

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2005-27, page 998.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2005.

Rev. Rul. 2005-28, page 997.

Medicaid rebates. This ruling holds that Medicaid rebates incurred by a pharmaceutical manufacturer are purchase price adjustments that are subtracted from gross receipts in determining gross income. Rev. Rul. 76-96 suspended in part.

Notice 2005-36, page 1007.

Form 8854, *Initial and Annual Expatriation Information Statement*, has been revised to reflect the substantial revisions made to the individual expatriation provisions of sections 877 and 6039G of the Code and the enactment of new section 7701(n) by section 804 of the American Jobs Creation Act of 2004. Revised Form 8854 is required to be filed by every individual who loses U.S. citizenship or terminates long-term residency after June 3, 2004. The purpose of this notice is to provide guidance with respect to the filing of the revised Form 8854 by such former citizens and former long-term residents. Notices 97-19 and 98-34 obsoleted in part.

Announcement 2005-32, page 1012.

This document contains corrections to proposed regulations (REG-163314-03, 2005-14 I.R.B. 835) that provide that a transaction will qualify for nonrecognition treatment under sections 332, 351, or 368 of the Code only if there is a transfer and a receipt of net value.

EMPLOYEE PLANS

Announcement 2005-33, page 1013.

This document contains corrections to final regulations (T.D. 9166, 2005-8 I.R.B. 558) under section 9801 of the Code governing portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan.

ESTATE TAX

Notice 2005-36, page 1007.

Form 8854, *Initial and Annual Expatriation Information Statement*, has been revised to reflect the substantial revisions made to the individual expatriation provisions of sections 877 and 6039G of the Code and the enactment of new section 7701(n) by section 804 of the American Jobs Creation Act of 2004. Revised Form 8854 is required to be filed by every individual who loses U.S. citizenship or terminates long-term residency after June 3, 2004. The purpose of this notice is to provide guidance with respect to the filing of the revised Form 8854 by such former citizens and former long-term residents. Notices 97-19 and 98-34 obsoleted in part.

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Finding Lists begin on page ii.



GIFT TAX

Notice 2005-36, page 1007.

Form 8854, *Initial and Annual Expatriation Information Statement*, has been revised to reflect the substantial revisions made to the individual expatriation provisions of sections 877 and 6039G of the Code and the enactment of new section 7701(n) by section 804 of the American Jobs Creation Act of 2004. Revised Form 8854 is required to be filed by every individual who loses U.S. citizenship or terminates long-term residency after June 3, 2004. The purpose of this notice is to provide guidance with respect to the filing of the revised Form 8854 by such former citizens and former long-term residents. Notices 97-19 and 98-34 obsoleted in part.

EMPLOYMENT TAX

T.D. 9196, page 1000.

REG-162813-04, page 1010.

Final, temporary, and proposed regulations under section 3402(f) of the Code provide guidance for employers and employees relating to Form W-4, *Employee's Withholding Allowance Certificate*. The regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of exemptions permitted, and the use of substitute forms. A public hearing on the proposed regulations is scheduled for July 26, 2005.

Announcement 2005-34, page 1014.

This document contains a notice of a public hearing on proposed regulations (REG-152945-04, 2005-6 I.R.B. 484) under section 3402 of the Code relating to the flat rate of withholding applicable to calculating the amount of income tax withholding on supplemental wages.

EXCISE TAX

T.D. 9199, page 1003.

REG-154000-04, page 1009.

Final, temporary, and proposed regulations under section 4082 of the Code describe the mandatory mechanical dye injection systems for use in injection of indelible dye into diesel fuel and kerosene that is used in a nontaxable use. A public hearing on the proposed regulations is scheduled for July 19, 2005.

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 compiled 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 last 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 last Bulletin of each semiannual period.

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 61.—Gross Income Defined

26 CFR 1.61-3: Gross income derived from business. (Also § 162; 1.162-1.)

Medicaid rebates. This ruling holds that Medicaid rebates incurred by a pharmaceutical manufacturer are purchase price adjustments that are subtracted from gross receipts in determining gross income. Rev. Rul. 76-96 suspended in part.

Rev. Rul. 2005-28

ISSUE

Are Medicaid Rebates incurred by a pharmaceutical manufacturer purchase price adjustments that are subtracted from gross receipts in determining gross income, or ordinary and necessary business expenses that are deductible from gross income under § 162 of the Internal Revenue Code?

FACTS

M, who uses an accrual method of accounting and files returns on a calendar year basis, manufactures and sells prescription drugs. In 1992, *M* entered into a “Rebate Agreement” with the Department of Health and Human Services (HHS) pursuant to the Medicaid Rebate Program established by the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388 (1990) (the Act).

The Medicaid Rebate Program is designed to reduce the cost of drugs paid for by the Medicaid Program and to increase Medicaid beneficiaries’ access to prescription drugs. Under the Act, pharmaceutical manufacturers must sign a “Rebate Agreement” with HHS (who acts on behalf of each State Medicaid Agency) to gain access to the Medicaid-funded segment of the pharmaceutical market.

The Rebate Agreements require pharmaceutical manufacturers to pay Medicaid Rebates directly to each State Medicaid Agency. A Medicaid Rebate is a portion of the price paid by State Medicaid Agencies to retailers for covered outpatient drugs dispensed to Medicaid beneficiaries. The amount of the Medicaid Rebate is designed to ensure that the Medicaid Program is charged no more for covered outpatient drugs than any other purchaser. See H.R. Rep. No. 101-881 at 96 (1990).

In 2005, the following events occur: (1) *M* sells *Product D*, a prescription drug, to *W*, a wholesaler; (2) *W* sells *Product D* to *R*, a retail pharmacy; (3) *R* dispenses *Product D* to individual *A*, a Medicaid beneficiary, and then files a reimbursement claim with *S*, a State Medicaid Agency; (4) *S* approves the claim and then reimburses *R* for the cost of *Product D* plus a dispensing fee; and (5) *M* pays a Medicaid Rebate to *S* pursuant to the Rebate Agreement.

LAW AND ANALYSIS

Section 61(a) provides that, except as otherwise provided, gross income means all income from whatever source derived. Section 1.61-3(a) of the Income Tax Regulations provides that in a manufacturing, merchandising, or mining business, “gross income” means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources.

Section 162 allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Section 1.162-1(a) provides, in part, that business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer’s trade or business.

In *Pittsburgh Milk Co. v. Commissioner*, 26 T.C. 707 (1956), *nonacq.* 1959-2 C.B. 8-9, *nonacq.* *withdrawn and acq.* 1962-2 C.B. 5-6, *acq.* *withdrawn and nonacq.* 1976-2 C.B. 3-4, and *nonacq.* *withdrawn in part and acq.* in part 1982-2 C.B. 2, the Tax Court addressed whether allowances, discounts,

or rebates paid by a milk producer to certain purchasers of its milk, in willful violation of state law, are adjustments to the purchase price of the milk resulting in a reduced sales price, or ordinary and necessary business expenses under § 162 (in which case no deduction would be allowed under the rules of § 162(c)). The court reasoned that for income derived from the sale of property, in determining gain, the amount realized must be based on the actual price or consideration for which the property was sold and not on some greater price for which it possibly should have been, but was not, sold. The court focused on the facts and circumstances of the transaction, what the parties intended, and the purpose or consideration for which the allowance was made. The court found that the allowances were part of the sales transaction and concluded that gross income must be computed with respect to the agreed net prices for which the milk was actually sold. Thus, under *Pittsburgh Milk*, where a payment is made from a seller to a purchaser, and the purpose and intent of the parties is to reach an agreed upon net selling price, the payment is properly viewed as an adjustment to the purchase price that reduces gross sales.

In contrast, in *United Draperies, Inc. v. Commissioner*, 41 T.C. 457 (1964), *aff’d*, 340 F.2d 936 (7th Cir.), *cert. denied*, 382 U.S. 813 (1965), the Tax Court held that a drapery manufacturer could not exclude from income kickbacks paid to employees of the companies that purchased the taxpayer’s draperies. The court noted that the kickbacks were made to employees of its customers and were “independent of its agreement with its purchasers fixing the selling price of the products sold,” and that “[t]hese amounts were paid for a consideration separate from the selling price of its products, namely these employees sending the business of their employers to petitioner” *United Draperies* at 465.

Rev. Rul. 76-96, 1976-1 C.B. 23, addresses the tax treatment of rebates paid by an automobile manufacturer to retail customers. The manufacturer offered rebates of a set amount to retail customers who independently negotiated at arm’s length with one of the manufacturer’s dealers to

arrive at a purchase price for a new car. The ruling holds that the rebates reduce the purchase price of the cars and are not includible in the retail customer's gross income. The ruling further holds that the manufacturer may deduct the rebates as ordinary and necessary business expenses under § 162.

The Medicaid Rebate is paid by *M* to *S* pursuant to the terms of the rebate agreement. Under the purpose and intent test of *Pittsburgh Milk*, the Medicaid Rebate is made with the purpose and intent of reaching an agreed upon net selling price, and is negotiated and agreed to before the sale to *W* takes place.

HOLDING

Medicaid Rebates incurred by a pharmaceutical manufacturer are purchase price adjustments that are subtracted from gross receipts in determining gross income.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 76-96 is suspended in part. Whether a rebate of the type described in Rev. Rul. 76-96 is an ordinary and necessary business expense or, alternatively, is a reduction of gross receipts in determining gross income, is an issue under reconsideration. Accordingly, the conclusion of Rev. Rul. 76-96 that rebates made by the manufacturer are ordinary and necessary business expenses deductible under § 162 is suspended pending the Service's reconsideration of the issue and publication of subsequent guidance. Therefore, the Service will not apply, and taxpayers may not rely on, this conclusion while it is being reconsidered.

DRAFTING INFORMATION

The principal author of this revenue ruling is Susie K. Bird of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Bird at (202) 622-4950 (not a toll-free call).

Section 162.—Trade or Business Expenses

26 CFR 1.162-1: Business expenses.

Medicaid rebates incurred by a pharmaceutical manufacturer are not ordinary and necessary business expenses deductible from gross income under § 162 but are purchase price adjustments that are subtracted from gross receipts in determining gross income. See Rev. Rul. 2005-28, page 997.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

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

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2005.

Rev. Rul. 2005-27

This revenue ruling provides various prescribed rates for federal income tax purposes for May 2005 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month

for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the

adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in

service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2005-27 TABLE 1				
Applicable Federal Rates (AFR) for May 2005				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	3.54%	3.51%	3.49%	3.48%
110% AFR	3.90%	3.86%	3.84%	3.83%
120% AFR	4.25%	4.21%	4.19%	4.17%
130% AFR	4.61%	4.56%	4.53%	4.52%
<i>Mid-term</i>				
AFR	4.28%	4.24%	4.22%	4.20%
110% AFR	4.71%	4.66%	4.63%	4.62%
120% AFR	5.15%	5.09%	5.06%	5.04%
130% AFR	5.59%	5.51%	5.47%	5.45%
150% AFR	6.46%	6.36%	6.31%	6.28%
175% AFR	7.56%	7.42%	7.35%	7.31%
<i>Long-term</i>				
AFR	4.83%	4.77%	4.74%	4.72%
110% AFR	5.32%	5.25%	5.22%	5.19%
120% AFR	5.80%	5.72%	5.68%	5.65%
130% AFR	6.30%	6.20%	6.15%	6.12%

REV. RUL. 2005-27 TABLE 2				
Adjusted AFR for May 2005				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term adjusted</i>				
AFR	2.61%	2.59%	2.58%	2.58%
<i>Mid-term adjusted AFR</i>				
	3.29%	3.26%	3.25%	3.24%
<i>Long-term adjusted</i>				
AFR	4.37%	4.32%	4.30%	4.28%

REV. RUL. 2005-27 TABLE 3	
Rates Under Section 382 for May 2005	
Adjusted federal long-term rate for the current month	4.37%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.37%

REV. RUL. 2005-27 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for May 2005

Appropriate percentage for the 70% present value low-income housing credit	8.06%
Appropriate percentage for the 30% present value low-income housing credit	3.45%

REV. RUL. 2005-27 TABLE 5

Rate Under Section 7520 for May 2005

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.2%
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Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

Section 3402.—Income Tax Collected at Source

26 CFR 31.3402(f)(2)-1: *Withholding exemption certificates.*

T.D. 9196

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 31

Withholding Exemptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, “Employee’s Withholding Allowance Certificate.” These regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text

of the temporary regulations also serves as the text of the proposed regulations (REG-162813-04) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin. The amendments to the final regulations provide cross-references to the temporary regulations.

DATES: These regulations are effective April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Margaret A. Owens, (202) 622-0047 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W-4 contained in the regulation under section 6001 (§31.6001-5; OMB Control No. 1545-0798) and in the regulation under section 3402 (§31.3402(f)(2)-1; OMB Control No. 1545-0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 3402(f)(2)(A), every employee is required to furnish his or her employer with a signed withholding exemption certificate on or before commencing employment. Regulations prescribe

the form of the certificate as the Form W-4. The maximum number of withholding exemptions to which an employee is entitled depends upon the employee’s marital status, the employee’s filing status, the number of the employee’s dependents, the number of exemptions claimed by the employee’s spouse (if any) on a Form W-4, and the amount of the employee’s estimated itemized deductions, tax credits, and certain other deductions from income. A Form W-4 may be in either paper or electronic form.

Section 31.3402(f)(2)-1(g) of the existing regulations requires employers to submit copies of certain questionable Forms W-4 to the IRS. Employers must submit a copy of each Form W-4 on which an employee claims more than 10 withholding exemptions. Employers must also submit a copy of each Form W-4 on which the employee claims a complete exemption from withholding for the taxable year if the employer reasonably expects, when the Form W-4 is received, that the employee’s wages from that employer will usually be \$200 or more per week.

In addition, the existing regulations provide that, upon written request from the IRS, employers are required to submit to the IRS copies of withholding exemption certificates which are received from employees or groups of employees identified by the IRS in the written request.

The existing regulations provide that the IRS may notify an employer that a named employee is not entitled to claim a complete exemption from withholding and is not entitled to claim a total number of withholding exemptions more than the maximum number specified by the IRS in the notice. The IRS will issue such notice if the IRS finds that the withholding

exemption certificate contains a materially incorrect statement or if the IRS finds, after written request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct. In these cases, the employer must withhold tax based on the maximum number of withholding exemptions specified in the notice from the IRS unless otherwise notified by the IRS. However, if the employee furnishes a new certificate that claims a number of withholding exemptions less than the number specified in the written notice to the employer, the employer must withhold tax based on that certificate.

Under the existing regulations, if the employee furnishes a new withholding exemption certificate that claims complete exemption from withholding or claims a number of withholding exemptions more than the maximum number specified by the IRS in the notice, the employee must submit the new withholding exemption certificate and a written statement to support the claims made by the employee on the new certificate to the IRS or to the employer, who must then submit them to the IRS. The employer must disregard this new certificate until the IRS notifies the employer to withhold tax based on the new certificate.

Explanation of Provisions

The temporary regulations change the procedures for submitting copies of Forms W-4 to the IRS and allow the IRS to issue a notice specifying the maximum number of withholding exemptions permitted without first obtaining a copy of the withholding exemption certificate from the employer.

The temporary regulations also clarify that a substitute withholding exemption certificate developed by the employer may be used in lieu of the prescribed Form W-4, if the employer also provides the worksheets contained in the Form W-4 in effect at that time. The temporary regulations also provide that employers may refuse to accept a substitute form developed by an employee and that the employee submitting such form will be treated as failing to furnish a withholding exemption certificate.

As noted in the *Background* portion of this preamble, §31.3402(f)(2)-1(g) of the

existing regulations sets forth rules for employers to submit copies of certain questionable Forms W-4 to the IRS. The Treasury Department and the IRS want to relieve employers of the burden of submitting copies of certain questionable Forms W-4 and want to more effectively address withholding noncompliance by using information already provided to the IRS. Under the temporary regulations, employers are no longer required to submit a copy of any Form W-4 on which an employee claims more than 10 withholding exemptions. In addition, under the temporary regulations, employers are no longer required to submit a copy of any Form W-4 on which an employee claims complete exemption from withholding for the taxable year if the employer reasonably expects, when the Form W-4 is received, that the employee's wages from that employer will usually be \$200 or more per week. Instead, an employer must submit a copy of any currently effective withholding exemption certificate only if directed to do so in a written notice to the employer from the IRS or if directed to do so under any published guidance. As under existing regulations, the written notice may direct the employer to submit copies of Forms W-4 for certain employees. The temporary regulations also authorize the IRS to provide specific criteria for those Forms W-4 that must be submitted either in a written notice to an employer or by published guidance.

The temporary regulations provide that the IRS may issue a notice to an employer specifying the maximum number of withholding exemptions permitted for a specific employee. The IRS may issue such a notice after determining that a copy of a withholding exemption certificate submitted to the IRS contains a materially incorrect statement or after the employee fails to respond adequately to a request for verification of the statements on the certificate.

The IRS may also issue such a notice after it determines an employee is not entitled to claim complete exemption from withholding or more than a specified number of withholding exemptions based on IRS records without first obtaining a copy of the withholding exemption certificate from the employer.

After the IRS issues a notice of the maximum number of withholding exemptions permitted, if the employee wants to claim complete exemption from withholding or

claim a number of withholding exemptions more than the maximum number specified by the IRS in the notice, the employee must submit a new withholding exemption certificate and a written statement to support the claims made by the employee on the new certificate to the IRS. To reduce burdens on employers and to more efficiently respond to the employee, the temporary regulations provide that the employee must send this new certificate and written statement directly to the IRS. The option under existing regulations to send this information to the employer for forwarding to the IRS has been removed. The employer must disregard this new certificate until the IRS notifies the employer to withhold tax based on the new certificate. However, if, at any time, the employee furnishes a certificate that claims a number of withholding exemptions less than the maximum number specified in the written notice to the employer, the employer must withhold tax based on that certificate.

The temporary regulations provide a period during which the employee can address the pending withholding adjustment by providing a new certificate and written statement to the IRS. The temporary regulations provide that the earliest the notice of the maximum number of withholding exemptions permitted may be effective is 45 calendar days after the date of the notice. The notice may specify a later effective date.

The Treasury Department and the IRS are considering additional amendments to the regulations under section 3402 to address other issues including, but not limited to, the criteria for identifying a valid withholding exemption certificate. The Treasury Department and the IRS specifically welcome comments on this issue in response to the related notice of proposed rulemaking in this issue of the Bulletin.

Effective Date

These regulations are applicable on April 14, 2005.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative

Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations will be 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 Margaret A. Owens, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Section 31.3402(f)(5)–1T also issued under 26 U.S.C. 3402(i) and (m). * * *

Par. 2. Section 31.3402(f)(2)–1 is amended by revising paragraph (g) to read as follows:

§31.3402(f)(2)–1 Withholding exemption certificates.

* * * * *

(g) For further guidance, see §31.3402(f)(2)–1T(g).

Par. 3. Section 31.3402(f)(2)–1T is added to read as follows:

§31.3402(f)(2)–1T Withholding exemption certificates (temporary).

(a) through (f) [Reserved]. For further guidance, see §31.3402(f)(2)–1(a) through (f).

(g) *Submission of certain withholding exemption certificates and notice of the maximum number of withholding exemptions permitted—(1) Submission of*

certain withholding exemption certificates. (i) An employer must submit to the Internal Revenue Service (IRS) a copy of any currently effective withholding exemption certificate as directed in a written notice to the employer from the IRS or as directed in published guidance. A notice to the employer may relate either to one or more named employees; to one or more reasonably segregable units of the employer; or to withholding exemption certificates under certain specified criteria. The notice will designate the IRS office where the copies of the withholding exemption certificates must be submitted. Employers may also be required to submit copies of withholding exemption certificates under certain specified criteria when directed to do so by the IRS in published guidance. For purposes of the preceding sentence, the term published guidance means a revenue procedure or notice published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). Alternatively, upon notice from the IRS, the employer must make withholding exemption certificates received from one or more named employees; from one or more reasonably segregable units of the employer; or from employees who have furnished withholding exemption certificates under certain specified criteria, available for inspection by an IRS employee (e.g., a compliance check).

(ii) After a copy of a withholding exemption certificate has been submitted to the IRS under this paragraph (g)(1), the employer must withhold tax on the basis of the withholding exemption certificate, if the withholding exemption certificate meets the requirements of §31.3402(f)(5)–1, unless that certificate must be disregarded based on a notice of the maximum number of withholding exemptions permitted under the provisions of paragraph (g)(2) of this section.

(2) *Notice of maximum number of withholding exemptions permitted.* (i) The IRS may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding and the employee is not entitled to claim a total number of withholding exemptions more than the maximum number of withholding exemptions specified by the IRS in the written notice. The notice will specify the IRS office to be contacted for further information. The notice of maximum number

of withholding exemptions permitted may be issued if—

(A) The IRS determines that a copy of a withholding exemption certificate submitted under paragraph (g)(1) of this section contains a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct; or

(B) The IRS otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions.

(ii) If the IRS provides a written notice to the employer under this paragraph (g)(2), the IRS will also provide the employer with a written notice for the employee (employee notice) that identifies the maximum number of withholding exemptions permitted and the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate number of withholding exemptions. The IRS will also mail a similar written notice to the employee's last known address. For further guidance regarding the definition of last known address, see §301.6212–2 of this chapter.

(iii) If the employee is still employed by the employer, the employer must furnish the employee notice to the employee within 10 business days of receipt. If the employee is no longer employed by the employer, the employer is not required to furnish the employee notice to the employee but the employer must send a written response to the IRS office designated in the notice indicating that the employee is no longer employed by the employer.

(iv) Except as provided in paragraph (g)(2)(v) and (vi) of this section, the employer must withhold tax on the basis of the maximum number of withholding exemptions specified in the written notice received from the IRS. The employer must withhold tax in accordance with the notice as of the date specified in the notice, which shall be no earlier than 45 calendar days after the date of the notice.

(v) If a withholding exemption certificate is in effect with respect to the employee before the employer receives a notice from the IRS of the maximum number of withholding exemptions permitted

under this paragraph (g)(2), the employer must continue to withhold tax in accordance with the existing withholding exemption certificate rather than on the basis of the notice if the existing withholding exemption certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the maximum number specified by the IRS in the written notice to the employer.

(vi) If the employee furnishes a new withholding exemption certificate after the employer receives a notice from the IRS of the maximum number of withholding exemptions permitted under this paragraph (g)(2), the employer must withhold tax on the basis of that new certificate as currently effective only if the new certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the number specified by the IRS in the notice to the employer. If any new certificate claims complete exemption from withholding or claims a number of withholding exemptions more than the maximum number specified by the IRS in the notice, then the employer must disregard the new certificate and must continue to withhold tax on the basis of the maximum number specified in the notice received from the IRS unless the IRS by subsequent written notice advises the employer to withhold tax on the basis of that new certificate. If the employee wants to put a new certificate into effect to claim complete exemption from withholding or to claim a number of withholding exemptions more than the maximum number specified by the IRS in the notice to the employer, the employee must submit to the IRS office designated in the employee notice earlier furnished to the employee under this paragraph (g)(2) that new certificate and a written statement to support the claims made by the employee on the new certificate.

(3) *Definition of employer.* For purposes of this paragraph (g), the term *employer* includes any person authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(4) *Effective date.* This paragraph (g) applies on April 14, 2005. The applicability of this paragraph (g) expires on or before April 11, 2008.

Par. 4. Section 31.3402(f)(5)-1 is amended by revising paragraph (a) to read as follows:

§31.3402(f)(5)-1 Form and contents of withholding exemption certificates.

(a) For further guidance, see §31.3402(f)(5)-1T(a).

* * * * *

Par. 5. Section 31.3402(f)(5)-1T is added to read as follows:

§31.3402(f)(5)-1T Form and contents of withholding exemption certificates (temporary).

(a)(1) *Form W-4.* Form W-4, “Employee’s Withholding Allowance Certificate,” is the form prescribed for the withholding exemption certificate required to be furnished under section 3402(f)(2). A withholding exemption certificate must be prepared in accordance with the instructions and regulations applicable thereto, and must set forth fully and clearly the data therein called for. Blank copies of paper Forms W-4 will be supplied to employers upon request to the Internal Revenue Service (IRS). An employer may also download and print Form W-4 from the IRS Internet site at <http://www.irs.gov>. In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if employers also provide employees with all the tables, instructions, and worksheets contained in the Form W-4 in effect at that time and only if employers comply with all revenue procedures relating to substitute forms in effect at that time. Employers may refuse to accept a substitute form developed by an employee and the employee submitting such form will be treated as failing to furnish a withholding exemption certificate. For further guidance regarding the employer’s obligations when an employee is treated as failing to furnish a withholding exemption certificate, see §31.3402(f)(2)-1.

(2) *Effective date.* This paragraph (a) applies on April 14, 2005. The applicability of this paragraph (a) expires on or before April 11, 2008.

(b) through (c) [Reserved]. For further guidance, see §31.3402(f)(5)-1(b) through (c).

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

Approved March 28, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on April 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 14, 2005, 70 F.R. 19694)

Section 4082.—Exemptions for Diesel Fuel and Kerosene

26 CFR 48.4082-1: Diesel fuel and kerosene; exemption for dyed fuel.

T.D. 9199

DEPARTMENT OF
THE TREASURY
Internal Revenue Service
26 CFR Parts 48 and 602

Diesel Fuel and Kerosene Excise Tax; Dye Injection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the diesel fuel and kerosene excise tax. These regulations reflect changes made by the American Jobs Creation Act of 2004 regarding mechanical dye injection systems for diesel fuel and kerosene. These regulations affect certain enterers, refiners, terminal operators, and throughputters. The text of the temporary regulation also serves as the text of the proposed regulations (REG-154000-04) set forth in the notice of proposed rulemaking on this subject elsewhere in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective October 24, 2005.

Applicability Dates: For dates of applicability, see §§48.4082-1T(e) and 48.4101-1T(h)(3)(iv).

FOR FURTHER INFORMATION CONTACT: William Blodgett at (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1418. Responses to this collection of information are required to obtain a tax benefit.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 4081 of the Internal Revenue Code (Code) imposes a tax on certain removals, entries, and sales of diesel fuel and kerosene. However, section 4082(a) provides that the tax is not imposed if the diesel fuel or kerosene (1) is destined for a nontaxable use (as defined in section 4082(b)), (2) is indelibly dyed in accordance with regulations that the Secretary shall prescribe, and (3) meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Section 4082(a)(2) was amended by the American Jobs Creation Act of 2004

(the Act) to provide that the diesel fuel and kerosene must be indelibly dyed “by mechanical injection.” The Act also requires the Secretary to issue regulations regarding mechanical dye injection systems and to include in the regulations standards for making such systems tamper resistant. The amendments to section 4082(a)(2) are effective on the 180th day after the date on which the Secretary issues such regulations.

The Act also adds new section 6715A, which imposes a penalty on any person that tampers with a mechanical dye injection system and any operator of a mechanical injection system that fails to maintain the security standards for such system in accordance with the regulations.

Explanation of provisions

Under these temporary regulations, diesel fuel or kerosene that is removed from a refinery, terminal, or blending facility is exempt from tax under section 4082(a) only if the required type and amount of dye is added to the fuel by means of a mechanical injection system that is approved by the IRS. Manual (or splash) dyeing is not allowed, even in the case of a malfunction of the mechanical injection system.

Application for approval of mechanical injection systems will be made in the form and manner prescribed by the IRS. It is anticipated that the application process will be similar to the process now in place for applications for registrations under section 4101. It is also anticipated that the IRS will act on such applications within a reasonable time.

Under these temporary regulations, the IRS will approve a mechanical injection system only if it contains adequate calibrated measurement devices, shut-off devices, and security equipment to secure these devices and other access points.

Generally, the security equipment must consist of either a “seal” system or a “lock box” system. The “seal” system requires that a seal be attached to each measuring device, each shut-off device, and any other access point to the mechanical injection system. The seals must secure the devices from tampering and, if necessary, may be accompanied by locks to ensure the necessary security. The alternative to

the “seal” system is the “lock box” system, which allows the operator to use one secured container, or box, to control access to each measuring device, each shut-off device, and any other access point to the mechanical injection system. Such container may be transparent for ease of satisfying the inspection requirements. If the “lock box” system is used, the container must be secured by a seal that satisfies all of the “seal” requirements. Each seal, whether it secures a “lock box” or attaches to an access point, must be separately identifiable by a numbering or coding system maintained by the terminal operator. In all cases, the type of allowable seal may be prescribed by the IRS.

These temporary regulations also set out ongoing duties of the operator of an approved mechanical injection system to maintain the system’s security standards and to keep certain records. However, no particular form for the records is prescribed.

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 flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is William Blodgett, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 48 and 602 are amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 48.4082-1T also issued under 26 U.S.C. 4082(a). * * *

Par. 2. Section 48.4082-1 is amended by revising paragraphs (d) and (e) to read as follows:

§48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

* * * * *

(d) [Reserved]. For further guidance, see §48.4082-1T(d).

(e) *Effective date*—(1) Except as provided in paragraph (e)(2) of this section, this section is applicable March 14, 1996.

(2) [Reserved] For further guidance, see §48.4082-1T(e)(2).

Par. 3. Section 48.4082-1T is added to read as follows:

§48.4082-1T Diesel fuel and kerosene; exemption for dyed fuel (temporary).

(a) through (c) [Reserved]. For further guidance, see §48.4082-1(a) through (c).

(d) *Time and method for adding dye*—(1) *In general.* Except as provided by paragraph (d)(6) of this section, diesel fuel or kerosene satisfies the dyeing requirements of this paragraph (d) only if the dye required by §48.4082-1(b) is combined with the diesel fuel or kerosene by means of a mechanical injection system that is approved by the Commissioner for use at the facility where the dyeing occurs. Application for approval must be made in the form and manner required by the Commissioner. Rules similar to the rules of §48.4101-1(g) apply to the Commissioner's action on the applications.

(2) *Mechanical injection system; requirements.* The Commissioner will approve a mechanical injection system only if—

(i) The system has features that automatically inject an amount of dye that

satisfies the concentration requirements of §48.4082-1(b) into diesel fuel or kerosene as the diesel fuel or kerosene is delivered from the bulk transfer/terminal system into the transport compartment of a truck, trailer, railroad car, or other means of non-bulk transfer;

(ii) The system has calibrated devices that accurately measure and record the amount of dye and the amount of diesel fuel and kerosene that is dispensed for each removal;

(iii) The system has automatic shut-off devices that prevent the removal of more than 100 gallons of undyed diesel fuel or kerosene in the case of a system malfunction;

(iv) The system is secured by either—

(A) Unbroken seals that are issued, installed, and maintained by the terminal operator and secure the measurement devices, shut-off devices, and other access points to the injection system; or

(B) A secured container that controls access to the measurement devices, shut-off devices, and other access points and is secured by an unbroken seal issued, installed, and maintained by the terminal operator;

(v) Each seal securing the system bears a unique identifying number or code and is produced in a manner that provides adequate assurance against duplication; and

(vi) The operator of the facility has written procedures in place for complying with its duty, described in paragraph (d)(4) of this section, to maintain the system's security standards.

(3) *Mechanical injection system; basis for approval.* In determining whether to approve a mechanical injection system, the Commissioner will take into account the individual circumstances of each facility, including local fire and safety codes, to ensure that the cost of acquiring and maintaining the appropriate levels of security are reasonable for that facility.

(4) *Mechanical injection system; duty of the operator of a mechanical injection system to maintain the system's security standards.* Each operator of a mechanical injection system must—

(i) Maintain a record for each seal, including its identifying number or code, the location of the seal, the date(s) on which the seal was issued and installed, and the reason for the installation;

(ii) Visually inspect each installed seal not less than once during every 24 hour period to ascertain that each seal and lock mechanism, if applicable, has not been physically altered;

(iii) Check the identifying number or code for each seal against the records maintained by the terminal operator no less frequently than once during each seven day period and record each inspection and verification;

(iv) Promptly notify the Commissioner if inspection of a seal reveals any inconsistency in the records pertaining to that seal, or if the seal has been damaged or removed (other than a removal authorized by the operator for testing or maintenance);

(v) Maintain a record of each seal that has been replaced to include the seal number or code, the date the seal was issued, the location of the seal, the date the seal was replaced, and the reason the seal was replaced;

(vi) Promptly destroy and replace seals that have been removed from the system;

(vii) Restrict access to unused seal inventory to individuals specifically designated by the operator and maintain a record of such individuals;

(viii) Maintain a record of each installation, inspection, and destruction described in this paragraph (d)(4), including the name of the individual who conducts the installation, inspection, or destruction;

(ix) Make available for the Commissioner's immediate inspection the seals and records described in this paragraph (d)(4); and

(x) Promptly notify the Commissioner if, and when, the dye injection system is placed out of service.

(5) *Mechanical injection system; revocation or suspension of approval.* The Commissioner may revoke or suspend its approval of a dye injection system if the Commissioner determines that the system does not meet the standards of paragraph (d)(2) of this section or if the operator of the system has not complied with the requirements of paragraph (d)(4) of this section.

(6) *Sales and entries.* For purposes of determining whether tax is imposed by section 4081 on a sale or entry of diesel fuel or kerosene, such fuel satisfies the dyeing requirements of this paragraph (d) only if the dye required by §48.4082-1(b) is combined with the fuel before the sale

or entry and the seller or enterer has in its records evidence (such as a certificate from the terminal operator providing the fuel) establishing that the dye was combined with the fuel by means of a mechanical injection system. Thus, for example, diesel fuel or kerosene that is entered into the United States by means of non-bulk transfer (such as a railroad car) does not satisfy the requirements of this paragraph (d) if the required dye and marker are combined with diesel fuel or kerosene after the diesel fuel or kerosene has been entered into the United States.

(7) *Cross reference.* For the penalty relating to mechanical dye injection systems, see section 6715A.

(e) and (e)(1) [Reserved]. For further guidance, see §48.4082-1(e) and (e)(1).

(2) This section is applicable on October 24, 2005.

Par. 4. Section 48.4101-1 is amended by revising paragraph (h)(3)(iv) to read as follows:

§48.4101-1 Taxable fuel; registration.

* * * * *

(h) * * *

(3) * * *

(iv) [Reserved]. For further guidance, see §48.4101-1T(h)(3)(iv).

* * * * *

Par. 5. Section 48.4101-1T is added to read as follows:

§48.4101-1T Taxable fuel; registration (temporary).

(a) through (h)(3)(iii) [Reserved]. For further guidance, see §48.4101-1(a) through (h)(3)(iii).

(iv) *Retention of information.* In addition to any other requirement relating to the retention of records, the terminal operator must—

(A) Maintain the information described in §48.4101-1(h)(3)(ii) at the terminal from which the removal occurred for at least 3 months after the removal to which it relates in the case of information relating to removals before January 1, 2006, and at least 12 months after the removal to which it relates in the case of information relating to removals after December 31, 2005; and

(B) Maintain the information described in §48.4101-1(h)(3)(iii) at the terminal where the dye was received for at least 3 months after the receipt in the case of receipts before January 1, 2006, and at least 12 months after the receipt in the case of receipts after December 31, 2005.

(h)(3)(v) through (l) [Reserved]. For further guidance, see § 48.4101-1(h)(3)(v) through (l).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In §602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4082-1T	1545-1418
* * * * *	
48.4101-1T	1545-1418
* * * * *	

Cono R. Namorato,
Acting Deputy Commissioner for Services and Enforcement.

Approved April 15, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2005. See Rev. Rul. 2005-27, page 998.

(Filed by the Office of the Federal Register on April 25, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 26, 2005, 70 F.R. 21332)

Part III. Administrative, Procedural, and Miscellaneous

Form 8854 and Expatriation Reporting Rules

Notice 2005-36

PURPOSE

Form 8854, *Initial and Annual Expatriation Information Statement*, has been revised to reflect the substantial revisions made to the individual expatriation provisions of sections 877 and 6039G of the Internal Revenue Code (“Code”) and the enactment of new section 7701(n) by section 804 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418, 1602 (the Act). Revised Form 8854 is required to be filed by every individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004. The purpose of this notice is to provide guidance with respect to the filing of the revised Form 8854 by such former citizens and long-term residents.

BACKGROUND

The Act made substantial changes to the tax and information reporting rules (and associated penalties) that apply to U.S. citizens and long-term residents, as defined in section 877(e), who lose their citizenship or terminate their long-term resident status after June 3, 2004. As a result of changes made by the Act, section 877 generally applies, without regard to tax motivation, to any former U.S. citizen or long-term resident: (i) whose net worth as of the date of loss of citizenship or termination of long-term resident status equals or exceeds \$2,000,000, (ii) whose average annual net income tax liability for the five preceding taxable years exceeds \$124,000 (as adjusted annually for inflation), or (iii) who fails to certify under penalty of perjury that all of his or her federal tax obligations for the five preceding taxable years have been met.

New rules also apply to former U.S. citizens or long-term residents who are subject to the rules of section 877(a) and who return to the United States during the 10-year period described in section 877(a). Subject to a limited exception for work in the United States for an unrelated employer, section 877(g) provides that a for-

mer U.S. citizen or long-term resident will be treated for federal tax purposes as a citizen or resident of the United States, as the case may be, for the taxable year in which the individual is physically present in the United States more than 30 days during the taxable year.

Pursuant to section 7701(n), an individual who loses U.S. citizenship or terminates long-term resident status will continue to be treated for federal tax purposes as a citizen or long-term resident of the United States, as the case may be, until the individual (i) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate such status) to the Department of State or the Department of Homeland Security and (ii) provides a statement to the IRS in accordance with the revised requirements of section 6039G (“initial expatriation information statement”). Until such an individual complies with the notification and information reporting requirements of section 7701(n), the individual will continue to be treated as a citizen or long-term resident of the United States for federal tax purposes regardless of the individual’s status under U.S. immigration law.

Section 6039G also requires annual information reporting for each taxable year during which an individual is subject to the rules of section 877(a). The annual information statement, which requires detailed income, asset and liability information, is due on the date that the individual’s U.S. income tax return for the taxable year is due or would be due if such a return were required to be filed.

REVISED FORM 8854

Form 8854 has been revised so that individuals may comply with the new information reporting requirements in sections 7701(n) and 6039G. In particular, Form 8854 has been expanded so that it functions as both the initial expatriation information statement for purposes of section 7701(n) and as the annual expatriation information statement under section 6039G. Revised Form 8854 and its instructions also address how individuals should certify (in accordance with section 877(a)(2)(C)) that they have met their

federal tax obligations for the five preceding taxable years and what constitutes notification to the Department of State or the Department of Homeland Security for purposes of section 7701(n).

SPECIAL RULES FOR INDIVIDUALS FILING FORM 8854 BEFORE JUNE 15, 2005

The revised Form 8854 provides a procedure for individuals who lost U.S. citizenship or terminated long-term resident status after June 3, 2004, (i) to certify that they have satisfied their federal tax obligations within the meaning of section 877(a)(2)(C), (ii) to notify, in accordance with section 7701(n), the Department of State or the Department of Homeland Security of their expatriating act or termination of residency, and (iii) to file a statement in accordance with section 6039G. Because an individual must provide a statement to the IRS in accordance with section 6039G to meet the requirements of section 7701(n), any individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004, must file a revised Form 8854 with the IRS. Although there is no due date for the initial filing of revised Form 8854, until an individual that loses U.S. citizenship or terminates long-term resident status completes and files that form with the IRS, the individual will continue to be treated as a citizen or long-term resident of the United States, as the case may be, for federal tax purposes.

Treasury and the IRS recognize that, until the revised Form 8854 was released, individuals who lost U.S. citizenship or terminated long-term resident status after June 3, 2004, did not know how to comply with the notification and information reporting requirements of section 7701(n). Accordingly, if an individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004, files the revised Form 8854 by June 15, 2005, the IRS will treat that form as if it were filed for purposes of section 7701(n) on the date on which the taxpayer provided the requisite notice to the Department of State or the Department of Homeland Security.

If an individual who loses U.S. citizenship or terminates long-term resident sta-

tus after June 3, 2004, does not file a revised Form 8854 on or before June 15, 2005, the individual's loss of citizenship or termination of long-term resident status for federal tax purposes will be the later of the date on which a revised Form 8854 is filed with the IRS or the date on which the taxpayer provides the requisite notice to the Department of State or the Department of Homeland Security.

The special rule provided by this notice for Forms 8854 filed before June 15, 2005, applies only to individuals who file Form 8854 as an initial expatriation information statement. The due date for the filing of

Form 8854 as an annual expatriation information statement is not affected.

EFFECT ON OTHER DOCUMENTS

Notice 98-34, 1998-2 C.B. 29, modifying Notice 97-19, 1997-1 C.B. 394, and Notice 97-19 are obsoleted to the extent necessary to reflect amendments made by section 804 of the Act.

EFFECTIVE DATE

This notice is effective for former U.S. citizens and long-term residents who lost their U.S. citizenship or terminated their

long-term resident status after June 3, 2004.

DRAFTING INFORMATION

The principal author of this notice is Willard W. Yates of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Willard W. Yates at (202) 622-3880 (not a toll-free call).

Part IV. Items of General Interest

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

Diesel Fuel and Kerosene Excise Tax; Dye Injection

REG-154000-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9199) relating to the mechanical dye injection of diesel fuel and kerosene. The text of those regulations also serves as the text of these proposed regulations. These regulations affect certain enterers, refiners, terminal operators, and throughputters.

DATES: Written and electronic comments must be received by June 27, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 19, 2005, must be received by June 27, 2005.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-154000-04), room 5203, 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 4 p.m. to: CC:PA:LPD:PR (REG-154000-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or submitted electronically, via the IRS Internet site at: www.irs.gov/reg or via the Federal eRuling portal at www.regulations.gov (IRS and REG-154000-04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Blodgett at (202)

622-3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by June 27, 2005.

Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in this proposed regulation is in §§48.4082-1(d)(2), 48.4082-1(d)(4), 48.4082-1(d)(6) and 48.4101-1(h)(3). This collection of information is necessary to obtain a tax benefit. The likely

recordkeepers are terminal operators and enterers.

Estimated total annual reporting and/or recordkeeping burden: 1,400 hours.

Estimated average annual burden hours per recordkeeper: 7 hours.

Estimated number of respondents and/or recordkeepers: 200.

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

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

Background

Temporary regulations in this issue of the Bulletin amend Manufacturers and Retailers Excise Taxes Regulations (26 CFR part 48) under sections 4082 and 4101. The temporary regulations set forth requirements regarding the mechanical dye injection systems for diesel fuel and kerosene and are required by the American Jobs Creation Act of 2004. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary 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 flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to maintain the required records and report to the IRS is minimal and will not have a significant impact on those small entities.

Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 19, 2005, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 27, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William Blodgett, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read, in part, as follows:

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

Par. 2. In §48.4082-1, paragraphs (d) and (e)(2) are revised to read as follows:

§48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

* * * * *

(d) [The text of this proposed paragraph (d) is the same as the text of §48.4082-1T(d) published elsewhere in this issue of the Bulletin].

(e) * * *

(e)(2) [The text of this proposed paragraph (e)(2) is the same as the text of §48.4082-1T(e)(2) published elsewhere in this issue of the Bulletin].

Par. 3. Section 48.4101-1 is amended by revising paragraph (h)(3)(iv) to read as follows:

§48.4101-1 Taxable Fuel; registration.

* * * * *

(h) * * *

(3) * * *

(iv) [The text of this proposed paragraph (h)(3)(iv) is the same as the text of §48.4101-1T(h)(3)(iv) published elsewhere in this issue of the Bulletin].

Cono R. Namorato,
*Acting Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on April 25, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 26, 2005, 70 F.R. 21361)

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

Withholding Exemptions

REG-162813-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9196) providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, "Employee's Withholding Allowance Certificate." The temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 5, 2005. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for July 26, 2005, must be received by July 5, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-162813-04), room 5203, 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 4 p.m. to: CC:PA:LPD:PR (REG-162813-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov

(IRS-REG-162813-04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Margaret A. Owens, (202) 622-0047; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These proposed regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W-4 contained in the regulation under section 6001 (§31.6001-5; OMB Control No. 1545-0798) and in the regulation under section 3402 (§31.3402(f)(2)-1; OMB Control No. 1545-0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in this issue of the Bulletin amend the Employment Tax Regulations (26 CFR part 31) relating to the Form W-4, “*Employee’s Withholding Allowance Certificate*.” These temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. The Treasury Department and the IRS are considering additional amendments to the regulations under section 3402 to address other issues including, but not limited to, the criteria for identifying a valid withholding exemption certificate. The Treasury Department and the IRS specifically welcome comments on this issue. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 26, 2005, at 10 a.m., in the Auditorium, 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” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by July 5, 2005.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Margaret A. Owens, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in the development of these proposed regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.3402(f)(2)-1 is amended by revising paragraph (g) to read as follows:

§31.3402(f)(2)-1 Withholding exemption certificates.

[The text of proposed §31.3402(f)(2)-1(g) is the same as the text of §31.3402(f)(2)-1T(g) published elsewhere in this issue of the Bulletin].

Par. 3. Section 31.3402(f)(5)-1 is amended by revising paragraph (a) to read as follows:

§31.3402(f)(5)-1 Form and contents of withholding exemption certificates.

[The text of proposed §31.3402(f)(5)-1(a) is the same as the text of §31.3402(f)(5)-1T(a) published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

Transactions Involving the Transfer of No Net Value; Correction

Announcement 2005-32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-163314-03, 2005-14 I.R.B. 835) that was published in the **Federal Register** on Thursday, March 10, 2005 (70 FR 11903). The proposed regulation provides guidance regarding corporate formations, reorganizations, and liquidations of insolvent corporations.

FOR FURTHER INFORMATION CONTACT: Jean Brenner, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-163314-03) that is the subject of these corrections are under sections 332, 351 and 368 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-163314-03) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-163314-03), that was the subject of FR Doc. 04-4384, is corrected as follows:

1. On page 11904, column 1, in the preamble under the paragraph heading “*Explanation of Provisions*”, the undesignated paragraph heading, “*Exchange*

of Net Value Requirement” is correctly designated as “1. *Exchange of Net Value Requirement*”.

2. On page 11904, column 1, in the preamble under the newly designated paragraph heading “1. *Exchange of Net Value Requirement*”, the undesignated paragraph heading, “*Background*” is correctly designated as “A. *Background*”.

3. On page 11904, column 3, in the preamble under the newly designated paragraph heading “1. *Exchange of Net Value Requirement*”, the undesignated paragraph, “*Explanation of rules*” is revised and correctly designated as “B. *Explanation of Rules*”.

4. On page 11904, column 3, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Net Value Requirement*” is correctly designated as “(i) *Net Value Requirement*”.

5. On page 11905, column 2, in the preamble under the newly designated paragraph heading, “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Scope of Net Value Requirement*” is correctly designated as “(ii) *Scope of Net Value Requirement*”.

6. On page 11905, column 3, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Definition of Liabilities*” is correctly designated as “(iii) *Definition of Liabilities*”.

7. On page 11905, column 3, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Amount of Liabilities*” is correctly designated as “(iv) *Amount of Liabilities*”.

8. On page 11906, column 1, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Assumption of Liabilities*” is correctly designated as “(v) *Assumption of Liabilities*”.

9. On page 11906, column 1, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*In Connection With*” is correctly designated as “(vi) *In Connection With*”.

10. On page 11906, column 2, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”,

the undesignated paragraph heading, “*Section 368(a)(1)(C)*” is correctly designated as “(vii) *Section 368(a)(1)(C)*”.

11. On page 11906, column 2, in the preamble under the newly designated paragraph heading “B. *Explanation of Rules*”, the undesignated paragraph heading, “*Section 721*” is correctly designated as “(viii) *Section 721*”.

12. On page 11906, column 3, in the preamble under the paragraph heading “*Explanation of Provisions*”, the undesignated paragraph heading, “*Continuity of Interest*” is correctly designated as “2. *Continuity of Interest*”.

13. On page 11906, column 3, in the preamble under the newly designated paragraph heading “2. *Continuity of Interest*”, the undesignated paragraph heading, “*Background*” is correctly designated as “A. *Background*”.

14. On page 11907, column 1, in the preamble under the newly designated paragraph heading “2. *Continuity of Interest*”, the undesignated paragraph heading, “*Explanation of Provisions*” is correctly designated as “B. *Explanation of Provisions*”.

15. On page 11907, column 3, in the preamble under the newly designated paragraph heading, “*Explanations of Provisions*” the undesignated paragraph heading, “*Section 332*” is correctly designated as “3. *Section 332*”.

16. On page 11907, column 3, in the preamble under the newly designated paragraph heading, “3. *Section 332*” the undesignated paragraph heading, “*Background*” is correctly designated as “A. *Background*”.

17. On page 11907, column 3, in the preamble under the newly designated paragraph heading, “3. *Section 332*” the undesignated paragraph heading, “*Explanation of Provisions*” is correctly designated as “B. *Explanation of Provisions*”.

LaNita Van Dyke,
Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV; Correction Announcement 2005–33

AGENCIES: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Correcting Amendment.

SUMMARY: This document corrects final regulations (T.D. 9166, 2005–8 I.R.B. 558) that were published in the **Federal Register** on December 30, 2004 (69 FR 78720) governing portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan.

DATES: These corrections are effective February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at 1–877–267–2323 ext. 61565; Amy Turner, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335 (not a toll-free number); or Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 9801, 9831, 9832, and 9833 of the Internal Revenue Code; sections 701, 731, 732, 733, and 734 of the Employee Retirement Income Security Act; and sections 2701, 2721, 2723, 2791, and 2792 of the Public Health Service Act.

Need for Correction

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

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 54, 29 CFR Part 2590 and 29 CFR Part 146 are corrected by making the following correcting amendment:

PART 54—PENSION EXCISE TAXES

Par. 1. The authority citation for part 54 continues to read as follows:

Authority: 26 USC 7805* * *

§54.9831–1 [Corrected]

1. Section 54.9831–1(c)(3)(iii)(B), the language “of which are for treatment of the eye.” is removed and the language “all of which are for treatment of the eye.” is added in its place.

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

Par. 1. The authority citation for part 2590 continues to read as follows:

Authority: 29 USC 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101(g), Public Law 104–191, 101 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 USC 651 note); Secretary of Labor’s Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§ 2590.731 [Corrected]

2. Section 2590.731(c)(2)(i), the language “§2590.701–3(a)(1)(i) (for purposes of” is removed and the language “§2590.701–3(a)(2)(i) (for purposes of” is added in its place.

3. Section 2590.731(c)(2)(ii), the language “and §2590.701–3(a)(1)(ii) (for purposes” is removed and the language “§2590.701–3(a)(2)(ii) (for purposes” is added in its place.

4. Section 2590.731(c)(2)(iii), the language “the Act and §§2590.701–3(a)(1)(iii) and” is removed and the language “the Act and §§2590.701–3(a)(2)(iii) and” is added in its place.

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

Par. 1. The authority citation for part 146 continues to read as follows:

Authority: Secs 2701 through 2763, 2791, and 2792, of the Public Health Service Act, 42 USC 300gg through 300gg–63, 300gg–91, 30gg–92 as amended by HIPAA (Public Law 104–191, 110 Stat. 1936), MHPA (Public Law 104–204, 110 Stat. 2944, as amended by Public Law 107–116, 115 Stat. 2177), NMHPA (Public Law 104–204, 110 Stat. 2935), WHCRA (Public Law 105–277, 112 Stat. 2681–436), and section 103(c)(4) of HIPAA.

§146.125 [Corrected]

5. Section 146.125, the language “Sections 146.111 through 146.119,” is removed and the language “Section 144.103, §§146.111 through 146.119,” is added in its place.

§146.143 [Corrected]

6. Section 146.143(b), the language “section 514 of the Act with respect to” is removed and the language “section 514 of ERISA with respect to” is added in its place.

7. Section 146.143(c)(2)(i), the language “§146.111(a)(1)(i) (for purposes of” is removed and the language “§146.111(a)(2)(i) (for purposes of” is added in its place.

8. Section 146.143(c)(2)(ii), the language “PHS Act and §146.111(a)(1)(ii) (for” is removed and the language “PHS Act and §146.111(a)(2)(ii) (for” is added in its place.

9. Section 146.143(c)(2)(iii), the language “the PHS Act and §§146.111(a)(1)(iii)” is removed and the language “the PHS Act and §§146.111(a)(2)(iii)” is added in its place.

Cynthia E. Grigsby,
*Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration)
Internal Revenue Service
Department of the Treasury.*

Dated this 16th day of March, 2005.

*Ann Agnew,
Executive Secretary,
Department of Health and Human
Services.*

Dated this 15th day of February, 2005.

*Daniel J. Maguire,
Director, Office of Health Plan
Standards and Compliance Assistance,
Employee Benefits Security
Administration,
Department of Labor.*

(Filed by the Office of the Federal Register on April 22, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2005, 70 F.R. 21146)

Flat Rate Supplemental Wage Withholding; Hearing Announcement 2005-34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations (REG-152945-04, 2005-6 I.R.B. 484) relating to the flat rate of withholding applicable to calculating the amount of income tax withholding on supplemental wages.

DATES: The public hearing is being held on Thursday, June 9, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Thursday, May 19, 2005.

ADDRESSES: The public hearing is being held in the Auditorium, Internal Revenue Service 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.

Mail outlines to: CC:PA:LPD:PR (REG-152945-04), room 5203, 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 4 p.m. to CC:PA:LPD:PR (REG-152945-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Submit outlines electronically to the IRS e-mail address notice.comments@irs.counsel.treas.gov.

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, (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking

(REG-152945-04) that was published in the **Federal Register** on Wednesday, January 5, 2005 (70 FR 767).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written or electronic comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by May 19, 2005.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

*Cynthia E. Grigsby,
Acting Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on April 22, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2005, 70 F.R. 21163)

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 laws 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 a 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.—Statement 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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