HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENT

This announcement provides a settlement initiative under which taxpayers and the Internal Revenue Service may resolve the tax treatment of certain tax transactions. Taxpayers have until January 23, 2006, to file an election indicating their intent to participate in this initiative.

INCOME TAX

This notice announces that Treasury and the Service will amend the regulations under section 6012 of the Code to create a new exception to the filing requirement for nonresident alien individuals who are required to file a return under the present regulations solely because they earn wages that are effectively connected with a United States trade or business.

EMPLOYEES PLANS

2006 covered compensation tables; permitted disparity. The covered compensation tables under section 401 of the Code for the year 2006 are provided for use in determining contributions to defined benefit plans and permitted disparity.

Minimum funding standards; disaster relief. As a result of the enactment of section 403(b) of the Katrina Emergency Tax Relief Act of 2005, the Internal Revenue Service, the Employee Benefits Security Administration of the Department of Labor, and the Pension Benefit Guaranty Corporation are providing additional disaster relief pertaining to the minimum funding standards of certain employee benefit plans. Notice 2005–60 superseded.

EMPLOYMENT TAX

This notice provides new rules for determining the amount of income tax employers must withhold under section 3402 of the Code from wages paid for services performed by nonresident alien employees within the United States. The notice also provides new rules for use by nonresident alien employees in completing Form W-4, Employee’s Withholding Allowance Certificate. The rules are effective with respect to wages paid on or after January 1, 2006.

2006 social security contribution and benefit base; domestic employee coverage threshold. The Commissioner of the Social Security Administration has announced (1) the OASDI contribution and benefit base for remuneration paid in 2006 and self-employment income earned in taxable years beginning in 2006, and (2) the domestic employee coverage threshold amount for 2006.

(Continued on the next page)
EXCISE TAX

This notice supersedes Notice 2004–57, 2004–2 C.B. 376, while confirming that the Service will continue to assess and collect the tax under section 4251 of the Code on all taxable communications services, including communications services similar to those at issue in American Bankers Insurance Group v. United States, 408 F.3d 1328 (11th Cir. 2005), rev'd 308 F. Supp. 2d 1360 (S.D. Fla. 2004). Notice 2004–57 superseded.

This notice provides guidance on certain excise tax provisions that were added or affected by the Energy Policy Act of 2005 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). This notice also provides additional guidance relating to mechanical dye injection of diesel fuel and kerosene. Notice 2005–4 modified.

ADMINISTRATIVE

South Asia earthquake; designation as a qualified disaster. The South Asia earthquake that struck Pakistan, India, and Afghanistan on October 8, 2005, is designated a qualified disaster for purposes of section 139 of the Code.
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:

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.

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

26 CFR 1.401(l)–1: Permitted disparity in employer-provided contributions or benefits.

2006 covered compensation tables; permitted disparity. The covered compensation tables under section 401 of the Code for the year 2006 are provided for use in determining contributions to defined benefit plans and permitted disparity.

Rev. Rul. 2005–72

This revenue ruling provides tables of covered compensation under §401(l)(5)(E) of the Internal Revenue Code (the “Code”) and the Income Tax Regulations, thereunder, for the 2006 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee, as the average of the contribution and benefit bases under section 230 of the Social Security Act (the “Act”) for each year in the 35-year period ending with the year in which the employee attains social security retirement age.

Section 401(l)(5)(E)(ii) of the Code states that the determination for any year preceding the year in which the employee attains social security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains social security retirement age.

Section 1.401(l)–1(c)(34) defines the taxable wage base as the contribution and benefit base under section 230 of the Act.

Section 1.401(l)–1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) social security retirement age. A 35-year period is used for all individuals regardless of the year of birth of the individual. In determining an employee’s covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee’s covered compensation for a plan year beginning after the 35-year period applicable under §1.401(l)–1(c)(7)(i) is the employee’s covered compensation for a plan year during which the 35-year period ends. An employee’s covered compensation for a plan year beginning before the 35-year period applicable under §1.401(l)–1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)–1(c)(7)(ii) provides that, for purposes of determining the amount of an employee’s covered compensation under §1.401(l)–1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the year 2006, the taxable wage base is $94,200. The following tables provide covered compensation for 2006:

### 2006 COVERED COMPENSATION TABLE

<table>
<thead>
<tr>
<th>CALENDAR YEAR OF BIRTH</th>
<th>CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE</th>
<th>2006 COVERED COMPENSATION</th>
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<tr>
<td>1926</td>
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</table>
## 2006 COVERED COMPENSATION TABLE

| CALENDAR YEAR OF BIRTH | CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE | 2006 COVERED COMPENSATION 
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<tr>
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<td>1972</td>
<td>2037</td>
<td>94,080</td>
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<td>1973 and later</td>
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</table>
### 2006 Rounded Covered Compensation Table

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<th>Year of Birth</th>
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<td>1950–1951</td>
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<td>1952–1953</td>
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<td>1954</td>
<td>78,000</td>
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<td>1955–1956</td>
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<td>1957–1959</td>
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<td>93,000</td>
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<tr>
<td>1970 and later</td>
<td>94,200</td>
</tr>
</tbody>
</table>

**Drafting Information**

The principal author of this revenue ruling is Lawrence Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans taxpayer assistance telephone service at 1–877–829–5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Isaacs’s telephone number is (202) 283–9710 (not a toll-free number).
Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States

Notice 2005–76

I. PURPOSE

This notice provides new rules for determining the amount of income tax employers must withhold under section 3402 of the Internal Revenue Code (Code) from wages paid for services performed by nonresident alien employees within the United States. This notice also provides new rules for use by nonresident alien employees in completing Form W–4, Employee’s Withholding Allowance Certificate. The rules for employers and employees are effective with respect to wages paid on or after January 1, 2006.

Because certain nonresident alien employees were experiencing overwithholding of income tax on their wages for services performed within the United States, the Internal Revenue Service has reconsidered the requirements for determining the amount of income tax to be withheld under section 3402 from the wages of nonresident alien employees. These new rules are designed to provide for withholding on the wages of a nonresident alien employee that more closely approximates the income tax liability of the nonresident alien.

II. BACKGROUND

A. Income Tax Withholding on Wages of Nonresident Alien Employees

Pursuant to the statutory provisions and regulations set forth below, employers are generally liable for the withholding of income tax on remuneration for services performed within the United States by a nonresident alien employee.

Section 3402(a)(1) of the Code provides that, except as otherwise provided in section 3402, every employer making a payment of wages shall deduct and withhold from such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. Section 3402(a)(1) further provides that any tables or procedures prescribed under section 3402(a)(1) shall be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be appropriate to carry out the purposes of chapter 1 (imposition of individual income tax).

Section 3401(a) of the Code provides that generally the term “wages” includes all remuneration for services performed by an employee for his employer. Section 3401(a)(6) provides an exception from wages for remuneration paid for such services performed by a nonresident alien individual as may be designated by regulations prescribed by the Secretary.

Pursuant to the authority granted under section 3401(a)(6), section 31.3401(a)(6)–1(b) of the Employment Tax Regulations provides that remuneration paid to a nonresident alien individual for services performed outside the United States is excepted from wages and hence is not subject to withholding under section 3402. Section 31.3401(a)(6)–1(a) conversely provides that, unless otherwise excepted, remuneration paid for services performed by a nonresident alien individual as an employee constitutes wages if such remuneration is effectively connected with the conduct of a trade or business within the United States.

Section 864(b) of the Code defines the term “trade or business within the United States” to include the performance of personal services within the United States at any time during the taxable year. Section 864(b)(1) provides an exception to this definition for the performance of personal services (A) for a nonresident alien individual, foreign partnership or foreign corporation not engaged in a trade or business within the United States; or (B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or corporation, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed $3,000 in the aggregate.

Assuming the nonresident alien individual engages in a United States trade or business under section 864(b) because he performs personal services in the United States during the tax year, section 1.864–4(e)(6)(ii) of the Income Tax Regulations provides that wages, salaries, compensations, or other remunerations received by the nonresident alien individual for performing those personal services in the United States constitute income that is effectively connected for the taxable year with the conduct of the trade or business in the United States by that individual.

Thus, employers, regardless of whether they are U.S. persons, are generally liable for the withholding of income tax on remuneration for services paid to nonresident alien employees to the extent the remuneration is attributable to services performed in the United States.

Section 3402(f)(2)(A) of the Code provides that every employee who receives wages shall provide his or her employer with a signed withholding exemption certificate relating to the number of withholding exemptions which the employee claims, which number shall in no event exceed the number to which he or she is entitled.

Section 3402(f)(5) of the Code provides that withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe. Section 31.3402(f)(5)–1(a) of the Employment Tax Regulations prescribes the form of the certificate as the Form W–4.

Although section 3402(f)(1) of the Code provides that an employee receiving wages shall on any day be entitled to certain listed withholding exemptions, nonresident alien employees are generally entitled to claim only one withholding exemption on Form W–4. Section 3402(f)(1)(A) provides an exemption for the employee unless the employee is an individual described in section 151(d)(2), regarding certain dependents. Section 3402(f)(6) provides that notwithstanding the provisions of section 3402(f)(1), a nonresident alien individual (with certain exceptions) shall be entitled to only one withholding exemption.

Section 3402(l)(3)(A)(ii) provides that for purposes of determining whether to claim married status when furnishing a
withholding exemption certificate, an otherwise married employee shall on any day be considered as not married if either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien. See also section 31.3402(l)–1(c)(1) of the regulations to the same effect.

Section 63(c)(6)(B) provides that in the case of a nonresident alien individual, the standard deduction shall be zero.

B. Reason for Change to Withholding Procedures for Nonresident Alien Employees

The income tax withholding tables in Publication 15 (Circular E), Employer’s Tax Guide (January 2005 revision), for use with the percentage method of withholding and the wage bracket method of withholding assume that an employee will be entitled to a standard deduction in determining the employee’s federal income tax liability. Under the withholding tables, an employer does not withhold any amount of income tax until the employee has received an amount (for example, $2,650 for an annual payroll period) that will be subject to tax after taking into account the standard deduction and the employee’s claimed withholding allowance(s). However, because a nonresident alien individual is not permitted to claim the standard deduction, nonresident alien employees have been given special instructions for completing their withholding exemption certificates in an effort to offset the assumed standard deduction built into the withholding tables. These instructions were intended to prevent underwithholding.

Specifically, Publication 15 (January 2005 revision) directs that when completing Form W–4, a nonresident alien employee is required to request an additional income tax withholding amount, depending on the payroll period. A chart is provided in Publication 15 setting forth the additional income tax withholding amount that is required to be requested by the nonresident alien employee for each type of payroll period. Nonresident alien students and business apprentices from India are not subject to the requirement to request additional income tax withholding.

The current withholding rules result in overwithholding on wages of nonresident alien employees who have small amounts of remuneration from services within the United States because the additional amount that the nonresident alien employee must request for withholding purposes is withholding liability that will apply from the first dollar of wages. Thus, even if the amount of the nonresident alien employee’s total annual wages for services performed in the United States is less than the personal exemption amount, the current withholding rules require income tax to be withheld. A nonresident alien in this situation must file a return and request a refund to get back the amount withheld.

III. WITHHOLDING RULES THAT WILL BE EFFECTIVE FOR WAGES PAID TO NONRESIDENT ALIEN EMPLOYEES ON OR AFTER JANUARY 1, 2006

A. Nonresident Alien Employees Completing Form W–4

When completing Form W–4 to provide information with respect to withholding on wages to be paid on or after January 1, 2006, nonresident alien employees are required to:

1. Not claim exemption from withholding;
2. Request withholding as if they are single, regardless of the actual marital status;
3. Claim only one allowance; and
4. Write “Nonresident Alien” or “NRA” above the dotted line on line 6 of Form W–4.

With respect to the third requirement, if the nonresident alien is a resident of Canada, Mexico, or South Korea, he or she may claim more than one allowance.

When completing a Form W–4 that will apply to wages paid on or after January 1, 2006, nonresident alien employees will no longer be required to request an additional withholding amount. However, like all other employees, nonresident aliens may request additional withholding at their option.

B. Employer Calculation of Withholding on Wages of Nonresident Alien Employees

Beginning with wages paid on or after January 1, 2006, employers are required to calculate income tax withholding under section 3402 of the Code on wages of nonresident alien employees (except for students and business apprentices from India) using a new procedure. Under this procedure the employer will add an amount to the wages of the nonresident alien employee solely for purposes of calculating the income tax withholding for each payroll period; the specific amount depends on the payroll period. Employers will determine the income tax to be withheld by applying the tables to the sum of the wages paid for the payroll period plus the additional amount. Adding this amount will offset the assumed standard deduction that is incorporated into the tables without requiring income tax to be withheld from wages that will fall below the personal exemption when annualized. The added amount is not income or wages to the employee, does not affect income, Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) tax liability for the employer or the employee, and is not to be reported as income or wages.

The amounts added under this procedure as set forth in the chart below are added purely for purposes of calculating the amount of the income tax withholding on the wages of the nonresident alien employee. These chart amounts should not be included in any box on the Form W–2, Wage and Tax Statement.

The amount required to be added to the wages of a nonresident alien employee for purposes of calculating income tax withholding is the highest wage amount to which a zero withholding rate applies as shown in the Table for the Percentage Method of Withholding for a single person (including a head of household) for each payroll period. The tables are published periodically in Publication 15.

For 2006, the amount required to be added to the wages of a nonresident alien employee for purposes of calculating income tax withholding, for each length of payroll period is as follows:
Updated tables are published each year in Publication 15. If intra-year changes in the tables are released, they may be in other IRS publications.

Thus, in determining the amount of income tax withholding on wages of nonresident alien employees, employers will calculate the amount of wages to be used in applying the applicable income tax withholding tables as follows: Employers will add to gross wages (to be included on Form W–2) the additional amount pursuant to the procedure described above (not included on Form W–2). If the employer uses the percentage method, the employer then should subtract an amount for withholding allowances for the payroll period, and then apply the percentage method withholding tables to the remainder. If the employer uses the wage bracket method, the employer should not subtract an amount for withholding allowance(s), because withholding allowances are reflected in the wage bracket withholding tables. Under the wage bracket method, the employer will apply the wage bracket tables to the sum of the gross wages and the additional amount added pursuant to the chart.

Thus, for example, if a nonresident alien employee is receiving wages on an annual payroll period in 2006, the employer is required to add $2,650 to the wages to determine the amount of income tax withholding. Then, if the employer is using the percentage method of withholding, the employer would subtract the applicable amount for withholding allowance(s) and apply the applicable percentage method withholding table for an annual payroll period for single employees. The $2,650 addition would not be included on Form W–2. The amount to be added to wages for a payroll period in calculating income tax withholding is the same for each payroll period as long as the employee retains the same payroll period.

C. Example Comparing 2005 Withholding Rules with 2006 Withholding Rules

A nonresident alien employee earns $250 per month for services performed in the United States and has a monthly payroll period. The employee has no other U.S. source income. The employer uses the wage bracket method of withholding.

(1) 2005 Withholding.

As a nonresident alien, the employee is required to complete Form W–4 claiming single status and no more than one withholding allowance, but the employee is not required to request an additional amount of withholding. The employee is required to write “nonresident alien” above the dotted line on line 6 of Form W–4. As a nonresident alien, the employee completes Form W–4, claiming single status, one withholding allowance, and writing “nonresident alien” above the dotted line on line 6 of Form W–4. Because the employee has a monthly payroll period, the employer adds $221 to the $250 of wages for the monthly payroll period solely for purposes of calculating the amount of withholding under the applicable table. This $221 would not be reflected on the Form W–2 of the employee. The employer applies the wage bracket withholding table applicable for a single employee receiving $250 of wages for a monthly payroll period and claiming one withholding allowance. The employee has no withholding under the withholding tables. However, because the employee has requested $33.10 of additional withholding, the employer will withhold $33.10 each pay period. If the employee’s wages are the same for each month in the year, the employer will withhold a total of $397.20 for the year ($33.10 times 12). The employee’s total gross income from U.S. sources for the year will be $3,000. After subtraction of $3,200 for the personal exemption amount, the employee will have no taxable income and no income tax liability. The employee will have to file an income tax return to claim a refund of the $397.20 that was withheld.

(2) 2006 Withholding.

As a nonresident alien, the employee is required to complete Form W–4 claiming single status and no more than one withholding allowance, but the employee is required to request an additional amount of withholding. The employee is required to write “nonresident alien” above the dotted line on line 6 of Form W–4. The employee completes Form W–4, claiming single status, one withholding allowance, and writing “nonresident alien” or “NRA” above the dotted line on line 6 of Form W–4. Because the employee has a monthly payroll period, the employer adds $221 to the $250 of wages for the monthly payroll period and claiming one withholding allowance. The employee will have no withholding. If the employee’s wages are the same for every month in the year, the employer will have no withholding. If the employee’s wages are the same for every month in the year, the employer will have no withholding. If the employee’s wages are the same for every month in the year, the employer will have no withholding. If the employee’s wages are the same for every month in the year, the employer will have no withholding. If the employee’s wages are the same for every month in the year, the employer will have no withholding.
D. What Employers and Employees Should Do to Implement the New Withholding Requirements

Employers hiring new nonresident alien employees who will receive remuneration for services performed in the United States for the first time on or after January 1, 2006, should instruct the new employees to complete Form W–4 in accordance with the instructions provided in this notice. An employer who already has one or more nonresident alien employees with Forms W–4 on file requesting additional withholding pursuant to the current instructions in Publication 15 should advise such employees to file new Forms W–4 with the employer at an appropriate time such that the new Forms W–4 will be effective for wages paid on or after January 1, 2006. Forms W–4 furnished by employees in place of Forms W–4 in effect with an employer shall take effect at the beginning of the first payroll period (or the first payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such Form W–4 is furnished. The employer may elect to make the replacement Form W–4 effective on or after the day the replacement Form W–4 is furnished by the employee and before the 30th day after the day on which the replacement Form W–4 is furnished.

The new Form W–4 must reflect single status and only the number of withholding allowances the employee is entitled to claim (generally one) with the employer. The nonresident alien employee is not required to request additional withholding on the new Forms W–4. However, depending on the employee’s circumstances, the employee may want to request additional withholding. To assist the employer in applying the correct withholding procedure to the employee’s wages, the Form W–4 filed by the nonresident alien employee should also be marked to indicate nonresident alien status by the employee. The nonresident alien employee should write “nonresident alien” or “NRA” above the dotted line after the words “Additional amount, if any, you want withheld from each paycheck” and before the box on line 6 of Form W–4. Employers maintaining electronic Form W–4 systems should make an appropriate modification in their systems that would allow employees to identify themselves as nonresident aliens. Also, employers using permissible substitute forms should make an appropriate modification to their forms.

An employee may submit a new Form W–4 to his employer at any time. The new form automatically supersedes the previous form provided to the employer. However, if a nonresident alien employee submits a new Form W–4 to his employer following the instructions in this notice and eliminating the request for withholding an additional amount, and the employer is not yet prepared to implement the new procedures for calculating the amount of income tax to be withheld at the time the new Form W–4 goes into effect, the nonresident alien employee may be subject to underwithholding. (See section III of this notice for the length of the employer’s transitional relief period.)

E. Students and Business Apprentices from India

The new procedure described in Part III of this notice does not apply if the nonresident alien employee is a student or business apprentice who is or was a resident of the Republic of India immediately before visiting the United States and who is present in the United States principally for the purpose of his or her education or training. This exception only applies for such period of time as may be reasonable or customarily required to complete the education or training undertaken. See Article 21 of the Tax Convention with the Republic of India (generally effective January 1, 1991).

F. Effect on Supplemental Wage Payments that the Employer is Subjecting to a Flat Rate of Withholding

This notice has no effect in determining the amount of withholding on supplemental wages if the supplemental wages are subject to mandatory flat rate withholding (currently 35 percent) or the employer is applying an optional flat rate of income tax withholding (currently 25 percent) on such supplemental wages. See section 904(b) of the American Jobs Creation Act of 2004, Pub. L. 108–357, establishing a mandatory flat rate for withholding on supplemental wages (currently 35 percent) to the extent that the employee’s total supplemental wages from the employer exceed one million dollars during the calendar year, and section 31.3402(g)–1 of the regulations, providing that employers generally have an option of withholding at a flat rate (currently 25 percent) on supplemental wage payments that are not subject to the mandatory flat rate of withholding.

G. Effect on the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA)

This notice has no effect in determining FICA and FUTA taxation on remuneration for services performed by nonresident alien employees.

H. Effect on Nonresident Alien Individuals Who Have No Wages subject to Federal Income Tax Withholding under Section 3402

This notice has no effect on nonresident alien individuals who have no wages subject to federal income tax withholding under section 3402. For example, if a nonresident alien employee is eligible for a tax treaty withholding exemption and has a valid Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, in effect with the employer, this notice has no application to remuneration paid by the employer to the employee that is exempt from income tax withholding under the treaty.

IV. EFFECTIVE DATE

This notice is effective with respect to wages paid to nonresident alien employees on or after January 1, 2006. However, with respect to wages paid prior to January 1, 2007, the Internal Revenue Service will not assert an employer’s liability for underpayments of income tax withholding and related interest and penalties resulting solely from the failure to apply the new withholding procedure in this notice to payments of wages made to nonresident alien employees, provided the employer has made a good faith effort to implement the withholding requirements in this notice as soon as possible. The transitional relief in the previous sentence does not affect the liability of employees for federal income tax.
V. DRAFTING INFORMATION

The principal author of this notice is Alfred G. Kelley of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Mr. Kelley at (202) 622–6040 (not a toll-free call).

Elimination of Filing Requirement for Nonresident Alien Individuals With United States Source Effectively Connected Wages Below the Personal Exemption Amount

Notice 2005–77

SECTION 1. PURPOSE

This notice announces that Treasury and the Internal Revenue Service (the Service) will amend Treas. Reg. §1.6012–1(b)(2) by adding a new exception from the filing requirement for nonresident alien individuals. Subject to the limitation described below, the new exception will eliminate the filing requirement for nonresident alien individuals who are required to file a return under the present regulations solely because they earn wages that are effectively connected with a United States trade or business in the tax year. This new exception will only apply to those nonresident alien individuals who earn wages that are less than the amount of one personal exemption under section 151 of the Internal Revenue Code (the Code).

SECTION 2. BACKGROUND

In general, section 6012(a)(1)(A) requires every individual having gross income in the taxable year that equals or exceeds the exemption amount to make a return with respect to income taxes under subtitle A of the Code. Flush language at the end of section 6012(a) provides that, subject to certain conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 of the Code may be exempted from the requirement of making returns under section 6012.

Under §1.6012–1(b) of the regulations, every nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year must make a return on Form 1040NR, U.S. Nonresident Alien Income Tax Return. For this purpose, it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, a nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year is required to file a return on Form 1040NR, even though (a) he has no income that is effectively connected with the conduct of a trade or business in the United States, (b) he has no income from sources within the United States, or (c) his income is exempt by reason of an income tax convention or any section of the Code.

Section 864(b) of the Code defines the term “trade or business within the United States” to include the performance of personal services within the United States at any time during the taxable year. Section 864(b)(1) provides an exception to this definition for the performance of personal services (A) for a nonresident alien individual, foreign partnership or foreign corporation not engaged in a trade or business within the United States; or (B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or corporation, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed $3,000 in the aggregate.

Assuming the nonresident alien individual engages in a United States trade or business under section 864(b) because he performs personal services in the United States during the tax year, §1.864–4(c)(6)(ii) of the Income Tax Regulations provides that wages, salaries, compensations, or other remunerations received by the nonresident alien individual for performing those personal services in the United States constitute income that is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

Section 871(b) of the Code provides that a nonresident alien individual engaged in a trade or business within the United States during the taxable year is taxable as provided in sections 1 or 55 of the Code, on his taxable income that is effectively connected with the conduct of a trade or business within the United States.

Section 873(b)(3) of the Code allows a nonresident alien individual a deduction under section 151 of the Code for only one personal exemption, unless the individual is a resident of a contiguous country or a national of the United States. The personal exemption amount under section 151 for tax year 2006 is $3,300.

SECTION 3. DISCUSSION

Treasury and the Service will amend the regulations under §1.6012–1(b)(2) to eliminate the Form 1040NR filing requirement for a nonresident alien individual who earns less than the amount of one personal exemption as United States source wages that are effectively connected with a United States trade or business (effectively connected wages) and who is required to file a United States income tax return because of those wages. All nonresident alien individuals who earn effectively connected wages are entitled to at least one personal exemption under section 151. Therefore, by amending the regulations, the new exception would treat nonresident alien individuals who earn effectively connected wages in an amount that is less than the amount of one personal exemption more similarly to United States citizens and residents who earn wages of less than the exemption amount. The exception would apply even if the nonresident alien individual also has United States source fixed or determinable annual or periodical gains, profits, or income (FDAP), provided that his United States tax liability for such income is fully satisfied by the withholding of tax at source.

The amendment to the regulations, however, will not affect the filing requirements of a nonresident alien individual who seeks a refund of an overpayment of United States tax, has a United States income tax liability with respect to FDAP that is not fully satisfied by withholding at source, or who has income exempt or partially exempt by reason of an income tax convention or any section of the Code.
SECTION 4. EFFECTIVE DATE

Regulations incorporating the guidance set forth in this notice will apply to tax years beginning on or after January 1, 2006. Until such regulations are issued, nonresident alien individuals may rely on this notice.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Paul J. Carlino of the Office of Chief Counsel (International). For further information regarding this notice, contact Mr. Carlino at (202) 622–3840 (not a toll-free call).

South Asia Earthquake Occurring on October 8, 2005, Designated as a Qualified Disaster Under § 139 of the Internal Revenue Code

Notice 2005–78

This notice designates the South Asia earthquake occurring on October 8, 2005, as a qualified disaster for purposes of § 139 of the Internal Revenue Code, and describes the affected areas.

SOUTH ASIA EARTHQUAKE

A magnitude 7.6 earthquake struck Pakistan, India, and Afghanistan on October 8, 2005, with resulting aftershocks. The earthquake inflicted enormous damage in South Asia. Published reports currently estimate that in Pakistan and India, more than 54,000 people were killed, over 82,000 were injured, and almost 3 million were displaced from their homes. USAID Fact Sheet No. 14 (October 24, 2005). This notice provides U.S. tax relief that will facilitate assistance to certain victims of the South Asia earthquake.

QUALIFIED DISASTER RELIEF PAYMENTS EXCLUDED FROM RECIPIENT’S GROSS INCOME

Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides that a qualified disaster relief payment includes any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses (not otherwise compensated for by insurance or otherwise) incurred as a result of a qualified disaster, or

(2) to reimburse or pay reasonable and necessary expenses (not otherwise compensated for by insurance or otherwise) incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

Under § 139(c)(3) the term “qualified disaster” includes a disaster resulting from an event that is determined by the Secretary to be of a catastrophic nature.

DESIGNATION AS QUALIFIED DISASTER

The Commissioner of Internal Revenue, pursuant to delegation by the Secretary, has determined that the South Asia earthquake occurring on October 8, 2005, is an event of a catastrophic nature under § 139(c)(3). Therefore, the South Asia earthquake is designated as a qualified disaster under § 139 in the affected areas of these countries: Pakistan, India, and Afghanistan.

SECTION 501(c)(3) ORGANIZATIONS

Because this notice designates the South Asia earthquake as a qualified disaster under § 139, employer-sponsored private foundations may choose to provide disaster relief to employee victims of the earthquake. Like all organizations described in § 501(c)(3), private foundations should exercise due diligence when providing disaster relief as set forth in Publication 3833, Disaster Relief: Providing Assistance Through Charitable Organizations.

DRAFTING INFORMATION

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

Communications Excise Tax; Section 4251

Notice 2005–79

The government’s recent loss in American Bankers Ins. Group v. United States, 408 F.3d 1328 (11th Cir. 2005), rev’d 308 F.3d 1360 (S.D. Fla. 2004), has caused some to question the continued applicability of the communications excise tax imposed by § 4251 of the Internal Revenue Code.

The government did not seek review by the United States Supreme Court in American Bankers Insurance Group. Nevertheless, the government will continue to litigate this important issue. The government is prosecuting appeals in five different circuits. The appeal in Office Max v. United States, 309 F. Supp. 2d 984 (N.D. Ohio 2004), has been briefed and argued, and the parties are awaiting a decision.

This notice confirms that the Service will continue to assess and collect the tax under § 4251 on all taxable communications services, including communications services similar to those at issue in the cases. Collectors should continue to collect the tax, including from taxpayers within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit.

Persons paying for taxable communications services (taxpayers) are required to pay the tax to a collecting agent (the person receiving the payment on which tax is imposed), and collecting agents are required to pay over the tax to the United States Treasury and to file the required returns. Taxpayers may preserve any claims for overpayments by filing administrative claims for refund with the Service pursuant to § 6511. Taxpayers are advised, however, that these claims, including claims for which appellate venue would lie in the United States Court of Appeals for the Eleventh Circuit, will not be processed while there are pending cases in other United States Courts of Appeals.

EFFECT ON OTHER DOCUMENTS

DRAFTING INFORMATION

The principal author of this notice is Barbara B. Franklin of the Office of Associate Chief Counsel (Passageways and Special Industries). For further information regarding this notice, contact Cynthia A. McGreevy at (202) 622–3130 (not a toll-free call).

Excise Tax Changes Under SAFETEA and the Energy Act; Dye Injection

Notice 2005–80

Section 1. PURPOSE


Notice 2005–4 provides guidance on certain excise tax provisions in the Code that were added or affected by the American Jobs Creation Act of 2004 (Pub. L. 108–357) (AJCA).

Except as provided in sections 4 and 5, references to Code provisions in this notice are to the Code as in effect on October 1, 2005. References to regulations are to the Manufacturers and Retailers Excise Tax Regulations.

Section 2. LUST

(a) In general—(1) This section describes the changes made by § 1362 of the Energy Act to the LUST tax.

(2) Except as provided in paragraph (b) of this section, tax is imposed at the LUST financing rate of $0.001 per gallon on removals, entries, and sales of gasoline, diesel fuel, and kerosene that are described as exempt transactions in §§ 48.4081–4(b) and (d) (relating to certain uses of gasoline blendstocks), 48.4082–1 (relating to dyed fuel), 48.4082–5 (relating to diesel fuel and kerosene in Alaska), 48.4082–7 (relating to kerosene used for feedstock purposes), and § 4 of Notice 2005–4 (relating to kerosene used in aircraft). Thus, for example, the LUST tax applies to removals of dyed diesel fuel for use as heating oil or use on a farm for farming purposes and to removals of kerosene for use in foreign trade or in military aircraft.

(3) Section 6430 of the Code provides that no refund, credit, or payment under §§ 6411–6430 shall be made for the LUST tax, except in the case of fuels destined for export.

(4) Under this notice, the position holder is liable for the LUST tax imposed on removals of kerosene directly into the fuel supply tank of an aircraft for a use exempt from tax under § 4041(c). See § 3(c)(1)(iii) of this notice. Thus, for example, for kerosene removed directly into the fuel tank of an aircraft for use in foreign trade or for use in military aircraft, the position holder is liable for tax of $0.001 per gallon. For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation other than foreign trade, the aircraft operator continues to be liable for tax of $0.044 per gallon (the sum of the $0.043-per-gallon rate under § 4081(a)(2)(C) and the $0.001-per-gallon LUST tax). See § 4(d) of Notice 2005–4 (relating to § 4081(a)(4)).

(b) Removals for export—(1) In general. The LUST tax is not imposed on the removal, entry, or sale of diesel fuel or kerosene for export if—

(i) The conditions of § 48.4082–1 (relating to the exemption for dyed fuel) are met; and

(ii) The person otherwise liable for tax has an unexpired export certificate (described in paragraph (b)(2) of this section) from the buyer of the fuel and has no reason to believe any information in the certificate is false.

(2) Export certificate. The export certificate is a statement that is signed under penalties of perjury by a person with authority to bind the buyer and contains—

(i) The name, address, and employer identification number of the buyer;

(ii) The name, address, and employer identification number of the person otherwise liable for tax;

(iii) The number of gallons and type of fuel; and

(iv) A statement that the fuel is for export.

(c) Effective date. This section is effective October 1, 2005.

Section 3. TREATMENT OF KEROSENE FOR USE IN AVIATION

(a) Overview. This section describes the changes made by § 11161 of SAFETEA to the tax on kerosene used in aviation. Section 4 of Notice 2005–4 is modified in accordance with these changes, as explained in this section.

(b) Kerosene for use in aviation. SAFETEA replaced the $0.219-per-gallon tax on “aviation-grade kerosene” with rules taxing all “kerosene” at a rate of $0.244 per gallon unless a reduced rate applies as described in paragraph (c) of this section. “Kerosene” has the meaning given to the term by § 48.4081–1(b).

(c) Reduced rates of tax on kerosene used in aviation—(1) In general. For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the rate of tax is $0.219 per gallon. See section 4081(a)(2)(C)(i), as added by SAFETEA. Except as provided in paragraph (c)(1)(ii) or (iii) of this section, a tax rate of $0.219 per gallon also applies if kerosene is removed into any aircraft from a refueling truck, tanker, or tank wagon that is loaded with kerosene from a terminal that is located within an airport (without regard to whether the terminal is located within a secured area of an airport) and the other requirements of §§ 4081(a)(3)(A) and (B) are met. Section 4081(a)(3). The other requirements of § 4081(a)(3)(A) and (B) relate to the characteristics of the refueling trucks, tankers, and tank wagons, the fueling operations at the terminal, and the restriction against loading kerosene into vehicles registered for highway use at such terminal.

(ii) For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax is $0.044 per gallon and the rules relating to refueling trucks, tankers, and tank wagons at secured airport terminals were not affected by the
treatment of refueler trucks, tanker, or tank wagon, the $0.044 rate applies only if the truck, tanker, or tank wagon is loaded at a terminal located in a secured area of the airport. See §4(d) of Notice 2005–4.

(iii) For kerosene removed directly into the fuel tank of an aircraft for a use exempt from tax under §4041(c) (such as use in foreign trade or in an aircraft for the exclusive use of a state or local government), including removals from a qualifying refueler truck, tanker, or tank wagon loaded at a terminal located within a secured area of an airport, the rate of tax is $0.001 per gallon.

(2) Secured airport terminals. The list of qualifying airport terminals located within secured areas of airports identified in §4(d)(2)(ii) of Notice 2005–4 is modified by adding the following airport terminals: Los Angeles International Airport, T–95–CA–4812; and Federal Express Corporation Memphis Airport, T–62–TN–2220.

(3) Exigent circumstances—(i) Section 4081(a)(3)(A)(iv) provides that, except in the case of exigent circumstances identified by the Secretary in regulations, the rule treating refueler trucks, tankers, and tank wagons as part of a terminal located within an airport applies only if no vehicle registered for highway use is loaded with kerosene at the terminal. If, in such exigent circumstances, a highway vehicle is loaded with kerosene at a terminal located within an airport, tax is imposed on the removal at a rate of $0.244 per gallon.

(ii) This notice identifies as an exigent circumstance the refueling of the off-airport storage tanks used exclusively by the governmental public safety agencies in Oahu. Accordingly, kerosene may be removed from the terminal located within Honolulu International Airport, T–91–HI–4570, into a vehicle registered for highway use for this purpose only without affecting the treatment of refueler trucks, tankers, and tank wagons as part of the terminal.


(d) Full rate buyers. The registration requirement for full rate buyers in sections 4(f)(3) and (4) of Notice 2005–4 is not applicable after September 30, 2005.

(e) Claims for kerosene used in commercial aviation (other than foreign trade)—(1) Before October 1, 2005, §6427(l)(4)(B) provided that if an ultimate purchaser of aviation-grade kerosene used for a nontaxable use waived its right to an income tax credit or payment, in the form and manner prescribed by the Secretary, and assigned such right to the registered ultimate vendor, then the ultimate vendor, and not the ultimate purchaser, could claim a payment or income tax credit. Section 4(h) of Notice 2005–4 provides rules regarding the conditions to allowance of a credit or payment, the form of the claim, the content of the claim, and a model waiver. Before October 1, 2005, these rules were applicable with respect to aviation-grade kerosene used in domestic commercial aviation and aviation-grade kerosene used in foreign trade, for export, for use in certain helicopter and fixed-wing air ambulance uses, for the exclusive use of a nonprofit educational organization, for use in an aircraft owned by an aircraft museum, for use in a military aircraft, and for other nontaxable uses such as use as heating oil.

(2) Effective October 1, 2005, the rules in §4(h) of Notice 2005–4 are applicable only with respect to kerosene used in commercial aviation (as defined in §4083(b)) and, even in the case of commercial aviation, the rules do not apply to kerosene used as supplies for vessels or aircraft within the meaning of §4221(d)(3). Thus, after September 30, 2005, an aircraft operator may continue to claim a credit or payment for kerosene used in domestic commercial aviation or may waive such right to the ultimate vendor, but the operator may not claim a credit or payment under §4627(l)(4)(B) for fuel used in foreign trade or other nontaxable uses.

(3) If an aircraft operator buys kerosene partly for use in commercial aviation and partly for use in noncommercial aviation, the following rules apply:

(i) The operator may identify, either at the time of the purchase or after the kerosene has been used, the amount of kerosene that will be (or has been) used in commercial aviation and either claim or waive the right to any credit or payment under paragraph (e)(2) of this notice with respect to such kerosene. The credit or payment related to the amount that will be (or has been) used in noncommercial aviation may be claimed under paragraph (f) of this section (relating to use in noncommercial aviation).

(ii) Alternatively, if the operator does not identify the amount of kerosene that will be (or has been) used in commercial aviation, the operator may provide a certificate under paragraph (f) of this section with respect to the kerosene (including the portion of the kerosene that will (or may) be used in commercial aviation). In such a case, “for a nontaxable use in noncommercial aviation” should be checked on the certificate. To the extent the kerosene purchased under the certificate is used in commercial aviation, the certificate will be treated, in the case of kerosene taxed at a rate of $0.244 per gallon, as a waiver of the right to claim a credit or payment under paragraph (e)(2) of this section with respect to $0.025 of the tax imposed on such kerosene. The operator may claim the remainder of the income tax credit or payment ($0.175 per gallon) with respect to such kerosene but may not waive the right to the credit or payment after providing a certificate with respect to the kerosene under paragraph (f) of this section.

(f) Claims for kerosene used in noncommercial aviation and foreign trade—(1) In general. Under §6427(l)(5)(B), as added by SAFETEA, only the registered ultimate vendor may claim a credit or payment for kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. For claims related to kerosene used by states and local governments in noncommercial aviation,
CERTIFICATE OF ULTIMATE PURCHASER OF KEROSENE FOR USE IN FOREIGN TRADE OR USE (OTHER THAN BY STATE OR LOCAL GOVERNMENT) IN NONCOMMERCIAL AVIATION

(To support vendor’s claim for a credit or payment under § 6427(l)(5)(B) of the Internal Revenue Code.)

__________________________

Name, address, and employer identification number of ultimate vendor

The undersigned ultimate purchaser ("Buyer") hereby certifies the following under the penalties of perjury:

The kerosene to which this certificate relates is purchased (check one): ______ for use on a farm for farming purposes; ______ for use in foreign trade (reciprocal benefits required for foreign registered airlines); ______ for use in certain helicopter and fixed-wing air ambulance uses; ______ for the exclusive use of a nonprofit educational organization; ______ for use in an aircraft owned by an aircraft museum; ______ for use in military aircraft; or ______ for a nonexempt use in noncommercial aviation.

This certificate applies to the following (complete as applicable):

____ This is a single purchase certificate:
1. _______ Invoice or delivery ticket number
2. _______ Number of gallons

____ This is a certificate covering all purchases under a specified account or order number:

1. Effective date _______
2. Expiration date _______ (period not to exceed 1 year after the effective date)
3. Buyer account number _______

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the kerosene to which this certificate relates for a use other than the nontaxable use stated above, Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.
(iii) Transition rules. A Waiver for Use by Ultimate Purchasers of Aviation-Grade Kerosene Used in Nontaxable Uses executed before October 1, 2005, as described in § 4(h)(6) of Notice 2005–4, will be treated as a certificate described in this section, and a new certificate will not have to be given until such waiver expires. In addition, for kerosene sold for a nonexempt use in noncommercial aviation, the business records used to document sales occurring before November 1, 2005, will be treated as a certificate described in this section (unless the records clearly establish that the kerosene will be used on the highway).

(5) Registration. Claims under this paragraph (f) may be made only by a registered ultimate vendor. Registration rules similar to those in § 4(h)(7) of Notice 2005–4 are applicable to ultimate vendors of kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. A person that is registered under § 4101 under Activity Letter “UA” (Ultimate vendor that sells aviation-grade kerosene for a nontaxable use or any use in commercial aviation) is treated as registered for purposes of claims filed with respect to kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. In addition, for claims relating to sales before January 1, 2006, for a nonexempt use in noncommercial aviation, an ultimate vendor that has obtained a valid TIN will be treated as registered.

(g) Claims for kerosene used by states and local governments. For rules relating to claims by registered ultimate vendors of kerosene used in aviation by state and local governments, see § 4 of this notice and § 48.6427–9.

(h) Effective date. Except as otherwise noted, this section is effective October 1, 2005, and applies to kerosene on which tax is imposed after September 30, 2005. A person making a claim for credit or payment under paragraph (e) or (f) of this section may use any reasonable method and assumptions to establish that tax was imposed after September 30, 2005, on the kerosene to which the claim relates.

Section 4. TAXABLE FUEL; CLAIMS BY CREDIT CARD ISSUERS

(a) Overview. This section describes the changes made by § 11163 of SAFETEA under which a person extending credit on a credit card (credit card issuer) may claim a credit, refund, or payment with respect to taxable fuel sold to a state or local government for its exclusive use or to a nonprofit educational organization for its exclusive use (exempt users). Section 7 of Notice 2005–4 is modified in accordance with these changes, as explained in this section.

(b) Identity of the claimant—(1) Gasoline—(i) Section 6416(b)(2) generally provides that the tax paid on gasoline is deemed to be an overpayment if the gasoline was sold to an exempt user. Section 6402(a) generally allows credits or refunds of overpayments to the person that made the overpayment (that is, the person that paid the tax to the government).

(ii) If gasoline is purchased with a credit card issued to an exempt user, § 6416(a)(4)(B) provides that the credit card issuer is treated as the person that paid the tax if prescribed conditions are met. Among other conditions, the credit card issuer must be registered by the Service.

(iii) If gasoline is purchased by an exempt user without the use of a credit card, § 6416(a)(4)(A) provides that the ultimate vendor of the gasoline is treated as the person (and the only person) that paid the tax, but only if the vendor is registered by the Service.

(iv) Guidance for claims made by ultimate vendors under § 6416(a)(4) and (b)(2) is set forth in § 7 of Notice 2005–4. The guidance set forth in § 7(a)(1)(ii) of Notice 2005–4 and § 2 of Notice 2005–24 (relating to oil company credit cards) does not apply to sales after December 31, 2005.

(v) If the conditions of § 6416(a)(4) are not met, a claim under § 6416 may not be made by the person that actually paid the tax to the government. Instead, the exempt user may make a claim under § 6421(c). For any particular transaction, a claim may not be made under § 6421(c) if the tax is credited or refunded under § 6416 to the credit card issuer or the ultimate vendor.

(2) Diesel fuel and kerosene—(i) If taxed diesel fuel or kerosene is purchased with a credit card issued to a state, § 6427(l)(6)(D) provides that the credit card issuer may, under prescribed conditions, claim a credit or payment related to the tax. Among other conditions, the credit card issuer must be registered by the Service.

(ii) If diesel fuel or kerosene is purchased by a state without the use of a credit card, § 6427(l)(6)(C) provides that the ultimate vendor of the diesel fuel or kerosene may claim a credit or payment related to the tax, but only if the vendor is registered by the Service and other prescribed con-
dtions are met. Under § 6427(l)(6)(A), the state may not claim a credit or payment related to the tax paid on diesel fuel or kerosene purchased without the use of a credit card. Claims made by ultimate vendors under § 6427(l)(6)(A) are described in § 48.6427–9.

(iii) If diesel fuel or kerosene is purchased with a credit card issued to a state, but the credit card issuer is not registered by the Service (or does not meet certain other conditions), the credit card issuer must collect the amount of the tax and the state is the proper claimant under § 6427(l)(6)(D).

(c) Definitions.

State has the meaning given to the term by § 48.4081–1(b).

Nonprofit educational organization has the meaning given to the term in § 4221(d)(5).

(d) Registration—(1) In general. Application for registration is made on Form 637, Application for Registration (For Certain Excise Tax Activities), in accordance with the instructions for that form. Form 637 will be revised to include an activity letter for credit card issuers.

(2) Requirements. The Service will register an applicant as a credit card issuer only if the Service—

(i) Determines that the applicant is engaged in business as a credit card issuer and in that business extends credit to state and local governments or nonprofit educational organizations by means of a credit card used for the purchase of taxable fuel; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(3) Separate entity not required. Section 48.4101–1(a)(4) provides that each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. The Service will not require a credit card issuer to form a separate business entity for the issuance of credit cards to qualify for registration under § 4101 or to claim a refund, credit, or payment under § 6416(a)(4)(B) or 6427(l)(6)(D).

(4) Current UV and UP registrants. A person that is registered under § 4101 under Activity Letter “UV” or “UP” is treated as registered for purposes of claims under this section related to the tax on fuels that are purchased without the use of a credit card and will not have to be reregistered unless notified to do so by the Service.

(e) Conditions to allowance of a credit, refund or payment. A claim for credit, refund, or payment is allowable under § 6416(a)(4)(B) or § 6427(l)(6)(D) if—

(1) The claimant is a registered credit card issuer;

(2) The claim relates to the tax on taxable fuel sold to a state for its exclusive use or gasoline sold to a nonprofit educational organization for its exclusive use;

(3) The fuel was purchased with a credit card issued by the claimant;

(4) Tax was imposed on the fuel under § 4041 or 4081; and

(5) The claimant has filed a timely claim for credit, refund, or payment and the claim contains all of the information required in paragraph (g) of this section.

(f) Form of claim—(1) Gasoline claims. For taxes paid on gasoline, claims for credit or refund under § 6416(a)(4) are made on Form 8849, Claim for Refund of Excise Taxes.

(2) Diesel fuel or kerosene claims. For taxes imposed on diesel fuel or kerosene, claims for payment under § 6427(l)(6) are made on Form 8849, Claim for Refund of Excise Taxes, and claims for income tax credit under §§ 34 and 6427(l)(6) are made on Form 4136, Credit for Federal Tax Paid on Fuels.

(g) Content of claim. Each claim under § 6416(a)(4)(B) or § 6427(l)(6)(D) for a credit, refund, or payment must contain the following information with respect to the gasoline, diesel fuel or kerosene covered by the claim:

(1) The total number of gallons.

(2) The claimant’s registration number.

(3) A statement that the claimant—

(i) Has not collected the amount of the tax from the person who purchased the taxable fuel; or

(ii) Has obtained written consent from the ultimate purchaser to the allowance of the credit or refund.

(4) A statement that the claimant—

(i) Has repaid or agreed to repay the amount of the tax to the ultimate vendor; and

(ii) Has obtained the written consent of the ultimate vendor to the allowance of the credit or refund; or

(iii) Has otherwise made arrangements which directly or indirectly provide the ultimate vendor with reimbursement of such tax.

(5) A statement that the claimant has in its possession an unexpired certificate described in paragraph (h) of this section and has no reason to believe any information in the certificate is false.

(h) Certificate—(1) In general. The certificate to be provided to the credit card issuer consists of a statement that is signed under penalties of perjury by a person with authority to bind the state or nonprofit educational organization that purchased the fuel with the issuer’s credit card, is in substantially the same form as the model certificate in paragraph (h)(2) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(i) The date two years after the effective date of the certificate.

(ii) The date a new certificate is provided.

(2) Model certificate.
CERTIFICATE OF BUYER OF TAXABLE FUEL FOR USE BY A STATE OR NONPROFIT EDUCATIONAL ORGANIZATION

(To support credit card issuer’s claim for a credit, refund, or payment under § 6416(a)(4)(B) or § 6427(l)(6)(D) of the Internal Revenue Code.)

Name, address, and employer identification number of credit card issuer.

The undersigned ultimate purchaser (“Buyer”) hereby certifies the following under the penalties of perjury (check one):

_____ Buyer will use the taxable fuel to which this certificate relates for the exclusive use of a state; or

_____ Buyer will use the gasoline to which this certificate relates for the exclusive use of a nonprofit educational organization.

This certificate applies to all purchases made with the credit card identified below during the period specified:

1. Buyer’s account number

2. Effective date of certificate

3. Expiration date of certificate (period not to exceed 2 years after the effective date).

Buyer will provide a new certificate to the credit card issuer if any information in this certificate changes.

Buyer understands that by signing this certificate, Buyer gives up its right to claim a credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

Buyer acknowledges that it has not and will not claim any credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

Signature and date signed

(3) Current certificates held by credit card issuers. A certificate also meets the conditions of this paragraph (h) if it is similar to the certificate described in paragraph (h)(2) of this section and was obtained by the credit card issuer for purposes of processing a claim under § 6416 or 6427 as in effect before January 1, 2006. These certificates expire on the earlier of January 1, 2007, or the expiration date on the certificate.

(i) Effective date. This section is effective January 1, 2006, and applies to claims relating to fuel sold to its ultimate purchaser on or after that date.

Section 5. DIESEL-WATER FUEL EMULSIONS

This section describes the changes made by § 1343 of the Energy Act regarding diesel-water fuel emulsion. Effective January 1, 2006, the rate of tax imposed by § 4081 is reduced for diesel-water fuel emulsion that meets the requirements described in § 4081(a)(2)(D). These requirements include the registration under § 4101 of the person liable for tax on the removal or sale of the diesel-water fuel emulsion. Section 6427(m) provides that a credit or payment is allowable if a person uses diesel fuel taxed at the full rate to produce diesel-water fuel emulsion.
The Internal Revenue Service, the Department of Labor’s Employee Benefits Security Administration (“EBSA”) and the Pension Benefit Guaranty Corporation (“PBGC”) are providing relief in connection with certain employee benefit plans because of damage caused by Hurricane Katrina (“Katrina”). The relief provided by this notice is in addition to the relief already provided by the Service, the EBSA and the PBGC to victims of Katrina. This relief is provided in accordance with section 403(b) of the Katrina Emergency Tax Relief Act of 2005 (“KETRA”), Pub. L. No. 109–73.

II. BACKGROUND

Section 412(a) of the Internal Revenue Code (“Code”) and § 302(a) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406 (“ERISA”) provide that, in order for a plan to meet the minimum funding standards of the Code and ERISA, the plan must not have an accumulated funding deficiency as of the end of each plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any contributions for a plan year made by an employer by the end of the 8½-month period following the end of such plan year are deemed to have been made on the last day of the year.
Section 412(d) of the Code and § 303 of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multi-employer plan to receive such a waiver, § 412(d)(4) of the Code and § 303(d)(1) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for the plan year ending on June 30, 2005, the sponsor of the plan must have submitted an application by September 15, 2005.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA require that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

Section 412(n)(1) of the Code and § 302(f)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA require that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.
for any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions are treated as timely for purposes of any Title IV reporting and disclosure requirement if they are made on or before the extended § 412(c)(10)/§ 302(c)(10) date under this notice.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2005–60 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans’ taxpayer assistance telephone service at 1–877–829–5500, between the hours of 8:30 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Rubin may be reached at (202) 283–9588 (not a toll-free number).

Social Security Contribution and Benefit Base for 2006

Notice 2005–85

Under authority contained in the Social Security Act ("the Act"), the Commissioner, Social Security Administration, has determined and announced (70 F.R. 61677, dated October 25, 2005) that the contribution and benefit base for remuneration paid in 2006, and self-employment income earned in taxable years beginning in 2006 is $94,200.

“Old-Law” Contribution and Benefit Base

General

The “old-law” contribution and benefit base for 2006 is $69,900. This is the base that would have been effective under the Act without the enactment of the 1977 amendments.

The “old-law” contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,
(b) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),
(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and
(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the “old-law” base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2006, this threshold is $1,500. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2006 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2004 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1993 ($23,132.67) produces the amount of $1,541.05. We then round this amount to $1,500. Accordingly, the domestic employee coverage threshold amount is $1,500 for 2006.

(Filed by the Office of the Federal Register on October 24, 2005, 8:45 a.m., and published in the issue of the Federal Register for October 25, 2005, 70 F.R. 61677)
Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Designation</th>
<th>Date of Suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reagan, John</td>
<td>Cortland, NY</td>
<td>CPA</td>
<td>Indefinite from June 24, 2005</td>
</tr>
<tr>
<td>Harris, Alexander W.</td>
<td>Chicago, IL</td>
<td>Attorney</td>
<td>July 1, 2005 to December 31, 2005</td>
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<tr>
<td>Belush, Glen J.</td>
<td>Monroe, CT</td>
<td>CPA</td>
<td>Indefinite from July 15, 2005</td>
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<td>Lamont, Alice</td>
<td>Atlanta, GA</td>
<td>CPA</td>
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<tr>
<td>Morse, Kyle K.</td>
<td>Bedford, TX</td>
<td>CPA</td>
<td>Indefinite from July 22, 2005</td>
</tr>
</tbody>
</table>
Name | Address | Designation | Date of Suspension
---|---|---|---
Duggan Jr., Joseph A. | Jacksonville, OR | Enrolled Agent | Indefinite from August 1, 2005
Harper, Ivan | Brooklyn, NY | CPA | Indefinite from August 15, 2005
Bandy, Robert M. | Tyler, TX | Attorney | Indefinite from August 24, 2005
Peterson, Stanley | Springfield, PA | CPA | Indefinite from August 26, 2005
Shorten, Judy | Vacaville, CA | Enrolled Agent | Indefinite from September 1, 2005
Watkins, David E. | Shelbyville, IN | Enrolled Agent | Indefinite from September 1, 2005

**Expedited Suspensions From Practice Before the Internal Revenue Service**

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name | Address | Designation | Date of Suspension
---|---|---|---
Leong, Thomas S. | Honolulu, HI | Attorney | Indefinite from July 11, 2005
Clark, Mark S. | Tucson, AZ | Attorney | Indefinite from July 11, 2005
Hudspeth, George E. | St. Louis, MO | Attorney | Indefinite from July 11, 2005
Dodd, Alan F. | Westborough, MA | Attorney | Indefinite from July 11, 2005
Crews, James F. | Tipton, MO | Attorney | Indefinite from July 11, 2005

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<tr>
<td>Luparella, Joseph</td>
<td>Hoboken, NJ</td>
<td>CPA</td>
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<tr>
<td>Deutchman, Murray</td>
<td>Barnesville, MD</td>
<td>Attorney</td>
<td>Indefinite from July 13, 2005</td>
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<tr>
<td>Cozier, Clifford G.</td>
<td>Englewood, CO</td>
<td>Attorney</td>
<td>Indefinite from July 13, 2005</td>
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<tr>
<td>Segall, Steven M.</td>
<td>Denver, CO</td>
<td>Attorney</td>
<td>Indefinite from July 14, 2005</td>
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<tr>
<td>Richardson, Bruce</td>
<td>Reisterstown, MD</td>
<td>Attorney</td>
<td>Indefinite from July 15, 2005</td>
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<tr>
<td>Parsley, Jeffrey A.</td>
<td>Englewood, CO</td>
<td>Attorney</td>
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<td>Wyrick, Richard L.</td>
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<td>Coates, Marsden S.</td>
<td>Baltimore, MD</td>
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<td>McCampbell, Daniel</td>
<td>Chico, CA</td>
<td>Attorney</td>
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<td>Ralston, Ronald G.</td>
<td>Fairmount, GA</td>
<td>CPA</td>
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<td>Friemann, Robert F.</td>
<td>Huntington Bay, NY</td>
<td>CPA</td>
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<td>Friedman, Milton G.</td>
<td>Ft. Lauderdale, FL</td>
<td>CPA</td>
<td>July 25, 2005 to January 24, 2007</td>
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<td>Acheampong, Robert</td>
<td>Columbus, OH</td>
<td>CPA</td>
<td>Indefinite from July 26, 2005</td>
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<td>Elias, Robert F.</td>
<td>Canfield, OH</td>
<td>Attorney</td>
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<td>Stover, Kathy A.</td>
<td>Topeka, KS</td>
<td>Attorney</td>
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<td>Leffler, Fredric D.</td>
<td>Columbia, MD</td>
<td>Attorney</td>
<td>Indefinite from July 29, 2005</td>
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<td>Harmon, Anthony N.</td>
<td>Batavia, IL</td>
<td>Attorney</td>
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<td>Hames, David H.</td>
<td>Dallas, TX</td>
<td>CPA</td>
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<td>Au, Ronald G.S.</td>
<td>Honolulu, HI</td>
<td>Attorney</td>
<td>Indefinite from August 9, 2005</td>
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<tr>
<td>Tilton Jr., George H.</td>
<td>Denver, CO</td>
<td>Attorney</td>
<td>Indefinite from August 12, 2005</td>
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<td>Spalsbury Jr., Clark</td>
<td>Estes Park, CO</td>
<td>Attorney</td>
<td>Indefinite from August 12, 2005</td>
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<tr>
<td>Brockman, Louis R.</td>
<td>Dallas, TX</td>
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<td>Hill, Richard B.</td>
<td>Kernersville, NC</td>
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<td>Rosenberg, Jeffrey P.</td>
<td>Morgan Hill, CA</td>
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<td>Link, Robert A.</td>
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<td>Halcrow, David S.</td>
<td>Taft, CA</td>
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<td>Lieber, Daniel M.</td>
<td>Edna, MO</td>
<td>Attorney</td>
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<td>Kirchoff, William W.</td>
<td>Jefferson City, MO</td>
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<td>Lauby, Gregory C.</td>
<td>Lexington, NE</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
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<tr>
<td>Early, Michael J.</td>
<td>Newburyport, MA</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
</tr>
<tr>
<td>Mickiewicz, Robert</td>
<td>Dorchester, MA</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
</tr>
<tr>
<td>Name</td>
<td>Address</td>
<td>Designation</td>
<td>Date of Suspension</td>
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<tr>
<td>Conant, Jon F.</td>
<td>Gloucester, MA</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
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<tr>
<td>Pennington, Jill</td>
<td>Chevy Chase, MD</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
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<tr>
<td>Randolph, Robert E.</td>
<td>Denham Springs, LA</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
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<tr>
<td>Carillo, Donald</td>
<td>Chicago, IL</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
</tr>
<tr>
<td>Sloan Jr., Dewey</td>
<td>Sioux City, IA</td>
<td>Attorney</td>
<td>Indefinite from September 9, 2005</td>
</tr>
<tr>
<td>Vogel, Garrett</td>
<td>Dallas, TX</td>
<td>CPA</td>
<td>Indefinite from September 13, 2005</td>
</tr>
<tr>
<td>Becker, Joseph</td>
<td>Houston, TX</td>
<td>CPA</td>
<td>Indefinite from September 13, 2005</td>
</tr>
<tr>
<td>Winick, Robert M.</td>
<td>Sarasota, FL</td>
<td>Attorney</td>
<td>Indefinite from September 19, 2005</td>
</tr>
<tr>
<td>Hunsaker Jr., William</td>
<td>Golden, CO</td>
<td>Attorney</td>
<td>Indefinite from September 19, 2005</td>
</tr>
<tr>
<td>Wheatley, Jay D.</td>
<td>Boca Raton, FL</td>
<td>Attorney</td>
<td>Indefinite from September 19, 2005</td>
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<tr>
<td>Clark, Carroll A.</td>
<td>Mesa, AZ</td>
<td>Attorney</td>
<td>Indefinite from September 19, 2005</td>
</tr>
</tbody>
</table>

**Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding**

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Designation</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sobel, Herbert L.</td>
<td>Elkins Park, PA</td>
<td>CPA</td>
<td>May 4, 2005 to February 3, 2007</td>
</tr>
</tbody>
</table>

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Designation</th>
<th>Date of Censure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pugno, Thomas</td>
<td>Rockwood, MI</td>
<td>Enrolled Agent</td>
<td>June 29, 2005</td>
</tr>
<tr>
<td>Barrett, Richard</td>
<td>Tyler, TX</td>
<td>CPA</td>
<td>August 1, 2005</td>
</tr>
<tr>
<td>Kelly, Michael G.</td>
<td>Odessa, TX</td>
<td>Attorney</td>
<td>August 1, 2005</td>
</tr>
<tr>
<td>Volstad, Paul S.</td>
<td>Plymouth, MN</td>
<td>CPA</td>
<td>August 18, 2005</td>
</tr>
<tr>
<td>Quackenbush, Gary A.</td>
<td>San Diego, CA</td>
<td>Attorney</td>
<td>September 2, 2005</td>
</tr>
<tr>
<td>Flores, Fred A.</td>
<td>Laredo, TX</td>
<td>CPA</td>
<td>September 2, 2005</td>
</tr>
<tr>
<td>Velasquez, Felix</td>
<td>Laredo, TX</td>
<td>CPA</td>
<td>September 2, 2005</td>
</tr>
</tbody>
</table>

Settlement Initiative

Announcement 2005–80

Section 1. Overview

This announcement provides a settlement initiative under which taxpayers and the Internal Revenue Service (Service) may resolve the tax treatment of certain tax transactions. Section 2 describes who is eligible to participate. Section 3 describes eligible transactions. Section 4 describes the settlement terms. Section 5 sets out the settlement procedures. Taxpayers have until January 23, 2006, to notify the Service of their intent to participate in this settlement initiative.

Section 2. Eligible Taxpayers

A person that claimed a federal tax benefit from a transaction described in section 3, including a person that filed an amended return claiming a federal tax benefit from such a transaction, may participate in this initiative unless the person is an ineligible person as determined in this section. However, a person described in paragraph 1, 2, or 3 that would like to settle under this initiative may file an Election that identifies each reason the person is an ineligible person, and request that the Service permit settlement under this initiative.

1. **Promoters**. A person who (i) organized, managed or sold the transaction; (ii) participated in the organization, management, or sale of the transaction; or (iii) received fees in connection with the organization, management, or sale of the transaction is an ineligible person.

2. **Persons related to promoters**. A partner in a partnership that is described in paragraph 1 of this section, a five percent or more shareholder of a corporation that is described in paragraph 1, or a person otherwise related to a person described in paragraph 1 within the meaning of § 267(b) (other than § 267(b)(1)) or § 707(b) is an ineligible person.

3. **TEFRA partners of promoters**. A partner in a disqualified entity in which (a) an ineligible partner claimed more than two percent of the improper tax benefits from the transaction at issue, or (b) ineligible partners in the aggregate claimed five percent or more of the improper tax benefits from the transaction, is an ineligible person. An “ineligible partner” is a person who is an ineligible person other than by reason of this paragraph 3. A “disqualified entity” is an entity that (i) is subject to the unified partnership audit and litigation provisions of §§ 6221 through 6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA partnership), (ii) engaged in a transaction described in section 3 of this announcement, and (iii) includes one or more ineligible partners. However, a partner who is
not an ineligible partner may settle if
the ineligible partners that cause the
TEFRA partnership to be described
in this paragraph 3 execute a waiver
under § 6224(b) of their right under
§ 6224(c)(2) to a consistent settle-
ment agreement, as provided in Form
13751, Waiver of Right to Consistent
Agreement of Partnership Items and
Partner-level Determinations as to
Penalties, Additions to Tax, and Addi-
tional Amounts.

4. Persons who engaged in a transac-
tion that has been designated for lit-
igation. A person who directly or in-
directly engaged in a transaction and,
before the date on which the Election
is filed, the Service has informed the
person (or the tax matters partner or
notice group of the TEFRA partner-
ship of which the person was a part-
ner) that the Service has designated or
is considering designating the transac-
tion for litigation is an ineligible per-
son.

5. Persons in litigation. A person who,
individually or as a partner in a
TEFRA partnership, is a party in a
court proceeding to determine the tax
treatment of any aspect of the trans-
action is an ineligible person.

6. Fraud. A person against whom the
Service has imposed the fraud penalty
under § 6663, or a person that has
been notified before the date on which
the Election is filed that the Service is
considering imposing the fraud
penalty against that person, is an inel-
igible person.

7. Persons under criminal investiga-
tion. A person under tax-related criminal
investigation by the Service or the
Department of Justice, or a person
that has been notified, before the date
on which the Election is filed, that the
Service or the Department of Justice
intends to commence a tax-related criminal
investigation of that person is an ineligible person.

Section 3. Eligible Transactions

The following transactions are eligible
for settlement under this initiative. Stated
by each transaction is the accuracy-related
penalty on the underpayment attributable
to the transaction that a person will be re-
quired to pay, unless one of the exceptions
listed in paragraph E of section 4 applies.

(Tax Avoidance Using Inflated Basis)
(20%).

(Intermediary Transactions Tax Shelter)
(20%).

(Accounting for Lease Strips and Other Stripping Transactions (10%),
and transactions involving losses re-
ported from inflated basis assets from
lease strips (20%)).

(Common Trust Fund Straddle Tax Shelters) (10%), but excluding trans-
actions described in Notice 2002–50,
2002–2 C.B. 98, and Notice 2002–65,

(Tax Avoidance Using Offsetting
Foreign Currency Option Contracts)
(10%).

Avoidance Using Distributions of En-
cumbered Property) (10%).

664 (“Reimbursements” for park-
ing expenses previously paid by an
employer or previously paid by an
employee through salary reduction)
(5%).

546, Situation 1 (Pension plan fails
to satisfy § 412(i) where amounts ac-
cumulated under life insurance con-
tracts and annuities held by the plan
exceed benefits payable under plan
terms) and Situation 2 (Employer con-
tributions to pension plan are not cur-
tently deductible when used to pay
premiums on life insurance contracts
that provide for death benefits in ex-
cess of the participant’s death benefit
under the terms of the plan), and Rev.
Rul. 2004–21, 2004–1 C.B. 544 (Pen-
sion plan fails to satisfy nondiscrimi-
nation requirements due to differences
in the value of participants’ rights to
purchase life insurance contracts from
the plan) (5%).

(Abusive Roth IRA Transactions)
(5%).

(Transactions that involve segregating
the business profits of an employee
stock ownership plan (ESOP)-owned S
corporation in a qualified subchapter
S subsidiary, so that rank-and-file
employees do not benefit from partic-
ipation in the ESOP) (5%).

(Transfers to Trusts to Provide for the
Satisfaction of Contested Liabilities)
(5%).

(Tax Problems Raised by Certain
Trust Arrangements Seeking to Qual-
ify for Exception for Collectively
Bargained Welfare Benefit Funds un-
der § 419A(f)(5)) (5%).

(Certain arrangements involving the
transfer of ESOPs that hold stock in
an S corporation for the purpose of
claiming eligibility for the delayed ef-
fective date of § 409(p)) (5%).

(“Reimbursements” of employees for
salary reduction amounts previously
excluded from gross income under
§ 106; “Advance reimbursements” or
“loans” without regard to whether an
employee has incurred medical ex-
peses) (5%).

(Stock Compensation Corporate Tax
Shelter) (5%).

(Certain transactions involving the
acquisition of two debt instruments
the values of which are expected to
change significantly at about the same
time in opposite directions) (5%).

17. Notice 95–34, 1995–1 C.B. 309 (Tax
Problems Raised by Certain Trust
Arrangements Seeking to Qualify for
Exemption from § 419) (5%).
with the transaction in a manner consistent with relevant published guidance providing the Service’s view of the transaction, the terms set forth in this announcement, and the facts and circumstances surrounding the specific transaction. For certain transactions, that may mean that the transaction will be treated as not having occurred for tax purposes and the person must concede all claimed tax benefits of the transaction for all taxable periods not barred by the period of limitations on assessment. For other transactions, that may mean that the transaction will be characterized in a manner consistent with its substance, and the person must concede all claimed tax benefits inconsistent with that substance. The person may also be required to make adjustments to basis, as appropriate, may be required to unwind or dissolve entities formed for the purpose of facilitating the transaction, and may have to pay applicable excise tax, employment tax, and self-employment tax liabilities.

These settlement terms apply for resolution of these transactions only, and do not constitute an interpretation of general rules to be applied in transactions not settled under this initiative.

A person may be required to change its method(s) of accounting to resolve a transaction. In such a situation, the settlement will impose the necessary accounting method change(s) with the following terms and conditions. The year of change will be the earliest taxable year in which the existing accounting method was used by the person in connection with the transaction, or the first taxable year for which the period of limitations has not expired. The Commissioner will grant consent under § 446(e) to make the method change on a retrospective basis. Where required, a § 481(a) adjustment will be imposed and taken into account entirely in the year of change.


B. Transaction Costs Generally Allowed as an Ordinary Loss. A person settling under this initiative will be allowed to treat as an ordinary loss those transaction costs, including promoter fees and fees paid for accounting, appraisal, and legal services, actually paid by the taxpayer. If tax benefits, including benefits attributable to transaction costs, were claimed in a year barred by the period of limitations on assessment, then transaction costs will be allowed as an ordinary loss only to the extent the transaction costs exceed the tax benefits claimed in the barred years.

C. Tax-Exempt Entities. Where a transaction includes a tax-exempt entity as a party, resolution for the taxpayer may require the tax-exempt entity to disburse any funds received as a result of the transaction. As noted in paragraph A of this section 4, excise taxes may also apply. If an eligible taxpayer created a tax-exempt entity specifically for the purpose of accommodating an abusive or tax-avoidance transaction, or if an entity created by an eligible taxpayer has engaged in abusive transactions as a substantial part of its activities, the entity may also be required to agree to revocation of its exemption.

D. Multi-Party Transactions. The Service generally expects that all parties to a transaction (e.g., an employer and employee) will elect to resolve the transaction under this initiative. The failure of all parties to the transaction to elect to resolve the transaction under this initiative will not automatically preclude settlement for the electing parties. If all parties do not elect to participate in this initiative, however, the Service reserves the right to not settle with the electing parties if it is not in the interest of sound tax administration to do so.

E. Penalties.

1. Except as otherwise provided in this paragraph E, a person that settles a transaction under this initiative will pay an accuracy-related penalty under § 6662 on the underpayment attributable to the transaction in the percentage amount provided for the transaction above in section 3.

2. A person that properly disclosed the transaction under Announcement 2002–2, 2002–1 C.B. 304, will not pay a penalty on the underpayment...
attributable to the disclosed transaction.

3. For purposes of this settlement initiative, at the discretion of the Service, a person that received and relied on a written tax opinion with respect to the treatment of the transaction under federal tax law before filing a return affected by the transaction will not pay a penalty on the underpayment attributable to that transaction if2—

   a. the tax opinion (i) concluded at a confidence level of at least “more likely than not” (a greater than 50% likelihood) that all significant federal tax issues arising out of the transaction would be resolved in the taxpayer’s favor, and (ii) considered all the relevant facts and did not assume any unreasonable facts; and

   b. the tax advisor (i) was not a person described in paragraph 1 or 2, (ii) was not referred to the taxpayer by a person described in section 2, paragraph 1 or 2, and (iii) did not have a fee arrangement contingent on the successful sustention of all or part of the intended tax benefit.

4. All other applicable penalties and additions to tax will apply.

F. Statute Extensions. Where the period of limitations on assessment of any applicable tax (e.g., income, excise, and employment taxes) will otherwise expire within 12 months after a person files an Election, the Service will ordinarily request that the person consent to extend the applicable period of limitations. If, after a request by the Service, the person does not consent to extend the applicable period of limitations as requested, the Service will treat that person as having withdrawn from this initiative.

Section 5. Application Process

A. Election. A person that wants to resolve a transaction through this settlement initiative must send an Election (Form 13750, Election to Participate in Announcement 2005–80 Settlement Initiative, and all required attachments) on or before January 23, 2006, to:

   INTERNAL REVENUE SERVICE
   MS 1505
   24000 Avila Rd
   Laguna Niguel, CA 92677

   Form 13750, as well as the required schedules and attachments, must be used to elect to participate in this initiative and must be submitted to the address listed above. The form will be available at http://www.irs.gov. The Service reserves the right not to accept any Election not properly addressed and timely mailed within the meaning of § 7502.

   A person who is under examination (or in Appeals), or who is a partner in a TEFRA partnership that is under examination (or in Appeals), must send a copy of the Election to the IRS examiner (or IRS Appeals Officer).

   B. Required Information. The Election requests information necessary to process the election and determine the proper tax liabilities. The Service may request additional information and documents relating to the transaction, such as marketing materials and tax opinion letters. All requested information must be submitted under penalties of perjury to the Service within 30 days of the date of mailing of the request for additional information by the Service. The Service may grant an extension for good cause to persons who request additional time within the 30-day period. The Service will treat a person who fails to provide the required information as having withdrawn from the initiative.

   C. Passthrough Entities. If the participant in the transaction was a partnership, subchapter S corporation, or some other pass-through entity, then the person that would be liable for the tax (e.g., the partner or shareholder) who wants to participate in this initiative must submit an Election on his or her own behalf.

   D. Closing Agreement and Payment. After receiving all the necessary information, the Service will prepare a closing agreement under § 7121 reflecting the terms of the settlement. The Service will send the closing agreement to the person (or the person’s corporate parent or representative, if appropriate), who must sign and return it to the Service within 30 days of the date of mailing by the Service. The Service may grant an extension for good cause.

   A person settling under this initiative must fully pay all taxes, interest, and penalties due under the terms of the settlement when the signed closing agreement is returned to the Service. Any person unable to make full payment at that time must submit complete financial statements and agree to financial arrangements acceptable to the Service before the Service will execute a closing agreement. The Service will not execute a closing agreement under this initiative with anyone unable to reach acceptable financial arrangements.

   E. Other Dispute Resolution Procedures. This settlement initiative does not affect conventional Service resolution procedures available to eligible persons that do not settle under this initiative. For eligible persons that forgo resolving eligible transactions under this settlement initiative and take their issues to Appeals, Appeals will carefully consider both the issue merits and the penalty, but such persons should not expect to receive a better offer in Appeals than that offered under this settlement initiative and may in fact receive a less favorable outcome.

Section 6. Paperwork Reduction Act

The collection of information in this announcement has been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1967. 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 number.

The collection of information in this announcement is in Section 5, Application Process. This information is required to apply the terms of the settlement and determine the suitable amount of any penalties. Collecting information is required to obtain the benefit described in this announcement. The likely respondents are

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2 The penalty waiver under this paragraph is being provided in the context of this administrative settlement, and does not reflect all relevant facts and circumstances that determine whether a taxpayer reasonably relied in good faith on a tax opinion.
individuals, businesses, other for-profit institutions, and tax-exempt entities.

The estimated total annual reporting burden is 2,500 hours. The estimated annual burden per respondent varies from 3 to 7 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 500. The estimated frequency of responses is one time per respondent.

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

Section 7. Contact Information

The principal author of this announcement is Joe Spires of the Office of Chief Counsel. For further information regarding this announcement, questions can be sent to Settlement.Initiative@irs.counsel.treas.gov or contact (202) 622–4284 (not a toll-free call).
Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it 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.
CI—City.
COO—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.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR—Federal Register.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
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.
Res. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
Stat.—Statistics at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferor.
TFR—Transferor.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
X—Corporation.
Y—Corporation.
Z—Corporation.


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Corrected by

**REG-102144-04**
Corrected by

**Proposed Regulations—Continued:**

**REG-108524-00**
Corrected by

**REG-142686-01**
Withdrawn by

**Revenue Procedures—Continued:**

**90-31**
Section 4 superseded by
Section 5 superseded by
Section 6 superseded by
Section 7 superseded by
Section 8 superseded by
Section 9 superseded by

**93-22**
Obsoleted by

**98-18**
Obsoleted by

**99-39**
Superseded by

**2000-27**
Modified and superseded by

**2000-31**
Superseded by

**2000-49**
Superseded by

**2001-9**
Superseded by

**2001-16**
Superseded by

**2002-9**
Modified and amplified by

**2002-49**
Modified, amplified, and superseded by

**2004-50**
Superseded by

**2004-54**
Superseded by

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Revenue Procedures—Continued:

2004-58
Superseded by

2004-64
Modified by

2005-1
Amplified by

2005-3
Amplified by

2005-6
Modified by

2005-10
Superseded by

2005-16
Modified by

2005-65
Corrected by

Revenue Rulings:

65-109
Obsoleted by

68-549
Obsoleted by

74-203
Revoked by

82-29
Modified and clarified by

2005-41
Corrected by

Treasury Decisions—Continued:

9205
Corrected by

9206
Corrected by

9207
Corrected by

9210
Corrected by

Treasury Decisions—Continued:

9205
Corrected by

9206
Corrected by

9207
Corrected by

9210
Corrected by