with respect to expected payments. Thus, there is not a compelling reason to extend the expedited process at this time.

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. These regulations impose no new collection of information 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 Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 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 1.1441-0 is amended by redesignating the entries for paragraph (g) of § 1.1441-6 as paragraph (h) and revising the entry for newly designated paragraph (h), and adding new entries for paragraphs (g) through (g)(5) to read as follows:

§ 1.1441-0 Outline of regulations provisions for section 1441.

* * * * *

(g) Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits.

(1) General rule.

(2) Special rule.

(3) Requirement that an ITIN be requested during the first business day following payment.

(4) Definition of unexpected payment.

(5) Examples.

(h) Effective dates.

* * * * *

Par. 3. Section 1.1441-1 is amended by adding paragraph (b)(7)(i)(D) to read as follows:

§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(7) * * *

(i) * * *

(D) The withholding agent has complied with the provisions of § 1.1441-6(c) or (g).

* * * * *

§ 1.1441-1T [Removed]

Par. 4. Section 1.1441-1T is removed.

Par. 5. Section 1.1441-6 is amended as follows:

1. The fifth sentence of paragraph (b)(1) is amended by removing the language "and § 1.1441-6T(h)" and adding "and § 1.1441-6(g)" in its place.

2. Paragraph (g) is redesignated as paragraph (h) and new paragraph (g) is added.

3. Newly designated paragraph (h) section heading is revised.

4. Newly designated paragraph (h)(1) is revised.

5. Newly designated paragraph (h)(2) is amended by removing the language "(g)(2)" and adding "(h)(2)" in its place each place it appears in the third and fourth sentences.

The addition and revisions read as follows:

§ 1.1441-6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Special taxpayer identifying number rule for certain foreign individuals claiming treaty benefits—(1) General rule.* Except as provided in paragraph (c) or (g)(2) of this section, for purposes of para-

graph (b)(1) of this section, a withholding agent may not rely on a beneficial owner withholding certificate, described in paragraph (b)(1) of this section, that does not include the beneficial owner's taxpayer identifying number (TIN).

(2) *Special rule.* For purposes of satisfying the TIN requirement of paragraph (b)(1) of this section, a withholding agent may rely on a beneficial owner withholding certificate, described in such paragraph, without regard to the requirement that the withholding certificate include the beneficial owner's TIN, if —

(i) A withholding agent, who is also an acceptance agent, as defined in § 301.6109-1(d)(3)(iv) of this chapter (the payor), has entered into an acceptance agreement that permits the acceptance agent to request an individual taxpayer identification number (ITIN) on an expedited basis because of the circumstances of payment or unexpected nature of payments required to be made by the payor;

(ii) The payor was required to make an unexpected payment to the beneficial owner who is a foreign individual;

(iii) An ITIN for the beneficial owner cannot be received by the payor from the Internal Revenue Service (IRS) because the IRS is not issuing ITINs at the time of payment or any time prior to the time of payment when the payor has knowledge of the unexpected payment;

(iv) The unexpected payment to the beneficial owner could not be reasonably delayed to permit the payor to obtain an ITIN for the beneficial owner on an expedited basis; and

(v) The payor satisfies the provisions of paragraph (g)(3) of this section.

(3) *Requirement that an ITIN be requested during the first business day following payment.* The payor must submit a beneficial owner payee application for an ITIN (Form W-7, *Application for IRS Individual Taxpayer Identification Number*) that complies with the requirements of § 301.6109-1(d)(3)(ii) of this chapter, and also the certification described in § 301.6109-1(d)(3)(iv)(A)(4) of this chapter, to the IRS during the first business day after payment is made.

(4) *Definition of unexpected payment.* For purposes of this section, an *unexpected payment* is a payment that, because of the nature of the payment or the circumstances in which it is made, could not reasonably

have been anticipated by the payor or beneficial owner during a time when the payor or beneficial owner could obtain an ITIN from the IRS. For purposes of this paragraph (g)(4), a payor or beneficial owner will not lack the requisite knowledge of the forthcoming payment solely because the amount of the payment is not fixed.

(5) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. G, a citizen and resident of Country Y, a country with which the United States has an income tax treaty that exempts U.S. source gambling winnings from U.S. tax, is visiting the United States for the first time. During his visit, G visits Casino B, a casino that has entered into a special acceptance agent agreement with the IRS that permits Casino B to request an ITIN on an expedited basis. During that visit, on a Sunday, G wins \$5000 in slot machine play at Casino B and requests immediate payment from Casino B. ITINs are not available from the IRS on Sunday and would not again be available until Monday. G, who does not have an individual taxpayer identification number, furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to the Casino upon winning at the slot machine. The beneficial owner withholding certificate represents that G is a resident of Country Y (within the meaning of the U.S. - Y tax treaty) and meets all applicable requirements for claiming benefits under the U.S. - Y tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for G. On the following Monday, Casino B faxes a completed Form W-7, including the required certification, for G, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, Casino B, may rely on the documentation furnished by G at the time of payment and pay the \$5000 to G without withholding U.S. tax based on the treaty exemption.

Example 2. The facts are the same as *Example 1*, except G visits Casino B on Monday. G requests payment Monday afternoon. In order to pay the winnings to G without withholding the 30 percent tax, Casino B must apply for and obtain an ITIN for G because an expedited ITIN is available from the IRS at the time of the \$5000 payment to G.

Example 3. The facts are the same as *Example 1*, except G requests payment fifteen minutes before the time when the IRS begins issuing ITINs. Under these facts, it would be reasonable for Casino B to delay payment to G. Therefore, Casino B must apply for and obtain an ITIN for G if G wishes to claim an exemption from U.S. withholding tax under the U.S. - Y tax treaty at the time of payment.

Example 4. P, a citizen and resident of Country Z, is a lawyer and a well-known expert on real estate transactions. P is scheduled to attend a three-day seminar on complex real estate transactions, as a participant, at University U, a U.S. university, beginning on a Saturday and ending on the following Monday, which is a holiday. University U has entered into a special acceptance agent agreement with the IRS that permits University U to request an ITIN on an expedited basis. Country Z is a country with which the United States has an income tax treaty that exempts certain income earned from the performance of in-

dependent personal services from U.S. tax. It is P's first visit to the United States. On Saturday, prior to the start of the seminar, Professor Q, one of the lecturers at the seminar, cancels his lecture. That same day the Dean of University U offers P \$5000, to replace Professor Q at the seminar, payable at the conclusion of the seminar on Monday. P agrees. P gives her lecture Sunday afternoon. ITINs are not available from the IRS on that Saturday, Sunday, or Monday. After the seminar ends on Monday, P, who does not have an ITIN, requests payment for her teaching. P furnishes a beneficial owner withholding certificate, described in § 1.1441-1(e)(2), to University U that represents that P is a resident of Country Z (within the meaning of the U.S. - Z tax treaty) and meets all applicable requirements for claiming benefits under the U.S. - Z tax treaty. The beneficial owner withholding certificate does not, however, contain an ITIN for P. On Tuesday, University U faxes a completed Form W-7, including the required certification, for P, to the IRS for an expedited ITIN. Pursuant to paragraph (b) and (g)(2) of this section, absent actual knowledge or reason to know otherwise, University U may rely on the documentation furnished by P and pay \$5000 to P without withholding U.S. tax based on the treaty exemption.

(h) *Effective dates—(1) General rule.* This section applies to payments made after December 31, 2000, except for paragraph (g) of this section which applies to payments made after December 31, 2001.

* * * * *

Section 1.1441-6T [Removed]

Par. 6. Section 1.1441-6T is removed.

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 8. In § 301.6109-1, paragraph (g)(3) is revised to read as follows:

§ 301.6109-1 *Identifying numbers.*

* * * * *

(g) * * *

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assign-

ment of a taxpayer identifying number, including disclosure of any taxpayer identifying number previously issued to the foreign person, and change of foreign status. This paragraph (g)(3) applies to payments made after December 31, 2001.

* * * * *

§ 301.6109-1T [Removed]

Par. 9. Section 301.6109-1T is removed.

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

Approved November 13, 2002.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on November 21, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 22, 2002, 67 F.R. 70310)

Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2003, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

Rev. Rul. 2002-70

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning January 1, 2003, is the sum of the

federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly

interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of October 2002 is 2 percent. Accordingly, an overpayment rate of 5 percent (4 percent in the case of a corporation) and an underpayment rate of 5 percent are established for the calendar quarter beginning January 1, 2003. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning January 1, 2003, is 2.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2003, is 7 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 5 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2003 and for the first 15 days in April 2003.

Interest factors for daily compound interest for annual rates of 2.5 percent, 4 percent, 5 percent, and 7 percent are published in Tables 10, 13, 15, and 19 of Rev. Proc. 95-17, 1995-1 C.B. 556, 564, 567, 569, and 573.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue ruling, contact Mr. Bailey at (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998—Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	1995—1 C.B.			1995—1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	1995—1 C.B.		
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan 1, 2003—Mar. 31, 2003	5%	15	569

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	1995-1 C.B.		
	RATE	TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT—Continued

	RATE	1995-1 C.B.	
		TABLE	PG
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995-1 C.B.	
		TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT—Continued

		1995-1 C.B.	
	RATE	TABLE	PG
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564

Part III. Administrative, Procedural, and Miscellaneous

Advance Payments

Notice 2002-79

This notice provides a proposed revenue procedure that, if finalized, will modify and supersede Rev. Proc. 71-21, 1971-2 C.B. 549. Pursuant to the discretion granted the Commissioner of Internal Revenue under § 446 of the Internal Revenue Code, Rev. Proc. 71-21 allows, and this proposed revenue procedure (if finalized) will allow, taxpayers using an accrual method of accounting to defer the inclusion in gross income for federal income tax purposes of advance payments in certain limited situations. This proposed revenue procedure is intended to reduce the administrative and tax compliance burdens on taxpayers and to minimize disputes between the Internal Revenue Service and taxpayers regarding advance payments.

In conjunction with this proposed revenue procedure, the Treasury Department and the Service plan to propose regulations that will modify § 1.61-8(b) of the Income Tax Regulations to conform with the proposed revenue procedure. The current regulation states that “advance rentals” are includible in gross income for the year of receipt (except as provided by § 467 and the regulations thereunder); the proposed regulation will allow the Commissioner to provide rules allowing for inclusion in gross income for a taxable year other than the taxable year of receipt.

The Service requests comments on the proposed revenue procedure provided in this notice. In particular, the Service requests comments regarding:

- whether the proposed revenue procedure should take into account the cost of goods sold in deferring advance payments from the sale of goods;
- a taxpayer’s ability to allocate advance payments between the deferral provisions in § 1.451-5 and this revenue procedure;
- the acceleration of advance payments pursuant to non-taxable transfers, such as transfers under § 351 or § 721, and the treatment of short tax years resulting from § 381(a) transactions; and
- the use of statistical methodologies for tracing advance payments if the taxpayer cannot determine the extent to

which particular advance payments received in a given taxable year are actually included in gross receipts for financial reporting purposes in that year.

All comments should be submitted by March 24, 2003, either to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU (ITA)
Room 5529

or electronically via the Service internet site at: *Notice.Comments@m1.irs.counsel.treas.gov* (the Service Comments e-mail address).

Rev. Proc. 2003-XX

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Rev. Proc. 71-21, 1971-2 C.B. 549, under which the Commissioner exercised his discretion under § 446 of the Internal Revenue Code to allow taxpayers using an accrual method of accounting to defer the inclusion in gross income for federal income tax purposes of certain advance payments for services in limited situations. This revenue procedure expands Rev. Proc. 71-21 to allow qualifying taxpayers to defer to the next succeeding taxable year the inclusion in gross income for federal income tax purposes of certain advance payments (as specified in section 4 of this revenue procedure) to the extent the advance payments are deferred for financial reporting purposes. This revenue procedure allows this deferral even if the advance payments are not included in gross receipts for financial reporting purposes by, or the income is not earned through performance by, the end of the next succeeding taxable year. However, in no event will this revenue procedure allow deferral to a taxable year later than the next succeeding taxable year. This revenue procedure neither restricts a taxpayer’s ability to use the methods provided in § 1.451-5 of the Income Tax Regulations regarding advance

payments for goods nor limits the period of deferral available under § 1.451-5.

SECTION 2. BACKGROUND AND CHANGES

.01 In general, § 451 provides that the amount of any item of gross income is included in gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, the amount is to be properly accounted for as of a different period. Section 1.451-1(a) provides that, under an accrual method of accounting, income is includible in gross income when all the events have occurred that fix the right to receive the income and the amount can be determined with reasonable accuracy. All the events that fix the right to receive income generally occur when (1) the required performance takes place, (2) payment is due to the taxpayer, or (3) payment is received by the taxpayer, whichever happens earliest. *See* Rev. Rul. 84-31, 1984-1 C.B. 127.

.02 Section 1.451-5 generally allows accrual method taxpayers to defer the inclusion in gross income for federal income tax purposes of advance payments for goods until the taxable year in which they are properly accruable under the taxpayer’s method of accounting for tax purposes if that method results in the payments being included in gross income no later than when they are includible in gross receipts under the taxpayer’s method of accounting for financial reporting purposes.

.03 Rev. Proc. 71-21 was published to implement an administrative decision of the Commissioner in the exercise of his discretion under § 446 to allow accrual method taxpayers in certain specified and limited circumstances to defer the inclusion in gross income for federal income tax purposes of payments received (or amounts due and payable) in one taxable year for services to be performed by the end of the next succeeding taxable year. Rev. Proc. 71-21 was designed to reconcile the tax and financial accounting treatment of payments received for services to be performed by the end of the next succeeding taxable year without permitting extended deferral of the inclusion of those payments in gross income for federal income tax purposes.

.04 Considerable controversy exists about the scope of Rev. Proc. 71-21, especially with regard to Forms 3115, *Application for Change in Accounting Method*, filed by taxpayers requesting to change to the method provided in Rev. Proc. 71-21. In particular, taxpayers and the Service frequently disagree about whether advance payments are for services, some type of non-service, or some mixture of services and non-services. Advance payments for non-services (and often, for mixed services and non-services) do not qualify for deferral under Rev. Proc. 71-21. Thus, the difficulty in defining "services" under Rev. Proc. 71-21 results in controversy over whether the Service should grant a taxpayer's request to change to the method provided in Rev. Proc. 71-21. In addition to the issue of defining "services" for purposes of Rev. Proc. 71-21, questions also arise about whether advance payments received under a series of agreements, or under a renewable agreement, are within the scope of Rev. Proc. 71-21. In the interest of reducing controversy about these issues, the Service has determined that it is appropriate to expand the scope of Rev. Proc. 71-21 to include advance payments for certain non-services and mixed services/non-services. Additionally, the Service has determined that it is appropriate to expand the scope to include advance payments received in connection with an agreement or series of agreements with a term or terms extending beyond the end of the next succeeding taxable year. The Service has determined, however, that it is appropriate to retain the limited one-year deferral of Rev. Proc. 71-21 for taxpayers within the scope of this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers using an accrual method of accounting that receive advance payments as defined in section 4 of this revenue procedure.

SECTION 4. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Advance payment.* Except as provided in section 4.02 of this revenue procedure, a payment is an "advance payment" if:

(1) the payment is received by the taxpayer in one taxable year;

(2) including the payment in gross income for the taxable year of receipt is a permissible method of accounting for federal income tax purposes (without regard to this revenue procedure);

(3) the payment is included by the taxpayer (in whole or in part) in gross receipts for financial reporting purposes for a subsequent taxable year, whether or not the inclusion is contingent upon a future act by the taxpayer or any other party; and

(4) the payment is solely for:

(a) services (other than for service warranty contracts for which the taxpayer uses the accounting method provided in Rev. Proc. 97-38, 1997-2 C.B. 479);

(b) the sale of goods (other than for sales of goods for which the taxpayer uses a deferral method provided in § 1.451-5(b)(1)(ii));

(c) the use of intellectual property as defined in section 4.03 of this revenue procedure;

(d) the occupancy of space or the use of property if the occupancy or use is ancillary to the provision of services (for example, advance payments for the use of rooms or other quarters in a hotel, booth space at a trade show, campsite space at a mobile home park, and recreational or banquet facilities, or other uses of property, so long as the use is ancillary to the provision of services to the property user);

(e) guaranty or warranty contracts ancillary to the items described in subsections (a), (b), (c), and (d) of this section;

(f) subscriptions (other than for subscriptions for which an election under § 455 is in effect), whether or not provided in a tangible or intangible format;

(g) membership in an organization (other than for memberships for which an election under § 456 is in effect); or

(h) any combination of subsections (a) through (g) of this section.

.02 *Exclusions from advance payment.* The term "advance payment" does not include:

(1) rent (except for amounts described in section 4.01(4)(c) and (d);

(2) insurance premiums; and

(3) payments with respect to financial instruments (for example, debt instruments, deposits, letters of credit, notional principal contracts, options, forwards, futures, foreign currency contracts, credit card

agreements, financial derivatives, etc.), including purported prepayments of interest.

.03 *Intellectual Property.* The term "intellectual property" includes copyrights, patents, trademarks, service marks, trade names, and similar intangible property rights (such as franchise rights and arena naming rights).

.04 *Received.* Income is "received" by the taxpayer if it is actually or constructively received, or if it is due and payable to the taxpayer.

.05 *Next Succeeding Taxable Year.* The term "next succeeding taxable year" means the taxable year immediately following the taxable year in which the advance payment is received by the taxpayer.

SECTION 5. PERMISSIBLE METHODS OF ACCOUNTING FOR ADVANCE PAYMENTS

.01 *Full Inclusion Method.* As provided in section 4.01(2), a taxpayer within the scope of this revenue procedure that includes the full amount of advance payments in gross income for federal income tax purposes in the taxable year received is using a proper method of accounting under § 1.451-1, regardless of whether the taxpayer includes the full amount of advance payments in gross receipts for that taxable year for financial reporting purposes.

.02 *Deferral Method.*

(1) *In general.* Except as otherwise provided in this revenue procedure, a taxpayer within the scope of this revenue procedure that uses the Deferral Method described in this section is using a proper method of accounting under § 1.451-1. Under the Deferral Method, for federal income tax purposes the taxpayer must include the advance payment in gross income for the taxable year of receipt to the extent the advance payment is included in gross receipts for financial reporting purposes for that year. The remaining amount of the advance payment must be included in gross income for the next succeeding taxable year.

(2) *Tracing advance payments.* To be eligible to use the Deferral Method, the taxpayer must have in place a methodology for determining that advance payments are included in gross income by the end of the next succeeding taxable year. In the case of goods or services that are not traced, a tax-

payer may generally use the methodology used for financial reporting purposes provided that

(a) the methodology used for financial reporting purposes provides a basis for determining how much of the current year's advance payments are included in gross receipts for financial reporting purposes in the current year; and

(b) the portion of an advance payment not included in gross income in the taxable year of receipt is included in gross income in the next succeeding taxable year.

(3) *Acceleration of advance payments.* Notwithstanding section 5.02(1) of this revenue procedure, the taxpayer must include in gross income for the taxable year of receipt:

(a) all advance payments if, in that year, the taxpayer either dies or ceases to exist in a transaction other than one to which § 381(a) applies;

(b) advance payments with respect to any one or more of the items listed in section 4.01 of this revenue procedure if, and to the extent that, the taxpayer's obligation to provide the item or items otherwise ends in that year.

.03 *Examples.* In each example below, the taxpayer uses an accrual method of accounting and files its returns on a calendar year basis.

(1) On November 1, 2003, *A*, in the business of giving dancing lessons, receives an advance payment for a 1-year contract commencing on that date and providing for up to 48 individual, 1-hour lessons. *A* provides eight lessons in 2003 and another 35 lessons in 2004 before the contract expires. For financial reporting purposes, *A* includes 1/6 of the payment in gross receipts for 2003, and 5/6 of the payment in gross receipts for 2004. *A* uses the Deferral Method. For federal income tax purposes, *A* must include 1/6 of the payment in gross income for 2003, and the remaining 5/6 of the payment in gross income for 2004.

(2) Assume the same facts as in *Example 1* except that the advance payment is received for a 2-year contract under which up to 96 lessons are provided. *A* provides eight lessons in 2003, 48 lessons in 2004, and 40 lessons in 2005. For financial reporting purposes, *A* includes 1/12 of the payment in gross receipts for 2003, 6/12 of the payment in gross receipts for 2004, and 5/12 of the payment in gross receipts for 2005. For federal income tax purposes, *A* must include 1/12 of the payment in gross income for 2003, and the remaining 11/12 of the payment in gross income for 2004.

(3) On June 1, 2003, *B*, a landscape architecture firm, receives an advance payment for goods and services that, under the terms of the agreement, must be completed by December 2004. On December 31, 2003, *B* estimates that 3/4 of the work under the agreement has been completed. For financial reporting purposes, *B* includes 3/4 of the payment in gross receipts

for 2003 and 1/4 of the payment in gross receipts for 2004. *B* uses the Deferral Method. For federal income tax purposes, *B* must include 3/4 of the payment in gross income for 2003, and the remaining 1/4 of the payment in gross income for 2004, regardless of whether *B* is for any reason unable to complete the job in 2004.

(4) On July 1, 2003, *C*, in the business of selling and repairing television sets, receives an advance payment for a 2-year contract under which *C* agrees to repair or replace certain parts in the customer's television set if those parts fail to function properly. For financial reporting purposes, *C* includes 1/4 of the payment in gross receipts for 2003, 1/2 of the payment in gross receipts for 2004, and 1/4 of the payment in gross receipts for 2005. *C* uses the Deferral Method. For federal income tax purposes, *C* must include 1/4 of the payment in gross income for 2003 and the remaining 3/4 of the payment in gross income for 2004.

(5) *D*, a video arcade operator, receives payments in 2003 for game tokens that are used by customers to play the video games offered by *D*. The tokens cannot be redeemed for cash. The tokens are imprinted with the name of the video arcade, but they are not individually marked for identification. For financial reporting purposes, *D* completed a study that determined that for payments received in the current year, *x* percent of tokens are expected to be used in the current year, *y* percent of tokens are expected to be used in the next year, and *z* percent of tokens are never expected to be used. Based on the study, *D* includes in gross receipts for 2003 the percentage of the payments for tokens that are used in that year (*x* percent) as well as the *z* percent for tokens that are never expected to be used; *D* includes the remaining *y* percent in gross receipts for 2004. *D* uses the Deferral Method. Because *D* does not trace which tokens are used in any given taxable year, *D* may include these payments in gross income in accordance with its financial reporting method, provided that any portion of the payment not included in income in the year of receipt is included in gross income for the next succeeding taxable year. *D* includes *x* percent and *z* percent in gross income for 2003, and *D* includes *y* percent in gross income for 2004.

(6) *E*, in the business of photographic processing, receives advance payments for mailers and certificates that oblige *E* to process photographic film, prints, or other photographic materials returned in the mailer or with the certificate. *E* tracks each of the mailers and certificates with unique identifying numbers. On July 20, 2003, *E* receives payments for 2 mailers; one of the mailers is submitted for film processing and is processed by *E* on September 1, 2003, and the other is submitted and processed on February 1, 2005. For financial reporting purposes, *E* includes the payment for the September 1, 2003, processing in gross receipts for 2003 and the payment for the February 1, 2005, processing in gross receipts for 2005. *E* uses the Deferral Method. For federal income tax purposes, *E* must include the payment for the September 1, 2003, processing in gross income for 2003 and the payment for the February 1, 2005, processing in gross income for 2004.

(7) *F*, a hair styling salon, receives advance payments from selling gift certificates that may later be redeemed at the salon for hair styling services or hair care products at the face value of the gift certi-

cate. The gift certificates look like standard credit cards, and each certificate has a magnetic strip that, in connection with *F*'s computer system, identifies the balance of the gift credit. The gift certificates may not be redeemed for cash, and they have no expiration date. *F* does not have in place a methodology for determining the extent to which the current year's advance payments are included in gross receipts for financial reporting purposes for the current year. *F* may not use the Deferral Method, and *F* must include the advance payments in gross income for the taxable year of receipt.

(8) *G* is in the business of compiling and providing business information for a particular industry in an online format accessible over the internet. On September 1, 2003, *G* receives an advance payment from a subscriber for 1 year of access to its online database. For financial reporting purposes, *G* includes 1/3 of the payment in gross receipts for 2003 and the remaining 2/3 in gross receipts for 2004. *G* uses the Deferral Method. For federal income tax purposes, *G* must include 1/3 of the payment in gross income for 2003 and the remaining 2/3 of the payment in gross income for 2004.

(9) On December 1, 2003, *H*, in the business of operating a chain of "shopping club" retail stores, receives advance payments for membership fees. Upon payment of the fee, a member receives an identification card that allows access for a 1-year period to *H*'s stores, which offer discounted merchandise and services. For financial reporting purposes, *H* includes 1/12 of the payment in gross receipts for 2003 and 11/12 of the payment in gross receipts for 2004. *H* uses the Deferral Method. For federal income tax purposes, *H* must include 1/12 of the payment in gross income for 2003, and the remaining 11/12 of the payment in gross income for 2004.

(10) *I*, a professional sports franchise, is a member of a sports league that enters into contracts with television networks for the sale of broadcasting rights to the games played between the member teams. The money received under the contracts is divided equally among the member teams. On April 1, 2003, the league enters into a 3-year broadcasting contract. *I* receives three equal installment payments on October 1 of each contract year, beginning in 2003. For financial reporting purposes, *I* includes 1/4 of the first installment payment in gross receipts for 2003 and 3/4 in gross receipts for 2004; *I* includes 1/4 of the second installment in gross receipts for 2004 and 3/4 in gross receipts for 2005; *I* includes 1/4 of the third installment in gross receipts for 2005 and 3/4 in gross receipts for 2006. *I* uses the Deferral Method. Under section 4 of this revenue procedure, each installment payment constitutes an "advance payment." Thus, for federal income tax purposes, *I* must include 1/4 of the first installment payment in gross income for 2003 and 3/4 in gross income for 2004; 1/4 of the second installment in gross income for 2004 and 3/4 in gross income for 2005; and 1/4 of the third installment in gross income for 2005 and 3/4 in gross income for 2006.

(11) *J* is a cable television provider that enters into contracts with subscribers to provide cable services for a monthly fee (paid prior to the service month). For those subscribers without a "cable ready" television set, *K* provides, for an additional monthly charge (also paid prior to the service month), a cable converter box with a remote control. Pursuant to the con-

tract, *J* will replace or repair the cable converter box if it proves defective during the contract period. *J* will not allow a non-subscriber to rent a converter box. In December 2003, *J* receives payments from subscribers for January 2004 cable service and converter box use. For financial reporting purposes, *J* includes these payments in gross receipts for 2004. *J* uses the Deferral Method. The payments for cable services are included in gross income for 2004. Because a subscriber's use of a converter box is ancillary to the provision of cable services by *J*, and because the converter box warranty is ancillary to the use of the converter box, *J* must include the entire advance payment in gross income for 2004.

(12) On January 1, 2003, *K* enters into, and receives advance payments pursuant to, a 5-year license agreement for its computer software. Under the contract, the licensee pays *K* both the first-year (2003) license fee and the fifth-year (2007) license fee upon commencement of the agreement. The fees for the second, third, and fourth years are payable on January 1 of each license year. For financial reporting purposes, *K* includes the fees in gross receipts for the respective license year. *K* uses the Deferral Method. For federal income tax purposes, *K* must include the first-year license fee in gross income for 2003, the second-year and the fifth-year license fee in gross income for 2004, the third-year license fee in gross income for 2005, and the fourth-year license fee in gross income for 2006.

(13) On July 1, 2003, *L*, who is in the business of selling off-the-shelf computer software and providing computer support, receives an advance payment for a 2-year "software maintenance contract" under which *L* will provide software updates if it develops an update within the contract period, as well as online and telephone customer support. For financial reporting purposes, *L* includes 1/4 of the payment in gross receipts for 2003, 1/2 in gross receipts for 2004, and the remaining 1/4 in gross receipts for 2005, regardless of when *L* provides updates or customer support. *L* uses the Deferral Method. For federal income tax purposes, *L* must include 1/4 of the payment in gross income for 2003 and 3/4 in gross income for 2004.

(14) Assume the same facts as *Example 13*, but *L* ceases to exist, on December 1, 2003, in a transaction to which § 381(a) does not apply. For federal income tax purposes, *L* must include the entire fee in gross income on December 1, 2003.

SECTION 6. AUDIT PROTECTION FOR TAXPAYERS CURRENTLY USING THE DEFERRAL METHOD

If a taxpayer uses the Deferral Method described in section 5.02 of this revenue procedure for advance payments (as defined in section 4 of this revenue procedure), the taxpayer's method of accounting for such advance payments under the Deferral Method will not be raised as an issue by the Service in a taxable year that ends before [insert date of publication of final revenue procedure]. If the taxpayer uses the Deferral Method described in section 5.02 of this revenue procedure, and the

treatment of advance payments (as defined in section 4 of this revenue procedure) under the Deferral Method is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9) in examination, in appeals, or before the U.S. Tax Court in a taxable year that ends before [insert date of publication of final revenue procedure], that issue will not be further pursued by the Service.

SECTION 7. CHANGE IN METHOD OF ACCOUNTING

A change in a taxpayer's treatment of advance payments to either of the methods described in section 5 of this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481, and the regulations thereunder, apply. Therefore, a taxpayer within the scope of this revenue procedure that wants to use one of the methods of accounting provided in section 5 of this revenue procedure, and that does not currently use that method, must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9, 2002-3 I.R.B. 327 (or its successor), as modified by Rev. Proc. 2002-19, 2002-13 I.R.B. 696, Announcement 2002-17, 2002-8 I.R.B. 561, and Rev. Proc. 2002-54, 2002-35 I.R.B. 432, with the following modifications:

.01 The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply to a taxpayer that wants to change its method for its first or second taxable year ending on or after [insert date of publication of final revenue procedure] provided the taxpayer's method of accounting for advance payments is not an issue under consideration for taxable years under examination, within the meaning of section 3.09 of Rev. Proc. 2002-9, at the time the Form 3115 is filed with the national office;

.02 A taxpayer that wants to change its method for its first taxable year ending on or after [insert date of publication of final revenue procedure], that on or before [insert date 30 days from date of publication of final revenue procedure] files its original federal income tax return for that year is not required to comply with the filing requirement in section 6.02(3)(a) of Rev. Proc. 2002-9, provided the taxpayer complies with the following filing requirements. The taxpayer must complete and file a Form 3115 in duplicate. The original must be attached to an amended federal income

tax return for the taxpayer's first taxable year ending on or after [insert date of publication of final revenue procedure]. This amended return must be filed no later than [insert date 180 days from date of publication of final revenue procedure]. A copy of the Form 3115 must be filed with the national office (see section 6.02(6) of Rev. Proc. 2002-9 for the address) no later than when the taxpayer's amended return is filed; and

(3) When filing the Form 3115, taxpayers must complete all applicable parts of the form and, in lieu of the label required by section 6.02(4) of Rev. Proc. 2002-9, are instructed to write "Change to [Full Inclusion Method or Deferral Method] under Rev. Proc. [insert rev. proc. number]" at the top of the form.

SECTION 8. RECORD KEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books or records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. Section 1.6001-1(e). In order to satisfy the record keeping requirements of § 6001 and the regulations thereunder, a taxpayer that uses the Deferral Method must maintain adequate books and records so that the amount deferred on the federal income tax return for any year can be verified from those books and records.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 71-21 is modified and superseded. Rev. Proc. 2002-9 is modified and amplified to include this automatic change in the APPENDIX. The Deferral Method provided in this revenue procedure is available to qualifying taxpayers notwithstanding revenue rulings, revenue procedures, notices, or announcements published by the Service that may provide different rules for when advance payments must be included in gross income. *See, e.g.*, Rev. Rul. 70-445, 1970-2 C.B. 101; Rev.

Rul. 68-44, 1968-1 C.B. 191; Rev. Rul. 65-141, 1965-1 C.B. 210; and Rev. Rul. 60-85, 1960-1 C.B. 181.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after [insert date of publication of final revenue procedure].

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is Edwin B. Cleverdon of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Cleverdon at (202) 622-7900 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Outbound Liquidations to Foreign Corporations

REG-127380-02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that provide guidance regarding the application of section 367(e)(2) to certain outbound liquidations. The regulations amend the anti-abuse rule of § 1.367(e)-2(d) by narrowing the scope of the rule to apply only to outbound transfers to a foreign corporation in a complete liquidation of a domestic corporation in which a principal purpose of the liquidation is the avoidance of U.S. tax. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 18, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 3, 2003, at 10 a.m. must be received by February 11, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-127380-02), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-127380-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/reg. 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 regu-

lations, Aaron A. Farmer (202) 622-3860; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Generally, a liquidating corporation does not recognize gain or loss under section 337(a) on a distribution of any property to an 80-percent distributee (as defined in section 337(c)) in a complete liquidation to which section 332 applies. Section 367(e)(2) provides that, in the case of any liquidation to which section 332 applies, section 337(a) and (b)(1) shall not apply where the 80-percent distributee is a foreign corporation except as provided in regulations. The purpose of section 367(e)(2) generally is to prevent the removal of appreciated assets from U.S. taxing jurisdiction without the imposition of a U.S. corporate level tax. See H.R. Conf. Rep. No. 99-841, at II-202 (1986).

On August 9, 1999, the IRS and Treasury published final regulations (T.D. 8834, 1999-2 C.B. 251 [64 FR 43072]) under section 367(e)(2) regarding distributions of property in a complete liquidation under section 332 by a domestic corporation to a foreign parent corporation (outbound liquidation) and by a foreign corporation to a foreign parent corporation (foreign-to-foreign liquidations).

With regard to foreign-to-foreign liquidations, § 1.367(e)-2(c) generally provides that nonrecognition treatment applies under section 337(a) and (b)(1) when a foreign corporation (foreign liquidating corporation) makes a distribution of property in complete liquidation under section 332 to a foreign corporation that meets the ownership requirements of section 332(b). The regulations require gain to be recognized in a foreign-to-foreign liquidation if the foreign liquidating corporation makes a distribution of property which either is used by the foreign liquidating corporation in the conduct of a trade or business within the United States (a U.S. trade or business) at the time of the distribution or which ceased to be used in the conduct of a U.S. trade or business within the ten-year period end-

ing on the date of distribution and would have been subject to section 864(c)(7) had it been disposed. The final regulations include an exception to this gain recognition rule in certain circumstances where the property is distributed to a foreign corporation that uses such property in a U.S. trade or business for the ten-year period following the distribution, provided that certain requirements are satisfied.

§ 1.367(e)-2(c)(2).

The final regulations included an anti-abuse rule providing that the Commissioner may require a foreign or domestic liquidating corporation to recognize gain (or treat the liquidating corporation as if it had recognized a loss) on a liquidating distribution if a principal purpose of the liquidation is the avoidance of U.S. tax. The final regulations further provide that a liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes (taken together or separately).

The preamble to the final regulations states that the anti-abuse rule would apply, for example, if a principal purpose of a liquidation is the distribution of a domestic liquidating corporation's earnings and profits without a U.S. withholding tax. The preamble to the final regulations also states that, in certain circumstances, the IRS is also concerned about a liquidation of a domestic corporation into a U.S. branch of a foreign corporation in a manner that facilitates the avoidance of U.S. tax, including the inappropriate use of attributes such as net operating losses. The preamble does not address the potential application of the anti-abuse rule to foreign-to-foreign liquidations.

Explanation of Provisions

Since the final regulations were issued, various commentators have expressed concern that the anti-abuse rule is overly broad because it is not limited by its express terms to outbound liquidations. Specifically, it has been brought to the attention of Treasury and the IRS that uncertainty regarding the potential application of the anti-abuse rule is preventing taxpayers from engaging in legitimate business transactions involving foreign-to-foreign liquidations. Although the preamble to the final regulations does not

address any circumstances in which the anti-abuse rule would apply to a foreign-to-foreign liquidation, the rule by its express terms could so apply. Application of this rule to require gain recognition in a foreign-to-foreign liquidation is not consistent with the approach of the final regulations that require gain recognition in the case of a foreign-to-foreign liquidation only in particular and limited circumstances. Accordingly, these proposed regulations would amend the anti-abuse rule to limit its application only to outbound liquidations.

The proposed regulations also would clarify what constitutes a principal purpose of tax avoidance for purposes of the anti-abuse rule. The proposed regulations similarly would clarify the anti-abuse rule in § 1.367(e)-2(b)(2)(iii)(C)(1).

Effective Date

These regulations are proposed to apply to distributions occurring on or after September 7, 1999, or to distributions in taxable years ending after August 8, 1999, if the taxpayer has elected to apply the final regulations to such distributions. The IRS intends that, prior to the publication of these regulations in final form, the Commissioner will exercise its authority under the anti-abuse rules in § 1.367(e)-2(b)(2)(iii)(C)(1) and (d) in a manner that is consistent with these proposed 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. 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 business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at www.irs.gov/regs. The IRS and Treasury Department request comments on the clar-

ity 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 3, 2003, beginning at 10:00 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT 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 written comments 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 11, 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 these proposed regulations is Aaron A. Farmer of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the Treasury and the IRS participated in their development.

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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 1.367(e)-2, is amended as follows:

1. Paragraph (b)(2)(iii)(C)(I) is amended by removing the parenthetical “(taken to-

gether or separately)” and adding “when taken together” in its place.

2. Paragraph (d) is revised.

The revision reads as follows:

§ 1.367(e)-2 *Distributions described in section 367(e)(2).*

* * * * *

(d) *Anti-abuse rule.* The Commissioner may require a domestic liquidating corporation to recognize gain on a distribution in liquidation described in paragraph (b) of this section (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation), if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

* * * * *

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

(Filed by the Office of Federal Register on November 19, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2002, 67 F.R. 70031)

Extension of Application Period for Rev. Proc. 2002-67

Announcement 2002-110

The Internal Revenue Service has extended the time to apply to participate in the settlement initiative for Contingent Liability Transactions, the procedures for which were prescribed in Rev. Proc. 2002-67, 2002-43 I.R.B. 733.

BACKGROUND

The settlement initiative in Rev. Proc. 2002-67 prescribed two optional methodologies for resolving cases involving Contingent Liability Transactions that are the same as or substantially similar to those described in Notice 2001-17, 2001-1 C.B. 730. Section 4.01 of Rev. Proc. 2002-67 provides that eligible taxpayers who want

to participate in one of the resolution methodologies provided under the revenue procedure must mail or deliver a written application to the Service on or before January 2, 2003. Taxpayers must include with their application a form stating which resolution methodology they have selected and information about their contingent liability transaction.

EXTENSION OF APPLICATION PERIOD

The Internal Revenue Service has received a number of questions regarding this initiative and intends to issue public responses to the questions posed. In order to permit taxpayers time to consider the responses, in conjunction with considering the settlement initiative, and for assembling the necessary information, the Internal Revenue Service has extended the application deadline for the settlement initiative from January 2, 2003, to March 5, 2003.

CONTACT INFORMATION

For information regarding this announcement, call Jo Ann Prager, Manager, at (202) 283-8445 (not a toll-free call). Ms. Prager may also be reached by fax at (202) 283-8406 or electronically at the following email address: otsa@irs.gov. Please include "Revenue Procedure 2002-67" in the subject line of any electronic communication.

Information Reporting Relating to Taxable Stock Transactions; Hearing

Announcement 2002-111

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed rulemaking.

SUMMARY: This document changes the date of a public hearing on proposed regulations (REG-143321-02, 2002-48 I.R.B. 922) relating to information reporting relating to taxable stock transactions.

DATES: The public hearing originally scheduled for Wednesday, March 5, 2003, at 10 a.m., in room 4718, is rescheduled for

Tuesday, March 25, 2003, at 10 a.m., in room 4718. Written or electronic outlines of oral comments must be received by Tuesday, March 4, 2003.

ADDRESSES: The public hearing is being held in room 4718 of the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter Main entrance, located at Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines 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 outlines of oral comments directly to the IRS Internet site at www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG-143321-02), that was published in the **Federal Register** on Monday, November 18, 2002 (67 FR 69496), announced that a public hearing on proposed regulations relating to information reporting relating to taxable stock transactions under sections 6043(c) and 6045 of the Internal Revenue Code would be held on Wednesday, March 5, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

The date of the public hearing has changed. The hearing is scheduled for Tuesday, March 25, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. We must receive outlines of oral comments by Tuesday, March 4, 2003.

Because of the controlled access restrictions, attendees are not admitted beyond the lobby on the Internal Revenue Service Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

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

(Filed by the Office of the Federal Register on November 26, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 27, 2002, 67 F.R. 70891)

Obligations of States and Political Subdivisions; Correction

Announcement 2002-112

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 9016, 2002-40 I.R.B. 628) that were published in the **Federal Register** on Monday, September 23, 2002 (67 FR 59756) relating to the definition of private activity bonds applicable to tax-exempt bonds issued by state and local governments for output facilities.

DATES: This correction is effective November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections is under section 141 of the Internal Revenue Code.

Need for Correction

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

Correction of Publication

Accordingly, the publication of final regulations (T.D. 9016), that were the subject of FR Doc. 02–24137, is corrected as follows:

1. On page 59758, column 2, in the preamble under the paragraph heading “Ex-

planation of Provisions”, first line, the language “through 821(c) (or by a state authority)” is corrected to read “through 825r (or by a state authority)”.

§ 1.141–7 [Corrected]

2. On page 59761, column 2, § 1.141–7(g)(1)(ii)(B), line 5, the language “Act (16 U.S.C. 791a through 821c) (or by)” is corrected to read “Act (16 U.S.C. 791a through 825r) (or by)”.

3. On page 59761, column 3, § 1.141–7(g)(3), fifth line from the top of the col-

umn, the language “U.S.C. 791a through 821(c) (does not)” is corrected to read “U.S.C. 791a through 825r) (or by a state regulatory authority under comparable provisions of state law) does not”.

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

(Filed by the Office of the Federal Register on November 26, 2002, 8:45 a.m., and published in the issue of the Federal Register for November 27, 2002, 67 F.R. 70845)

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

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