

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **Rev. Rul. 2008-32, page 6.**

**Corporations; “outside director” definition.** This ruling provides guidance for determining whether an individual qualifies as an “outside director” for purposes of section 162(m) of the Code. The ruling holds that an individual does not qualify as an “outside director” of a corporation when the individual has served as the corporation’s interim chief executive officer in regular and continued service with the full authority vested in that office.

#### **Rev. Rul. 2008-33, page 8.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2008.

#### **T.D. 9401, page 1.**

#### **REG-149405-07, page 73.**

Final, temporary, and proposed regulations under section 41 of the Code implement changes to the credit for increasing research activities made by the Tax Relief and Health Care Act of 2006. A public hearing on the proposed regulations is scheduled for September 25, 2008.

#### **Notice 2008-55, page 11.**

This notice provides guidance regarding the effect of adding certain liquidity facilities to support certain auction rate preferred stock on the equity character of the stock for federal income tax purposes.

### **EMPLOYEE PLANS**

#### **Rev. Rul. 2008-32, page 6.**

**Corporations; “outside director” definition.** This ruling provides guidance for determining whether an individual qualifies as an “outside director” for purposes of section 162(m) of the Code. The ruling holds that an individual does not qualify as an “outside director” of a corporation when the individual has served as the corporation’s interim chief executive officer in regular and continued service with the full authority vested in that office.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2008-62, page 74.**

The IRS has revoked its determination that The Neil & Patricia Chiarello Charitable Supporting Organization of West Milford, NJ; The Jonathan Dreier Foundation of Paradise Valley, AZ; Fanwood-Scotch Plains Recycling Association, Inc., of Fanwood, NJ; A Mother’s Love Child Care Center of West Memphis, AR; Northstar Family Foundation of W. Valley City, UT; and Metro Fire Dept., Ltd., of Warren, MI, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

**(Continued on the next page)**

Finding Lists begin on page ii.



## **ADMINISTRATIVE**

### **REG-129243-07, page 32.**

Proposed regulations under sections 6694 and 6695 of the Code implement the amendments to the tax return preparer penalties and the related definitional provisions, as enacted by the Small Business and Work Opportunity Tax Act of 2007. A public hearing is scheduled for August 18, 2008.

### **Rev. Proc. 2008-34, page 13.**

This procedure contains revisions to Publication 1239, *Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically* (revised 7-2008). Rev. Proc. 2006-29 superseded.

# The IRS Mission

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

the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## Section 41.—Credit for Increasing Research Activities

26 CFR 1.41-1: Credit for increasing research activities.

### T.D. 9401

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

#### Alternative Simplified Credit Under Section 41(c)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the election and calculation of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code. The final and temporary regulations implement changes to the credit for increasing research activities under section 41 made by the Tax Relief and Health Care Act of 2006. The final and temporary regulations will affect certain taxpayers claiming credit under section 41. The text of these temporary regulations also serves as the text of the proposed regulations (REG-149405-07) published in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on June 17, 2008.

*Applicability Date:* For dates of applicability, see §§1.41-6T(j), 1.41-8T(b)(5), and 1.41-9T(d).

**FOR FURTHER INFORMATION CONTACT:** David A. Selig (202) 622-3040 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document amends 26 CFR part 1 to provide rules relating to the alternative simplified credit (ASC), which may be

elected under section 41(c)(5) of the Internal Revenue Code (Code).

#### General Overview

Section 41(a) provides an incremental tax credit for increasing research activities (research credit), and is based on a percentage of a taxpayer's qualified research expenses (QREs) above a base amount. The Tax Relief and Health Care Act of 2006 (Public Law 109-432, 120 Stat. 2922, December 20, 2006) (the Act) made certain changes to the research credit, including the addition of another method of computation that taxpayers may elect to use in computing the amount of the research credit. The relevant Act provisions are effective generally for tax years after December 31, 2006, but provide certain transitional rules for fiscal year taxpayers.

Prior to the Act changes, there were two ways a taxpayer could determine the research credit under section 41(a). One way, commonly referred to as the regular credit, is determined by following the rules and percentages stated under section 41(a)(1). Under the regular credit, the base amount is generally determined with reference to the gross receipts of the taxpayer for the four prior taxable years preceding the taxable year in which credit is being determined (credit year) and the QREs and gross receipts over the five-year base period from 1984-1988. The base amount cannot be less than 50 percent of the taxpayer's QREs for the credit year. Special rules are provided for certain start-up companies.

The second way a taxpayer could compute the research credit prior to the Act was to elect, in lieu of the regular credit, the alternative incremental credit (AIRC) under section 41(c)(4). Under the AIRC, the base amount is determined with reference to the gross receipts of the taxpayer for the four prior taxable years.

The Act added a third way, the ASC, under section 41(c)(5), which a taxpayer may elect to compute the research credit. Section 41(c)(5)(A) provides the general rule that, at the election of the taxpayer, the credit determined under section 41(a)(1) shall be equal to 12 percent of so much

of the QREs for the taxable year as exceeds 50 percent of the average QREs for the three taxable years preceding the taxable year for which the credit is being determined. Section 41(c)(5)(B) provides a special rule that the credit shall be equal to 6 percent of the QREs for the taxable year if the taxpayer does not have QREs in each of the three taxable years preceding the year for which credit is being determined.

Section 41(c)(5)(C) provides that an ASC election under section 41(c)(5) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. It further provides that an ASC election under section 41(c)(5) may not be made for any taxable year to which an AIRC election under section 41(c)(4) applies.

#### Explanation of Provisions

The primary objective of these temporary regulations is to provide guidance on the ASC under section 41(c)(5). The temporary regulations provide rules for the ASC similar to some of the rules relating to the AIRC as contained in §1.41-8 of the current regulations. However, because there are also differences, such as the formula calculation for the ASC, the ASC rules are provided in a new §1.41-9T. These final and temporary regulations also make conforming and clarifying changes to §§1.41-1, 1.41-6, and 1.41-8.

Section 1.41-9T provides that, at the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under the ASC under section 41(c)(5). Generally, a taxpayer may elect the ASC for any taxable year of the taxpayer ending after December 31, 2006. However, for certain transitional rules, see Division A, section 104(b)(3), (c)(2), and (c)(4) of the Act. Because the transitional rules are of limited duration and have already been described and implemented in the 2006 version of Form 6765, "Credit for Increasing Research Activities," these regulations do not address the transitional rules.

The temporary regulations generally provide the same rules related to elections

and revocations as those provided for the AIRC in §1.41–8 in the current regulations. If a taxpayer makes an ASC election under section 41(c)(5), the election applies to the taxable year for which made and all subsequent taxable years unless revoked. An ASC election under section 41(c)(5) is made by completing the portion of Form 6765, “Credit for Increasing Research Activities,” (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer’s timely filed (including extensions) original return for the taxable year to which the election applies. The election may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke the election if the taxpayer completes the portion of Form 6765 (or successor form) relating to the credit determined under section 41(a)(1) or the AIRC and attaches the completed form to the taxpayer’s timely filed (including extensions) original return for the year to which the revocation applies. As is the case with a revocation of an AIRC election under §1.41–8, an election under section 41(c)(5) may not be made or revoked on an amended return. Accordingly, for purposes of further clarification, the temporary regulations also provide that an extension of time to make or revoke an election under section 41(c)(5) (and similarly, under section 41(c)(4)) will not be granted under §301.9100–3.

In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election or revocation must be made by the designated member by satisfying the requirements described above. The election or revocation by the designated member is binding on all the members of the group for the credit year to which the election or revocation relates. If the designated member fails to timely make or revoke an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

The term *designated member* means that member of the group that is allocated the greatest amount of the group credit under §1.41–6(c) based on the amount of credit reported on the original timely-filed Federal income tax return (even if that

member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a), the AIRC method, or the ASC method) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit.

The temporary regulations provide several special rules. Section 1.41–9T(c) provides that unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals the percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

The temporary regulations also provide special rules relating to consistency and short taxable years. The temporary regulations provide that in computing the credit, QREs for the three taxable years preceding the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year. The regulations also provide special rules similar to the rules in §1.41–3(b) of the existing regulations for taxpayers that have a short taxable year. If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 12 and divided by the number of months in that year. Additionally, the temporary regulations provide that if a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of months in the short taxable year and dividing the result by 12.

The regulations also clarify that the average QREs for the three taxable years preceding the taxable year for which credit is being determined will be considered the base amount for purposes of the computation under section 41(h)(2). Therefore, if the research credit expires during the credit

year, the average QREs for the three taxable years preceding the credit are multiplied by the ratio of the number of days for which the research credit is effective to the total number of days in the credit year.

The Treasury Department and the IRS note that the rules generally applicable under section 6001 provide sufficient detail about required documentary substantiation for purposes of the research credit. Section 1.6001–1 requires the keeping of records “sufficient to establish the amount of ... credits ... required to be shown ....” The IRS may deny the credit for failure to provide sufficient records substantiating the claimed credit for any method used in determining the research credit.

### **Effective/Applicability Date**

Sections 1.41–6T(j), 1.41–8T(b)(5), and 1.41–9T(d) of these regulations apply to taxable years ending after December 31, 2006, the effective date of section 41(c)(5), and terminate on or before June 13, 2011. For certain transitional rules under section 41, see Division A, sections 104(b)(3), (c)(2), (c)(4), and 123(a) of the Act.

The IRS and Treasury Department are committed to providing appropriate relief to taxpayers that have used methodologies inconsistent with the short taxable year rules provided in these regulations on tax returns filed after the effective date of section 41(c)(5) and prior to the publication of these regulations.

### **Special Analyses**

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

## Drafting Information

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

\* \* \* \* \*

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

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

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

Section 1.41-8T also issued under 26 U.S.C. 41(c)(4)(B);

Section 1.41-9T also issued under 26 U.S.C. 41(c)(5)(C); \* \* \*

Par. 2. Section 1.41-0 is amended by:

1. Revising the introductory text.  
2. Revising the paragraph heading for §1.41-6(j) and adding entries for paragraphs (j)(1), (j)(2), and (j)(3).

3. Revising the section heading for §1.41-8 and entries for paragraphs (a) and (b)(5).

4. Adding §1.41-9.

The additions and revisions read as follows:

#### §1.41-0 Table of contents.

This section lists the table of contents for §§1.41-1 through 1.41-9.

\* \* \* \* \*

#### §1.41-6 Aggregation of expenditures.

\* \* \* \* \*

(j) Effective/applicability date.

(1) In general.

(2) Consolidated group rule.

(3) Taxable years ending on or before December 31, 2006.

\* \* \* \* \*

#### §1.41-8 Alternative incremental credit.

(a) Determination of credit.

(b) \* \* \*

(5) Effective/applicability dates.

#### §1.41-9 Alternative simplified credit.

[Reserved]. For further guidance, see the entries for §1.41-9T in §1.41-0T.

Par. 3. Section 1.41-0T is added to read as follows:

#### §1.41-0T Table of contents (temporary).

This section lists the table of contents for §§1.41-6T, 1.41-8T, and 1.41-9T.

#### §1.41-6T Aggregation of expenditures (temporary).

(a) [Reserved]. For further guidance, see the entry for §1.41-6(a) in §1.41-0.

(b) Computation of the group credit.

(1) In general.

(2) [Reserved]. For further guidance, see the entry for §1.41-6(b)(2) in §1.41-0.

(c) Allocation of the group credit.

(1) [Reserved]. For further guidance, see the entry for §1.41-6(c)(1) in §1.41-0.

(2) Stand-alone entity credit.

(d) [Reserved]. For further guidance, see the entry for §1.41-6(d) in §1.41-0.

(e) Example.

(f) through (i) [Reserved]. For further guidance, see the entries for §1.41-6(f) through (i) in §1.41-0.

(j) Effective/applicability dates.

#### §1.41-8T Alternative incremental credit (temporary).

(a) [Reserved]. For further guidance, see the entry for §1.41-8(a) in §1.41-0.

(b) Election.

(1) In general.

(2) Time and manner of election.

(3) Revocation.

(4) Special rules for controlled groups.

(i) In general.

(ii) Designated member.

(5) Effective/applicability dates.

#### §1.41-9T Alternative simplified credit (temporary).

(a) Determination of credit.

(b) Election.

(1) In general.

(2) Time and manner of election.

(3) Revocation.

(4) Special rules for controlled groups.

(i) In general.

(ii) Designated member.

(c) Special rules.

(d) Effective/applicability dates.

(e) Expiration date.

Par. 4. Section 1.41-1 is amended by adding a sentence to the end of paragraph (a) to read as follows:

#### §1.41-1 Credit for increasing research activities.

(a) \* \* \* For taxable years ending after December 31, 2006, and at the election of the taxpayer, the portion of the credit determined under section 41(a)(1) may be calculated using either the alternative incremental credit set forth in section 41(c)(4), or the alternative simplified credit set forth in section 41(c)(5).

\* \* \* \* \*

Par. 5. Section 1.41-6 is amended by:

1. Revising paragraph (e) introductory text and the paragraph heading for paragraph (j).

2. Adding paragraph (j)(3).

The revision and addition reads as follows:

#### §1.41-6 Aggregation of expenditures.

\* \* \* \* \*

(e) *Examples.* The following examples illustrate the provisions of this section. Unless otherwise stated, no members of a controlled group are members of a consolidated group, no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium, and the group has not made an AIRC election (except as provided in Example 6) or an ASC election. For an example illustrating the calculation of the alternative simplified credit under section 41(c)(5), which is applicable for taxable years ending after December 31, 2006, see §1.41-6T(e).

\* \* \* \* \*

(j) *Effective/applicability dates.* \* \* \*

(3) *Taxable years ending on or before December 31, 2006.* Paragraphs (b)(1) and (c)(2) of this section are applicable for taxable years ending on or before December 31, 2006. For taxable years ending after December 31, 2006, see §1.41-6T.

Par. 6. Section 1.41-6T is added to read as follows:

*§1.41-6T Aggregation of expenditures (temporary).*

(a) [Reserved]. For further guidance, see §1.41-6(a).

(b) *Computation of the group credit—(1) In general.* All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation, either the method described in section 41(a)(1), the alternative incremental credit (AIRC) method described in section 41(c)(4), or the alternative simplified credit (ASC) method described in section 41(c)(5), in computing the group credit for a credit year.

(2) [Reserved]. For further guidance, see §1.41-6(b)(2).

(c) *Allocation of the group credit.* (1) [Reserved]. For further guidance, see §1.41-6(c)(1).

(2) *Stand-alone entity credit.* The term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 41(f)(1) did not apply, except that the member must apply the rules provided in §1.41-6(d)(1) (relating to consolidated groups) and §1.41-6(i) (relating to intra-group transactions). Each member's stand-alone entity credit for any credit year must be computed under whichever method (the method described in section 41(a), the method described in section 41(c)(4), or the method described in section 41(c)(5)) results in the greatest stand-alone entity credit for that member, without regard to the method used to compute the group credit.

(d) [Reserved]. For further guidance, see §1.41-6(d).

(e) *Example. Group alternative simplified credit.* The following example il-

lustrates a group computation in a year for which the ASC method under section 41(c)(5) is in effect. No members of the controlled group are members of a consolidated group and no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium.

*Example.* (i) *Facts.* Q, R, and S, all of which are calendar-year taxpayers, are members of a controlled group. The research credit under section 41(a)(1) is not allowable to the group for the 2008 taxable year (the credit year) because the group's aggregate QREs for the credit year are less than the group's base amount. The group does not use the AIRC method of section 41(c)(4) because its aggregate QREs for the credit year do not exceed 1 percent of the average annual gross receipts for the four years preceding the credit year. The group credit is computed using the ASC rules of section 41(c)(5). Assume that each member of the group had QREs in each of the three years preceding the credit year. For purposes of computing the group credit for the credit year, Q, R, and S had the following:

	Q	R	S	Group Aggregate
Credit Year QREs	\$0x	\$20x	\$30x	\$50x
Average QREs for 3 Years Preceding the Credit Year	\$10x	\$20x	\$10x	\$40x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if Q, R, and S are one taxpayer. The group credit is equal to 12 percent of so much of the QREs for the credit year as exceeds 50 percent of the average QREs for the three taxable years preceding the credit year. The group credit is  $0.12 \times (\$50x - (0.5 \times \$40x))$ , which equals \$3.6x.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity

credit for each member of the group must be computed using the method that results in the greatest stand-alone entity credit for that member. The stand-alone entity credit for Q is zero under all three methods. Assume that the stand-alone entity credit for each of R (\$1.2x) and S (\$3x) is greatest using the ASC method. Therefore, the stand-alone entity credits for each of R and S must be computed using the ASC method. The sum of the stand-alone entity credits of the members of the group is \$4.2x. Because

the group credit of \$3.6x is less than the sum of the stand-alone entity credits of all the members of the group (\$4.2x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The \$3.6x group credit is allocated as follows:

	Q	R	S	Total
Stand-Alone Entity Credit	\$0x	\$1.2x	\$3x	\$4.2x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.2	1.2/4.2	3/4.2	
Multiplied by: Group Credit	\$3.6x	\$3.6x	\$3.6x	
Equals: Credit Allocated to Member	\$0x	\$1.03x	\$2.57x	\$3.6x

(f) through (i) [Reserved]. For further guidance, see §1.41-6(f) through (i).

(j) *Effective/applicability dates.* This section is applicable for taxable years ending after December 31, 2006. For taxable years ending on or before December 31, 2006, see §1.41-6.

(k) *Expiration date.* The applicability of this section will expire on or before June 13, 2011.

Par. 7. Section 1.41-8 is amended by:  
1. Revising the section heading and the heading of paragraph (a).

2. Removing the language "paragraph (c) of this section" from the first sentence of paragraph (b)(4)(ii) and adding "§1.41-6(c)" in its place.

3. Revising the paragraph heading and adding two sentences at the end of paragraph (b)(5).



The revisions and additions read as follows:

*§1.41-8 Alternative incremental credit.*

(a) *Determination of credit.* \* \* \*

(b) \* \* \*

(5) *Effective/applicability dates.* \* \* \*

Paragraphs (b)(3) and (b)(4)(ii) of this section are applicable for taxable years ending on or before December 31, 2006. For taxable years ending after December 31, 2006, see §1.41-8T.

Par. 8. Section 1.41-8T is added to read as follows:

*§1.41-8T Alternative incremental credit (temporary).*

(a) [Reserved]. For further guidance, see §1.41-8(a).

(b) *Election*—(1) [Reserved]. For further guidance, see §1.41-8(b)(1).

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, “*Credit for Increasing Research Activities*,” (or successor form) relating to the election of the AIRC, and attaching the completed form to the taxpayer’s timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(4) may not be made on an amended return. An extension of time to make an election under section 41(c)(4) will not be granted under §301.9100-3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(4) if the taxpayer completes the portion of Form 6765, “*Credit for Increasing Research Activities*,” (or successor form) relating to the amount determined under section 41(a)(1) (the regular credit) or the alternative simplified credit (ASC) and attaches the completed form to the taxpayer’s timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(4) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(4) will not be granted under §301.9100-3 of this chapter.

(4) *Special rules for controlled groups*—(i) [Reserved]. For further guidance, see §1.41-8(b)(4)(i).

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under §1.41-6(c) based on the amount of credit reported on the original timely-filed Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the AIRC method is \$15x. Under the AIRC method, B would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. For the credit year, the group credit using the ASC method is \$10x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the AIRC method and B is allocated the greatest amount of credit under that method, B is the designated member. Therefore, if B makes a section 41(c)(4) election on its original timely-filed return for the credit year, that election is binding on all members of the group for the credit year.

(5) *Effective/applicability dates.* This section is applicable for taxable years ending after December 31, 2006. For taxable years ending on or before December 31, 2006, see §1.41-8.

(6) *Expiration date.* This applicability of this section expires on or before June 13, 2011.

Par. 9. Sections 1.41-9 and 1.41-9T are added to read as follows:

*§1.41-9 Alternative simplified credit.*

[Reserved]. For further guidance, see §1.41-9T.

*§1.41-9T Alternative simplified credit (temporary).*

(a) *Determination of credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(5).

(b) *Election*—(1) *In general.* A taxpayer may elect to apply the provisions of the alternative simplified credit (ASC) in section 41(c)(5) for any taxable year of the taxpayer ending after December 31, 2006. If a taxpayer makes an election under section 41(c)(5), the election applies to the taxable year for which made and all subsequent taxable years unless revoked in the manner prescribed in paragraph (b)(3) of this section.

(2) *Time and manner of election.* An election under section 41(c)(5) is made by completing the portion of Form 6765, “*Credit for Increasing Research Activities*,” (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer’s timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(5) may not be made on an amended return. An extension of time to make an election under section 41(c)(5) will not be granted under §301.9100-3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(5) if the taxpayer completes the portion of Form 6765 (or successor form) relating to the credit determined under section 41(a)(1) (the regular credit) or the alternative incremental credit (AIRC) and attaches the completed form to the taxpayer’s timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(5) may not be revoked on an

amended return. An extension of time to revoke an election under section 41(c)(5) will not be granted under §301.9100-3 of this chapter.

(4) *Special rules for controlled groups*—(i) *In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraph (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under §1.41-6(c) based on the amount of credit reported on the original timely-filed Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a), the AIRC method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the AIRC method is \$10x. Under the AIRC method, B would be allocated \$5x of the group credit, which is the largest share of the group credit

computed using the AIRC method. For the credit year, the group credit using the ASC method is \$15x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the ASC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, if C makes a section 41(c)(5) election on its original timely-filed return for the credit year, that election is binding on all members of the group for the credit year.

(c) *Special rules*—(1) *Qualified research expenses (QREs) required in all years.* Unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals that percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

(2) *Section 41(c)(6) applicability.* QREs for the three taxable years preceding the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year.

(3) *Section 41(h)(2) applicability.* Solely for purposes of the computation under section 41(h)(2), the average QREs for the three taxable years preceding the taxable year for which the credit is being determined shall be treated as the base amount.

(4) *Short taxable years.* If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 12 and divided by the number of months in that year. If a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of months in the short taxable year and dividing the result by 12.

(5) *Controlled groups.* For purposes of computing the group credit under §1.41-6,

a controlled group must apply the rules of this paragraph (c) on an aggregate basis. For example, if the controlled group has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the controlled group applies the credit computation provided by section 41(c)(5)(A) rather than section 41(c)(5)(B)(ii).

(d) *Effective/applicability dates.* This section is applicable for taxable years ending after December 31, 2006. For certain transitional rules, see Division A, section 104(b)(3), (c)(2), and (c)(4) of the Tax Relief and Health Care Act of 2006 (Public Law 109-432, 120 Stat. 2922).

(e) *Expiration date.* The applicability of this section expires on or before June 13, 2011.

Steven T. Miller,  
*Acting Deputy Commissioner  
for Services and Enforcement.*

Approved June 6, 2008.

Eric Solomon,  
*Assistant Secretary of  
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on June 13, 2008, 11:51 a.m., and published in the issue of the Federal Register for June 17, 2008, 73 F.R. 34185)

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

## Section 162.—Trade or Business Expenses

26 CFR 1.162-27(e): *Certain employee remuneration in excess of \$1,000,000.*

**Corporations; “outside director” definition.** This ruling provides guidance for determining whether an individual qualifies as an “outside director” for purposes of section 162(m) of the Code. The ruling holds that an individual does not qualify as an “outside director” of a corporation when the individual has served as the corporation’s interim chief executive officer in regular and continued service with the full authority vested in that office.

## Rev. Rul. 2008–32

### ISSUE

Whether a member of a corporation's board of directors qualifies as an "outside director" under § 162(m)(4)(C)(i) after serving as an interim chief executive officer?

### FACTS

Company X, a calendar year taxpayer, is a publicly held corporation within the meaning of § 162(m)(2). Director A is a member of Company X's board of directors. Director A is not a member of the compensation committee of Company X's board of directors. Company X's chief executive officer (CEO), Employee E, unexpectedly resigned on January 7, 2008. In response to Employee E's resignation, the board of directors of Company X appointed Director A to serve as interim CEO while the board of directors conducts a search for a permanent replacement CEO. The service agreement between Company X and Director A does not limit Director A's authority as interim CEO and provides for termination of service upon selection of a permanent CEO. Company X filed Form 8-K (dated January 7, 2008) with the United States Securities and Exchange Commission (SEC) to report Employee E's retirement and Director A's appointment as interim CEO, and to explain that Company X has initiated a search for a permanent replacement CEO. On February 1, 2008, the compensation committee of Company X's board of directors approved, and the board of directors ratified, a compensation plan for the period Director A serves as interim CEO. The plan provides for a base salary of \$1,000,000, as well as participation in Company X's executive bonus plan, which pays a percentage of base salary. The plan provides that Director A's compensation will be prorated based on the length of Director A's service as interim CEO.

On December 11, 2008, Company X announced that Employee F was selected as Company X's new CEO. Company X filed Form 8-K (dated December 11, 2008) with the SEC to report Director A's resignation as interim CEO, effective immediately, and Employee F's appointment as CEO of Company X.

Other than service as interim CEO, Director A has not been employed by Company X (or any member of its affiliated group of corporations). Director A received final, prorated compensation for services as interim CEO on December 29, 2008. Following December 29, 2008, Director A does not receive compensation from Company X, directly or indirectly, in any capacity other than as a director. In January 2009, Director A joined the compensation committee on Company X's board of directors.

### LAW

Section 162(a)(1) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) provides that, in the case of any publicly held corporation, no deduction is allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of the remuneration for the taxable year exceeds \$1,000,000.

Section 162(m)(2) provides that the term "publicly held corporation" means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

Section 162(m)(3) provides that the term "covered employee" means any employee of the taxpayer if (i) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or (ii) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

Section 162(m)(4)(A) defines "applicable employee remuneration," with respect to any covered employee for any taxable year, generally as the aggregate amount allowable as a deduction for the taxable year (determined without regard to § 162(m)) for remuneration for services performed by the employee (whether or not during the taxable year).

Section 162(m)(4)(C) provides that applicable employee remuneration does not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if (i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors, (ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before payment of such remuneration, and (iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and other material terms were in fact satisfied.

Section 1.162–27(e)(3)(i) of the Regulations provides that a director is an "outside director" if the director (A) is not a current employee of the publicly held corporation; (B) is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year; (C) has not been an officer of the publicly held corporation; and (D) does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services.

Section 1.162–27(e)(3)(vi) provides that whether a director is an employee or a former officer is determined on the basis of the facts at the time that the individual is serving as a director on the compensation committee. Thus, a director is not precluded from being an outside director solely because the director is a former officer of a corporation that previously was an affiliated corporation of the publicly held corporation. For example, a director of a parent corporation of an affiliated group is not precluded from being an outside director solely because that director is a former officer of an affiliated subsidiary that was spun off or liquidated. However, an outside director would no longer be an outside director if a corporation in which the director was previously an officer became an affiliated corporation of the publicly held corporation.

Section 1.162-27(e)(3)(vii) provides that, solely for this purpose, “officer” means an administrative executive who is or was in regular and continued service. The regulations state that the term implies continuity of service and excludes those employed for a special and single transaction. An individual who merely has (or had) the title of officer, but not the authority of an officer, is not considered an officer. The regulations further state that determination of whether an individual is or was an officer is based on all of the facts and circumstances in the particular case, including without limitation the source of the individual’s authority, the term for which the individual is elected or appointed, and the nature and extent of the individual’s duties.

#### ANALYSIS

The determination of whether an individual is or was an officer is based on all of the facts and circumstances in the particular case, including without limitation the source of the individual’s authority, the term for which the individual is elected or appointed, and the nature and extent of the individual’s duties. Director A was in regular and continued service from January 7, 2008 through December 11, 2008. Company X did not employ Director A for a special and single transaction and Director A did not merely have the title of officer. Instead, Company X employed Director A for an indefinite period to serve as interim CEO with the full authority vested in that office. Accordingly, under the facts and circumstances analysis, Director A was an officer of Company X.

#### HOLDING

Under the facts provided in this revenue ruling, a member of the board of directors who serves as interim chief executive officer is not an “outside director” for purposes of § 162(m)(4)(C) and § 1.162-27(e)(3).

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Ilya Enkishev of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this rev-

enue ruling, contact Mr. Enkishev at (202) 622-6030 (not a toll-free call).

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### Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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

The adjusted applicable federal long-term rate is set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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### Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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### Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

### Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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### Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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### Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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### Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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

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

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2008.

#### Rev. Rul. 2008-33

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2008 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in

section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in

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

a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2008 for purposes of section 7872.

REV. RUL. 2008-33 TABLE 1				
Applicable Federal Rates (AFR) for July 2008				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	2.42%	2.41%	2.40%	2.40%
110% AFR	2.67%	2.65%	2.64%	2.64%
120% AFR	2.91%	2.89%	2.88%	2.87%
130% AFR	3.15%	3.13%	3.12%	3.11%
<i>Mid-term</i>				
AFR	3.45%	3.42%	3.41%	3.40%
110% AFR	3.80%	3.76%	3.74%	3.73%
120% AFR	4.14%	4.10%	4.08%	4.07%
130% AFR	4.50%	4.45%	4.43%	4.41%
150% AFR	5.20%	5.13%	5.10%	5.08%
175% AFR	6.08%	5.99%	5.95%	5.92%
<i>Long-term</i>				
AFR	4.60%	4.55%	4.52%	4.51%
110% AFR	5.07%	5.01%	4.98%	4.96%
120% AFR	5.53%	5.46%	5.42%	5.40%
130% AFR	6.01%	5.92%	5.88%	5.85%

REV. RUL. 2008-33 TABLE 2				
Adjusted AFR for July 2008				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	2.07%	2.06%	2.05%	2.05%
Mid-term adjusted AFR	3.12%	3.10%	3.09%	3.08%
Long-term adjusted AFR	4.52%	4.47%	4.45%	4.43%

REV. RUL. 2008-33 TABLE 3	
Rates Under Section 382 for July 2008	
Adjusted federal long-term rate for the current month	4.52%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.71%

REV. RUL. 2008-33 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for July 2008

Appropriate percentage for the 70% present value low-income housing credit	7.93%
Appropriate percentage for the 30% present value low-income housing credit	3.40%

REV. RUL. 2008-33 TABLE 5

Rate Under Section 7520 for July 2008

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	4.2%
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REV. RUL. 2008-33 TABLE 6

Blended Annual Rate for 2008

Section 7872(e)(2) blended annual rate for 2008	2.8%
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**Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2008. See Rev. Rul. 2008-33, page 8.

# Part III. Administrative, Procedural, and Miscellaneous

## Auction Rate Preferred Stock—Effect of Liquidity Facilities on Equity Character

### Notice 2008–55

#### SECTION 1. Purpose

This notice provides guidance regarding the effect of adding certain liquidity facilities to support certain auction rate preferred stock on the equity character of the stock for Federal income tax purposes under the Internal Revenue Code of 1986, as amended (the “Code”). (Except as noted, section references in this notice are to the Code.) Previously, in Rev. Rul. 90–27, 1990–1 C.B. 50, the Internal Revenue Service (“IRS”) ruled that certain auction rate preferred stock qualified as equity for Federal income tax purposes, but that ruling did not address the question of the effect of guarantees or liquidity facilities on such equity character. This notice is intended to provide greater certainty and flexibility regarding certain Federal tax issues that have arisen in connection with efforts to address liquidity needs in the auction rate securities market as a result of recent significant auction failures in this market.

#### SECTION 2. Background

##### 2.1 Certain Auction Rate Preferred Stock

This notice addresses auction rate preferred stock issued by eligible issuers described herein with terms that are described generally herein (“auction rate preferred stock”). In general, auction rate preferred stock is preferred stock in which the dividend rate is reset periodically (typically every seven to 28 days), pursuant to an auction rate-setting process or a similar remarketing agent rate-setting process that is designed to produce the minimum dividend rate necessary to enable all interested sellers to sell the preferred stock to willing buyers at a price equal to the par amount of the applicable “liquidation preference” (typically, \$25,000), plus accrued but unpaid dividends. A “failed” auction or remarketing occurs if the auction or remarketing fails to produce buyers for all interested sellers at a dividend rate that is at or below the maximum dividend rate

specified by the terms of the auction rate preferred stock. Upon a failed auction or remarketing, the dividend rate is reset at a prescribed maximum dividend rate until the next auction or remarketing. In addition, in the case of some issues of auction rate preferred stock, the dividend rate may escalate further to prescribed increasing maximum rates based on the continued occurrence of failed auctions or remarketings for increasing periods of time. The auction rate preferred stock generally is perpetual, optionally redeemable by the issuer at any time, and mandatorily redeemable in certain circumstances, such as upon a failure to meet certain asset coverage requirements. All redemptions of auction rate preferred stock are subject to applicable state law restrictions on redemptions of stock.

This notice only addresses auction rate preferred stock issued in the United States by closed-end management companies that are “regulated investment companies” (as defined in § 851 of the Internal Revenue Code) which invest predominantly in debt instruments and whose other investments are incidental to their business of investing in the debt instruments (“Eligible Issuers”).

##### 2.2 Liquidity Facility

Presently, money market funds cannot hold auction rate preferred stock because it lacks the requisite liquidity features necessary to enable it to qualify as an eligible security for purchase by such funds under the Security and Exchange Commission’s Rule 2a–7, 17 C.F.R. 270.2a–7, issued under the Investment Company Act of 1940 (“Rule 2a–7”). In order to address liquidity needs in the auction rate securities market in response to recent auction failures, issuers and third parties seek to add liquidity facilities to support auction rate preferred stock and thereby to enable such stock to become eligible for purchase by money market funds under Rule 2a–7. Issuers and other interested parties reasonably expect that adding liquidity facilities to auction rate preferred stock and expanding the investor base for such stock to include money market fund investors will facilitate successful auctions.

The liquidity facilities for the auction rate preferred stock will be provided by

third-party liquidity providers with terms and parameters that are described generally herein (“liquidity facilities” and “liquidity providers,” respectively). In general, the liquidity facilities will have terms intended to make the auction rate preferred stock covered by such liquidity facilities eligible for purchase by money market funds under Rule 2a–7. All current and future holders of auction rate preferred stock covered by a liquidity facility will be designated third-party beneficiaries of the liquidity facility and will have the right to enforce the liquidity facility directly against the liquidity provider.

A liquidity facility on auction rate preferred stock will provide to holders a tender option or right to sell such stock to the liquidity provider at a price equal to the stock’s liquidation preference, plus accrued but unpaid dividends, if one of the following two “trigger events” occurs: (1) a failed auction or remarketing; or (2) a failure to renew, replace, or extend an existing liquidity facility then in place with the same liquidity provider or another liquidity provider by a date that occurs at least two auction or remarketing dates before the termination date of the existing liquidity facility then in place.

In some cases, a liquidity facility for auction rate preferred stock may include an agreement by the issuer of the auction rate preferred stock to redeem the stock purchased by the liquidity provider under the liquidity facility after a minimum holding period of six months and after continuous good faith efforts to resell the stock in the periodic auctions at a price equal to the liquidation preference, plus accrued but unpaid dividends. In other cases, a liquidity facility for auction rate preferred stock may be provided without any contractual rights of the liquidity provider to require the issuer of such stock to redeem or repurchase any such stock purchased by the liquidity provider under the liquidity facility.

Issuers anticipate that liquidity facilities typically, but not necessarily, will have a term of not more than 364 days for regulatory reasons. Issuers expect that they will be required to arrange for renewal, replacement, or extension of such liquidity facilities at least two auction or remarket-

ing dates before expiration of existing liquidity facilities so that liquidity facilities will cover the auction rate preferred stock without interruption to facilitate qualification for purchase by money market funds under Rule 2a-7.

Issuers expect that liquidity providers will charge commercially reasonable liquidity fees for liquidity facilities, including commitment fees for the availability of the liquidity facilities and draw fees for draws to purchase stock under the liquidity facilities.

### **SECTION 3. Scope and Application.**

**3.1 In General.** The IRS will not challenge the equity characterization of auction rate preferred stock, as described in § 2.1 of this notice, for Federal income tax purposes as a result of adding a liquidity facility, as described in § 2.2 of this notice, to support the auction rate preferred stock if the conditions of §§ 3.2 through 3.5 of this notice are met and if the conditions of either § 3.6 or § 3.7, as applicable, of this notice are met.

**3.2 Certain Overall Limits on Scope.** The issuer of the auction rate preferred stock must be an Eligible Issuer. The auction rate preferred stock had to be outstanding on February 12, 2008 (the date on which significant auction failures first occurred) or issued after that date to refinance, directly or indirectly, any auction rate preferred stock that was outstanding on that date, provided that the total par amount of the liquidation preferences on all such stock issued for refinancing purposes is no greater than the total par amount of the liquidation preferences on such outstanding refinanced stock. The liquidity facility must be an initial liquidity facility with respect to the auction rate preferred stock that is entered into after February 12, 2008 and on or before December 31, 2009 or a liquidity facility that renews, replaces, or extends such an initial liquidity facility, either directly or in a series of liquidity facilities.

**3.3 Certain Limits on Dividend Payments.** An issuer may pay dividends on auction rate preferred stock only if it duly declares such dividends and it pays such dividends out of legally available funds for payments in respect of stock under applicable state law.

**3.4 Unrelated Liquidity Providers and Related Party Definition.** The liquidity provider must be an “unrelated party” (as defined below) to the issuer of the auction rate preferred stock, as determined before taking into account any purchase of such stock by the liquidity provider under the liquidity facility. As used generally in this notice, the term “related party” means a party whose relationship to another party under § 267(b) or § 707(b) would result in a disallowance of losses, and an “unrelated party” is a party other than such a related party. Sections 3.6, 3.7, and 3.8 of this notice also include certain provisions that consider related parties to issuers for purposes of redemptions or repurchases of stock or partnership interests from liquidity providers.

**3.5 Certain Limits on Tender Options under a Liquidity Facility.** The liquidity facility must provide to holders of auction rate preferred stock a tender option or right to sell their stock to the liquidity provider only if one of the following two trigger events occurs: (1) a failed auction or remarketing; or (2) a failure to renew, replace, or extend an existing liquidity facility then in place with the same liquidity provider or another liquidity provider by a date that occurs at least two auction or remarketing dates before the termination date of the existing liquidity facility then in place.

**3.6 Certain Conditions on Rights of a Liquidity Provider to Require Redemption or Repurchase of Stock by Issuer.** In the case of a liquidity facility for auction rate preferred stock in which the liquidity provider has any contractual rights to require the issuer of such stock or a related party to such issuer to redeem or repurchase stock purchased by the liquidity provider under the liquidity facility, any such contractual rights must be limited by applicable state law restrictions on redemptions of stock that apply to any holder of the auction rate preferred stock (e.g., state law restrictions on redemptions of stock which would impair the issuer’s required capital, surplus, or total assets). The liquidity provider must hold auction rate preferred stock purchased under a liquidity facility for a minimum continuous holding period of at least six months before any redemption or repurchase of such stock by the issuer or a related party to the issuer. During this required six-month

holding period, the liquidity provider must offer such stock for resale at each periodic auction or remarketing duly held under the terms of the stock to set the dividend rate at a price equal to the par amount of the applicable liquidation preference, plus accrued but unpaid dividends. Except for any contractual rights provided to the liquidity provider to require the issuer of the auction rate preferred stock to redeem or repurchase stock purchased by the liquidity provider under the liquidity facility, the liquidity provider and any subsequent holder of such purchased stock otherwise must not have any greater rights with respect to such stock than other holders of the stock under the terms of the liquidity facility, the terms of such stock, or applicable state law.

**3.7 Certain Liquidity Facilities Without Rights of a Liquidity Provider to Require Redemption or Repurchase of Stock by Issuer.** In the case of a liquidity facility for auction rate preferred stock in which the liquidity provider has no contractual rights to require the issuer of such stock or a related party to such issuer to redeem or repurchase stock purchased by the liquidity provider under the liquidity facility, any redemption of such stock purchased by the liquidity provider or any subsequent holder of such purchased stock must be limited by applicable state law restrictions on redemptions of stock that apply to any holder of the auction rate preferred stock (e.g., state law restrictions on redemptions of stock which would impair the issuer’s required capital, surplus, or total assets). The liquidity provider and any subsequent holder of the auction rate preferred stock must not have any greater redemption rights or other rights against the issuer of such stock or a related party to such issuer with respect to such stock than other holders of such stock under the terms of the liquidity facility, the terms of such stock, or applicable state law.

**3.8 Certain Liquidating Partnerships That Hold Auction Rate Preferred Stock.** The IRS will not challenge the equity characterization of interests in a partnership for Federal income tax purposes as a result of adding a liquidity facility, as described in this § 3.8, to support the variable-rate interests in the partnership, as described in this § 3.8, if the conditions of this § 3.8 are met. The partnership must reasonably expect that at least 95 percent of the assets



of the partnership will consist of auction rate preferred stock described in § 2.1 of this notice that meets the conditions of § 3.2 and § 3.3 of this notice and temporary investments of proceeds received from dispositions of such stock pending redemption of partnership interests. The partnership must issue two classes of equity interests: (1) interests that are entitled to a preferred variable return on capital payable out of partnership income (“variable-rate interests”); and (2) residual inverse interests that are entitled to all remaining income of the partnership. The variable-rate interests must be supported by liquidity facilities that have terms and limitations that are comparable to liquidity facilities described in § 2.2 of this notice and that meet the conditions of § 3.2, § 3.4, § 3.5, and § 3.7 of this notice (*i.e.*, certain time limitations for liquidity facilities, limitations requiring liquidity providers to be unrelated parties to the partnership, permissible trigger events for liquidity facilities, and the absence of contractual rights of the liquidity provider to require the partnership or a related party to the partnership to redeem or repurchase the variable-rate interests in the partnership). The partnership must offer to sell the auction rate preferred stock that it holds at each periodic auction or remarketing duly held under the terms of the stock to set the dividend rates on such stock at a price

equal to the par amount of the applicable liquidation preference on such stock, plus accrued but unpaid dividends. The partnership must apply proceeds received from sales, redemptions, or other dispositions of auction rate preferred stock that it holds promptly to redeem partnership interests and the partnership must not reinvest such disposition proceeds, except only for temporary reinvestments of such disposition proceeds for a reasonable period pending redemption of partnership interests. A partnership that meets the requirements of this § 3.8 and that otherwise constitutes a partnership for Federal income tax purposes is treated as eligible to make a monthly closing election under Rev. Proc. 2003–84, 2003–2 C.B. 1159, as in effect on June 13, 2008 (“Rev. Proc. 2003–84”). In applying the 95 percent qualified income test under § 4.02 of Rev. Proc. 2003–84, any dividends paid by an Eligible Issuer under this notice shall be treated as qualified income for this purpose.

#### **SECTION 4. No Inferences on Law**

This notice provides administrative relief in furtherance of public policy in light of significant liquidity needs in the auction rate securities market as a result of recent significant auction failures in this market. Except with respect to the administrative

relief expressly provided in this notice, no inferences should be drawn from this notice regarding the debt or equity character of any security, material modifications or exchanges of any security under § 1001, or any other Federal tax issues regarding any security. In addition, this notice is not intended to address any other Federal tax issue implicated in the described transactions to add liquidity facilities to auction rate preferred stock.

#### **SECTION 5. Effective Date**

This notice is effective on June 13, 2008. This notice applies to auction rate preferred stock and to liquidity facilities within the time limitations and other limitations set forth in § 3.2 of this notice. This notice also applies to certain partnerships and liquidity facilities within comparable time limitations and other limitations set forth in § 3.2 of this notice as applied to certain partnerships and liquidity facilities under § 3.8 of this notice.

#### **SECTION 6. Drafting Information**

The principal author of this notice is Alfred C. Bishop of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, please contact Mr. Bishop at (202) 622–7930 (not a toll-free call).

**NOTE:** Use this revenue procedure to prepare Forms 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, for submission to Internal Revenue Service (IRS) using the FIRE (Filing Information Returns Electronically) System. Please read this publication carefully. Persons required to file may be subject to penalties if they do not follow the instructions in this revenue procedure.

**Note: Electronic filing is the ONLY acceptable method for filing Form 8027 with IRS/ECC-MTB.**

**Significant changes were made to the record layout. Please review this publication carefully before submitting your information.**

26 CFR 601.206: Tax forms and instructions.

**Rev. Proc. 2008–34**

**TABLE OF CONTENTS**

**Part A. General**

**SEC. 1. PURPOSE** ..... 15

**SEC. 2. NATURE OF CHANGES**..... 15

**SEC. 3. WHERE TO FILE AND HOW TO CONTACT THE IRS, ENTERPRISE COMPUTING CENTER —  
MARTINSBURG**..... 15

**SEC. 4. FILING REQUIREMENTS AND DUE DATES** ..... 16

**SEC. 5. FORM 8508, REQUEST FOR WAIVER FROM FILING INFORMATION RETURNS  
ELECTRONICALLY** ..... 17

**SEC. 6. FORM 4419, APPLICATION FOR FILING INFORMATION RETURNS ELECTRONICALLY** ..... 17

**SEC. 7. STATE ABBREVIATIONS** ..... 17

**SEC. 8. EXTENSION OF TIME**..... 18

**SEC. 9. PENALTIES** ..... 19

**SEC. 10. CORRECTED RETURNS, PAPER FORMS, AND COMPUTER-GENERATED FORMS** ..... 20

**SEC. 11. VALIDATION OF FORM 8027 AT IRS/ECC-MTB** ..... 20

**SEC. 12. DEFINITION OF TERMS** ..... 20

**Part B. Electronic Filing Specifications**

**SEC. 1. GENERAL** ..... 21

**SEC. 2. ELECTRONIC FILING APPROVAL PROCEDURE** ..... 22

**SEC. 3. TEST FILES** ..... 22

**SEC. 4. ELECTRONIC SUBMISSIONS**..... 22

**SEC. 5. PIN REQUIREMENTS** ..... 23

**SEC. 6. ELECTRONIC FILING SPECIFICATIONS** ..... 23

**SEC. 7. CONNECTING TO THE FIRE SYSTEM**..... 23

**SEC. 8. COMMON PROBLEMS AND QUESTIONS ASSOCIATED WITH ELECTRONIC FILING** ..... 25

**Part C. Filing Specifications and Record Layout**

**SEC. 1. RECORD FORMAT AND LAYOUT** ..... 26

## Part A. General

### Sec. 1. Purpose

.01 Form 8027 is used by large food or beverage establishments when the employer is required to make annual reports to the IRS on receipts from food or beverage operations and tips reported by employees.

**Note: All employees receiving \$20.00 or more a month in tips must report 100% of their tips to their employer.**

.02 The Internal Revenue Service Enterprise Computing Center — Martinsburg (IRS/ECC-MTB) has the responsibility of processing Forms 8027 submitted electronically. The purpose of this revenue procedure is to provide the specifications for filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, electronically. This revenue procedure is updated when legislative changes occur or reporting procedures are modified.

.03 This revenue procedure supersedes the following: Rev. Proc. 2006–29 published in Internal Revenue Bulletin 2006–27, dated July 3, 2006, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Magnetically or Electronically. This revenue procedure is effective for Forms 8027 due the last day of February 2009 and any returns filed thereafter.

### Sec. 2. Nature of Changes

Please read the publication carefully and in its entirety before attempting to prepare your electronic file for submission. Major changes have been emphasized by using italics. The changes are as follows:

.01 IRS/ECC-MTB no longer accepts any form of magnetic media. Electronic filing through the FIRE System is the only method to report Form 8027 to IRS/ECC-MTB.

.02 Title of Publication 1239 was changed to reflect the elimination of magnetic media filing.

.03 Form 4804, Transmittal of Information Returns Reported Magnetically, is obsolete. This form was only required for magnetic media reporting which is no longer a valid method of reporting information returns.

.04 Form 8809, Application for Extension of Time To File Information Returns, is available as a fill-in form on the FIRE System and is highly encouraged in lieu of the paper Form 8809. (See Part B, Sec. 1.)

.05 Additional and clarifying information was added to Part A, Sec. 4 concerning good faith agreements and determination letters.

.06 Several sections have been deleted due to the elimination of magnetic media filing and others combined for greater clarity. Please review the entire Publication for all relevant changes.

.07 Test files can be submitted through the FIRE System. See Part B, Sec. 3 for details.

.08 Special characters of any kind in name and address fields are not acceptable. See note with example in Part C, Sec. 01.

.09 The following changes were made to the record layout:

(a) An additional indicator was added to the Final Return Indicator field, position 371.

(b) An additional indicator was added to the Liable/Not Liable Indicator field, position 374.

(c) The new field, Tax Year, was added to positions 375–378.

(d) The new field, Prior Year Indicator, was added to position 379.

(e) The new field, Test File Indicator, was added to position 380.

(f) The new field, Record Sequence Number, was added to positions 411–418.

### Sec. 3. Where to File and How to Contact the IRS, Enterprise Computing Center — Martinsburg

.01 All correspondence concerning Forms 8027 processed at IRS/ECC-MTB should be sent to the following address:

IRS-Enterprise Computing Center — Martinsburg  
Information Reporting Program  
240 Murall Drive  
Kearneysville WV 25430

.02 Requests for paper forms and publications should be requested by calling the "Forms Only Number" toll-free number **1-800-TAX-FORM (1-800-829-3676)**.

.03 Questions pertaining to electronic filing of Forms W-2 **must** be directed to the Social Security Administration (SSA). Filers can call 1-800-SSA-6270 to obtain the telephone number of the SSA Employer Services Liaison Officers for their area.

.04 A taxpayer or authorized representative may request a copy of a tax return or a Form W-2 filed with a return by submitting Form 4506, Request for Copy of Tax Return, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**.

.05 Electronic Products and Services Support, Information Reporting Branch, Customer Service Section (IRB/CSS), located at IRS/ECC-MTB, answers electronic, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of business information returns (Forms 1096, 1098, 1099, 5498, 8027, and W-2G). IRB/CSS also answers questions relating

to the electronic filing of Forms 1042-S and to the tax law criteria and paper filing instructions for Forms W-2 and W-3. Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRB/CSS. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Time, by calling toll-free **1-866-455-7438** or via e-mail at [mccirp@irs.gov](mailto:mccirp@irs.gov). **Do not include SSNs or EINs in e-mails or attachments since this is not a secure line.** The Telecommunications Device for the Deaf (TDD) toll number is **304-267-3367**. Call as soon as questions arise to avoid the busy filing seasons at the end of January and February. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

**.06** The telephone numbers and web addresses for questions about specifications for electronic submissions are:

**Information Reporting Program Customer Service Section**

**TOLL-FREE 1-866-455-7438 or outside the U.S. 1-304-263-8700**  
e-mail at [mccirp@irs.gov](mailto:mccirp@irs.gov)

**304-267-3367 — TDD**  
(Telecommunication Device for the Deaf)

**Fax Machine**  
*Toll-free within the U.S. — 877-477-0572*  
**Outside the U.S. — 304-264-5602**

**Electronic Filing — FIRE System**  
<http://fire.irs.gov>

**TO OBTAIN FORMS:**  
**1-800-TAX-FORM (1-800-829-3676)**

[www.irs.gov](http://www.irs.gov) — IRS website access to forms

## **Sec. 4. Filing Requirements and Due Dates**

**.01** Section 6011(e)(2)(A) of the Internal Revenue Code requires that any person, including corporations, partnerships, individuals, estates, and trusts, required to file 250 or more information returns must file such returns electronically.

**.02** The filing requirements apply separately to both original and corrected returns.

**.03** The above requirements do not apply if you establish undue hardship (see Part A, Sec. 5).

**.04 DO NOT SUBMIT THE SAME INFORMATION ON PAPER FORMS THAT YOU SUBMIT ELECTRONICALLY, SINCE THIS WOULD RESULT IN DUPLICATE FILING.** This does not mean that corrected documents are not to be filed. If a return has been prepared and submitted improperly, you must file a corrected return as soon as possible. Refer to Part A, Sec. 10 for requirements and instructions for filing corrected returns.

**.05** *If an allocation of tips is based on a good faith agreement, a copy of this agreement must be submitted within 3 business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Mail or Fax a copy of this agreement using the contact information in Part A, Sec. 3. In your transmittal (e.g., fax transmittal or cover letter), include the words “Form 8027 attachment(s)” and the following information: name of establishment, establishment number, TCC and the tax year of the Form 8027.*

**.06** *Employers can request a lower rate (but not lower than 2%) for tip allocation purposes by submitting an application to the IRS. See Sec. 31.6053-3(h)(4) of Employment Tax Regulations. Detailed instruction for requesting a lower rate can be found in the Instructions for Form 8027. The IRS will issue a determination letter to notify the employer when and for how long a reduced rate is effective. If a lower rate is used on the Form 8027 based on the IRS determination letter, a copy of this letter must be submitted within 3 business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Mail or Fax a copy of this agreement using the contact information in Part A, Sec. 3. In your transmittal (e.g., fax transmittal or cover letter), include the words “Form 8027 attachment(s)” and the following information: name of establishment, establishment number, TCC and the tax year of the Form 8027.*

**.07** Electronic reporting to IRS for Form 8027 must be on a calendar year basis. The due date for paper reported Forms 8027 is the last day of February. However, Forms 8027 filed **electronically** are due March 31.

**.08** If the due date falls on a Saturday, Sunday, or legal holiday, filing Form 8027 on the next day that is not a Saturday, Sunday, or legal holiday will be considered timely.

## Sec. 5. Form 8508, Request for Waiver From Filing Information Returns Electronically

.01 If an employer is required to file electronically but fails to do so and does not have an approved waiver on record, the employer will be subject to a penalty of \$50 per return in excess of 250.

.02 If employers are required to file original or corrected returns electronically, but such filing would create a hardship, they may request a waiver from these filing requirements by submitting Form 8508, Request for Waiver From Filing Information Returns Electronically, to IRS/ECC-MTB. Form 8508 can be obtained on the IRS website at [www.irs.gov](http://www.irs.gov) or by calling toll-free 1-800-829-3676.

.03 Even though an employer may submit as many as 249 corrections on paper, IRS encourages electronic filing of corrections. Once the 250 threshold has been met, filers are required to submit any additional returns electronically. However, if a waiver for an original filing is approved, any corrections for the same type of returns will be covered under that waiver.

.04 Generally, only the employer may sign the Form 8508. A transmitter may sign if given power of attorney; however, a letter signed by the employer stating this fact must be attached to the Form 8508.

.05 A transmitter must submit a separate Form 8508 for each employer. Do not submit a list of employers.

.06 All information requested on the Form 8508 must be provided to IRS for the request to be processed.

.07 The waiver, if approved, will provide exemption from electronic filing for the current tax year only. Employers may not apply for a waiver for more than one tax year.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to IRS/ECC-MTB at least 45 days before the due date of the returns.

.10 All requests for a waiver should be sent using the following address:

IRS-Enterprise Computing Center — Martinsburg  
Information Reporting Program  
**Attn: Extension of Time Coordinator**  
240 Murall Drive  
Kearneysville, WV 25430

.11 **File Form 8508 for Forms W-2 with IRS/ECC-MTB, not SSA.**

.12 Waivers are evaluated on a case-by-case basis and are approved or denied based on criteria set forth under section 6011(e) of the Internal Revenue Code. The transmitter must allow a minimum of 30 days for IRS/ECC-MTB to respond to a waiver request.

.13 If a waiver request is approved, the transmitter should keep the approval letter on file.

.14 An approved waiver from filing Forms 8027 electronically does not provide exemption from all filing. The employer must timely file Form 8027 on acceptable paper forms with the Cincinnati Service Center. **The transmitter should also send a copy of the approved waiver to the Cincinnati Service Center where the paper returns are filed.**

## Sec. 6. Form 4419, Application for Filing Information Returns Electronically

.01 For the purposes of this revenue procedure, the EMPLOYER is the organization supplying the information and the TRANSMITTER is the organization preparing the electronic file and/or sending the file to IRS/ECC-MTB. The employer and the transmitter may be the same entity. Employers or their transmitters are required to complete Form 4419, Application for Filing Information Returns Electronically.

.02 Form 4419 can be submitted at any time during the year; however, it should be submitted to IRS/ECC-MTB at least 30 days before the due date of the return(s). IRS will act on an application and notify the applicant, in writing, of authorization to file. A five-character alpha/numeric Transmitter Control Code (TCC) will be assigned and included in an acknowledgment letter within 15 to 45 days of receipt of the application. Electronic returns may not be filed with IRS until the application has been approved and a TCC assigned. Include your TCC in any correspondence with IRS/ECC-MTB.

.03 If you file information returns other than Form 8027 electronically, you must obtain a separate TCC for those types of returns. The TCC assigned for Forms 8027 is to be used for the processing of these forms only.

.04 After you have received approval to file electronically, you do not need to reapply each year; however, notify IRS in writing if:

(a) You change your name or the name of your organization, so that your files may be updated to reflect the proper name;

(b) You discontinue filing for two years (your TCC may have been reassigned).

.05 IRS/ECC-MTB encourages filers who plan to submit for multiple employers to submit one application and to use one TCC for all employers.

.06 Approval to file does not imply endorsement by IRS/ECC-MTB of any computer software or of the quality of tax preparation services provided by a service bureau or software vendor.

## Sec. 7. State Abbreviations

.01 The following state and U.S. possession abbreviations are to be used when developing the state code portion of address fields.

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	No. Mariana Islands	MP
Alaska	AK	Louisiana	LA	Ohio	OH
American Samoa	AS	Maine	ME	Oklahoma	OK
Arizona	AZ	Marshall Islands	MH	Oregon	OR
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federated States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	(U.S.) Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY
Kansas	KS				

.02 Filers must adhere to the city, state, and ZIP Code format for U.S. addresses. This also includes American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

**Note: A Form 8027 is required only for establishments in the 50 states and the District of Columbia.**

## Sec. 8. Extension of Time

.01 An extension of time to file may be requested for Form 8027.

.02 A paper Form 8809, Application for Extension of Time To File Information Returns, should be submitted to IRS/ECC-MTB. This form may be used to request an extension of time to file information returns submitted on paper or electronically. All requests for an extension of time filed on Form 8809 should be sent using the following address:

IRS-Enterprise Computing Center - Martinsburg  
Information Reporting Program  
**Attn: Extension of Time Coordinator**  
240 Murall Drive  
Kearneysville, WV 25430

**Note: Due to the large volume of mail received by IRS/ECC-MTB and the time factor involved in processing Extension of Time (EOT) requests, it is imperative that the attention line be present on all envelopes or packages containing Form 8809.**

.03 The fill-in Form 8809 may be completed online via the FIRE System. (See Part B, Sec. 7, for instructions on connecting to the FIRE System.) At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form". This option is only used to request an automatic 30-day extension. Extension requests completed online via the FIRE System receive an instant response. If you are requesting an additional extension, you must submit a paper Form 8809. Requests for an additional extension of time to file information returns are not automatically granted. Requests for additional time are granted only in cases of extreme hardship or catastrophic event. The IRS will only send a letter of explanation approving or denying your additional extension request. (Refer to .06 of this Section.)

.04 Filers requesting an extension of time for multiple employers may submit one Form 8809 and attach a list of the employer names and their Employer Identification Numbers (EINs). **The listing must be attached to ensure the extension is recorded for all employers.** Form 8809 may be computer-generated or photocopied. Be sure that all the pertinent information is included.

**.05** Requests for extensions of time for multiple employers will be responded to with one approval letter, accompanied by a list of employers covered under that approval.

**.06 As soon as it is apparent** that an extension of time to file is needed, Form 8809 may be submitted. When granted, the extension will be for 30 days. It will take a minimum of 30 days for IRS/ECC-MTB to respond to an extension request. Under certain circumstances, a request for an extension of time could be denied. When a denial letter is received, any additional or necessary information may be resubmitted within 20 days. When requesting an extension of time, **do not** hold your files waiting for a response.

**.07** While very difficult to obtain, if an additional extension of time is needed, a second Form 8809 must be submitted before the end of the initial extension period. Line 7 on the form should be checked to indicate that an additional extension is being requested. A second 30-day extension will be approved only in cases of extreme hardship or catastrophic events.

**.08** Form 8809 must be postmarked no later than the due date of the return for which an extension is requested. If requesting an extension of time to file several types of forms, use one Form 8809, but the Form 8809 must be postmarked no later than the earliest due date. For example, if requesting an extension of time to file both Forms 8027 and 5498, submit Form 8809 postmarked on or before the last day of February.

**.09** If an extension request is approved, the approval letter should be kept on file. The approval letter or copy of the approval letter for extension of time should **not** be sent to IRS/ECC-MTB with the electronic file. When submitting Form 8027 on **paper only** to the Cincinnati Service Center, attach a copy of the approval letter. If an approval letter has not been received, send a copy of the timely filed Form 8809.

**.10** Request an extension for only one tax year.

**.11** The extension request must be signed by the employer or a person who is duly authorized to sign a return, statement or other document for the employer.

**.12** Failure to properly complete and sign the Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions on the back of the Form 8809.

**.13** Form 8809 may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)** or **downloading from [www.irs.gov](http://www.irs.gov)**.

**Note: An extension of time to file is not an extension to furnish Form W-2 to the employee.**

**.14** Request an extension of time to furnish the statements to recipients of Forms W-2 by submitting a letter to IRS/ECC-MTB (See Part A, Sec. 3) containing the following information:

- (a) Employer name
- (b) EIN
- (c) Address
- (d) Type of return (W-2)
- (e) Specify that the extension request is to provide W-2 statements to recipients.
- (f) Reason for delay
- (g) Signature of employer or person duly authorized.

Requests for an extension of time to furnish the statements for Forms W-2 to recipients are not automatically approved; however, if approved, generally an extension will allow a maximum of 30 additional days from the due date to furnish the statements to the recipients. The request must be postmarked no later than the date on which the statements are due to the recipients.

## **Sec. 9. Penalties**

**.01** The Revenue Reconciliation Act of 1989 changed the penalty provisions for any documents, including corrections, which are filed after the original filing date for the return. The penalty for failure to file correct information returns is "time sensitive," in that prompt correction of failures to file, or prompt correction of errors on returns that were filed, can lead to reduced penalties.

- The penalty generally is \$50 for each information return that is not filed, or is not filed correctly, by the prescribed filing date, with a maximum penalty of \$250,000 per year (\$100,000 for certain small businesses with average annual gross receipts, over the most recent 3-year period, not in excess of \$5,000,000). The penalty generally is reduced to:
- \$30 for each failure to comply if the failure is corrected more than 30 days after the return was due, but on or before August 1 of the calendar year in which the return was due, with a maximum penalty of \$150,000 per year (\$50,000 for certain small businesses with average annual gross receipts, over the most recent 3-year period, not in excess of \$5,000,000).
- \$15 for each failure to comply if the failure is corrected within 30 days after the date the return was due, with a maximum penalty of \$75,000 per year (\$25,000 for certain small businesses with average annual gross receipts, over the most recent 3-year period, not in excess of \$5,000,000).

**.02** Penalties can be waived if failures were due to reasonable cause and not to willful neglect. In addition, section 6721(c) of the Code provides a de minimis rule that if:

- (a) information returns have been filed but were filed with incomplete or incorrect information, and

(b) the failures are corrected on or before August 1 of the calendar year in which the returns were due, then the penalty for filing incorrect returns (but not the penalty for filing late) will not apply to the greater of 10 returns or one-half of 1 percent of the total number of information returns you are required to file for the calendar year.

**.03 Intentional Disregard of Filing Requirements** — If any failure to file a correct information return is due to intentional disregard of the filing and correct information requirements, the penalty is at least \$100 per information return with no maximum penalty.

## Sec. 10. Corrected Returns, Paper Forms, and Computer-Generated Forms

**.01** If returns must be corrected, approved electronic filers must provide such corrections electronically for 250 or more forms. If your information is filed electronically, corrected returns are identified by using the “Corrected 8027 Indicator” in field position 370 of the employer record.

**.02** A correction file must be identified by entering the correction indicator “G” in position 370.

**.03** When replacing a correction file that was bad, you must submit a replacement file. Since you are replacing a correction file you must enter the correction indicator “G” in position 370.

**.04** If corrections are not submitted electronically, employers must submit them on official Forms 8027. Substitute forms that have been previously approved by IRS, or computer-generated forms that are exact facsimiles of the official form (except for minor page size or print style deviations), may be submitted without obtaining IRS approval before using the form.

**.05** Employers/establishments may send corrected paper Forms 8027 to IRS at the address shown in Part A, Sec. 10.06. Corrected paper returns are identified by marking the “AMENDED” check box on Form 8027.

**.06** If you are filing more than one paper Form 8027, you must attach a completed Form 8027-T, Transmittal of Employer’s Annual Information Return of Tip Income and Allocated Tips, to the Forms 8027 and send to:

Department of the Treasury  
Internal Revenue Service Center  
Cincinnati, OH 45999

IRS/ECC-MTB processes Forms 8027 submitted electronically only. Do not send paper Forms 8027 to IRS/ECC-MTB.

**.07** If part of a submission is filed electronically and the rest of the submission is filed on paper Forms 8027, send the paper forms to the Cincinnati Service Center. For example, you filed your Forms 8027 electronically with IRS/ECC-MTB, and later you found that some of the forms you filed need correcting. Because of the low volume of corrections, you submit the corrections on paper Forms 8027. You must send these corrected Forms 8027 along with Form 8027-T to the Cincinnati Service Center.

## Sec. 11. Validation of Form 8027 at IRS/ECC-MTB

**.01** The accuracy of data reported on Form 8027 will be validated at the IRS Service Center. All fields indicated as “Required” in the record layout must contain valid information. If the IRS identifies an error, you will be notified and required to provide correct information.

**.02** The address for the establishment must agree with the state and ZIP Code. If there are inconsistencies or if the ZIP code does not agree with the address the record will error out.

**.03** All alpha characters must be in upper case.

**.04** The following is clarification of monetary amount requirements:

(a) Charged Receipts (positions 260–271) must exceed Charged Tips (positions 248–259).

(b) Total Tips Reported (positions 308–319) must equal the combined amount of the Indirect Tips (positions 284–295) and Direct Tips (positions 296–307).

(c) Gross Receipts (positions 320–331) must exceed all other monetary amounts with the exception of Charged Receipts. It is possible to equal Charged Receipts if all transactions were conducted on charge cards.

(d) The Tip Percentage Rate Times Gross Receipts (332–343) must equal the Gross Receipts times the Tip Rate. Normally, the Tip Rate is 8%. The Tip Rate must be entered as 0800 in positions 344–347 unless you have been granted a lower rate by the IRS.

(e) Generally, you would have allocated tips if the Total Tips Reported (positions 308–319) is less than the Tip Percentage Rate Times Gross Receipts (positions 332–343). The difference must be entered as Allocated Tips (positions 348–359).

## Sec. 12. Definition of Terms

ELEMENT	DESCRIPTION
Correction	A correction is an information return submitted by the employer/transmitter to correct an information return that was previously submitted to and successfully processed by IRS, but contained erroneous information.



ELEMENT	DESCRIPTION
EIN	A nine-digit Employer Identification Number which has been assigned by IRS to the reporting entity.
Employees hours worked	The average number of employee hours worked per business day during a month is figured by dividing the total hours worked during the month by all your employees who are employed in a food or beverage operation by the average number of days in the month that each food or beverage operation at which these employees worked was open for business.
Employer	The organization supplying their information. Use the same name and EIN you used on your Forms W-2 and Forms 941.
Establishment	A large food or beverage establishment that provides food or beverage for consumption on the premises; where tipping is a customary practice; and where there are normally more than 10 employees who work more than 80 hours on a typical business day during the preceding calendar year.
File	For the purpose of this revenue procedure, a file is the Form 8027 information submitted electronically by an Employer or Transmitter.
More than 10 employees	An employer is considered to have more than 10 employees on a typical business day during the calendar year if half the sum of: the average number of employee hours worked per business day in the calendar month in which the aggregate gross receipts from food and beverage operations were greatest, <b>plus</b> the average number of employee hours worked per business day in the calendar month in which the total aggregate gross receipts from food and beverage operations were the least, <b>equals</b> more than 80 hours.
Replacement	A replacement is an information return file sent by the employer/transmitter <b>at the request</b> of IRS/ECC-MTB because of errors encountered while processing the filer's original file or correction file.
Transmitter	Person or organization preparing electronic file(s). May be employer or agent of employer.
Transmitter Control Code (TCC)	A five-character alpha/numeric code assigned by IRS to the transmitter prior to actual filing electronically. This number is inserted in the record and must be present. An application (Form 4419) must be filed with IRS to receive this number.

## Part B. Electronic Filing Specifications

**Note: The FIRE System DOES NOT provide fill-in forms, except for Form 8809, Application for Extension of Time To File Information Returns. Filers must program files according to the Record Layout Specifications contained in this publication.**

### Sec. 1. General

**.01** Electronic filing of Forms 8027 information returns, originals and replacements, is a reporting method for filers submitting 250 or more Forms 8027. Payers who are under the filing threshold requirement, are encouraged to file electronically.

**.02** All electronic filing of information returns are received at IRS/ECC-MTB via the FIRE (Filing Information Returns Electronically) System. To connect to the FIRE System, point your browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only.

**.03** The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each program. Only inquiries concerning electronic filing of information returns should be directed to IRS/ECC-MTB.

**.04** Files submitted to IRS/ECC-MTB electronically must be in standard ASCII code. Do not submit paper forms with the same information as electronically submitted files. This would create duplicate reporting resulting in penalty notices.

**.05** Form 8809, Application for Extension of Time To File Information Returns, is available as a fill-in form via the FIRE System. If you do not already have a User ID and password refer to Section 7. At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form". This option is only used to request an automatic 30-day extension and must be completed by the due date of the return for each payer requesting an extension. Print the approval page for your records. Refer to Part A, Sec. 8 for additional details.

## Sec. 2. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) prior to submitting files electronically. Filers who previously had a TCC for magnetic media filing of Form 8027 may use their assigned TCC for electronic filing. Refer to Part A, Sec. 6, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers assign their own user ID, password and PIN (Personal Identification Number) and do not need prior or special approval. See Part B, Sec. 5, for more information on the PIN.

.03 If a filer is submitting files for more than one TCC, it is not necessary to create a separate logon and password for each TCC.

.04 For all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be 8 alpha/numeric characters containing at least 1 uppercase, 1 lowercase, and 1 numeric. However, filers who forget their password or PIN, can call **toll-free 1-866-455-7438** for assistance. Users can change their passwords at any time from the main menu. The FIRE System may require users to change their passwords on a yearly basis.

## Sec. 3. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year 2008 (returns to be filed in 2009), it **must** be submitted to IRS/ECC-MTB **no earlier than** November 1, 2008, and **no later than** February 15, 2009.

.02 Filers who encounter problems while transmitting the electronic test file can contact IRS/ECC-MTB **toll-free 1-866-455-7438** for assistance.

.03 Within 5 days, the results of the electronic transmission will be e-mailed to you providing you provide an accurate e-mail address on the "Verify Your Filing Information" screen. If you are using e-mail filtering software, configure your software to accept e-mail from [fire@irs.gov](mailto:fire@irs.gov) and [irs.e-helpmail@irs.gov](mailto:irs.e-helpmail@irs.gov). If after receiving the e-mail it indicates that your file is bad, you must log into the FIRE System and go to the CHECK FILE STATUS area of the FIRE System to determine what the errors are in your file. If you do not receive an e-mail in 5 business days, log back into the FIRE System and click on CHECK FILE STATUS to view the results of your file.

## Sec. 4. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/ECC-MTB 24 hours a day, 7 days a week. Technical assistance will be available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time by calling **toll-free 1-866-455-7438**.

.02 **The FIRE System will be down from the last week of December through the first week of January.** This allows IRS/ECC-MTB to update its system to reflect current year changes.

.03 If you are sending files larger than 10,000 records electronically, data compression is encouraged. If you are considering sending files larger than 5 million records, please contact IRS/ECC-MTB for specifics. WinZip and PKZip are the only acceptable compression packages. IRS/ECC-MTB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon the type of connection to the Internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.**

.04 Transmitters may create files using self assigned files name(s). Files submitted electronically will be assigned a new unique file name by the FIRE System. The file name assigned by the FIRE System will consist of submission type (ORIG [original], TEST [test], CORR [correction], and REPL [replacement]), the filer's TCC and a four-digit number sequence. The sequence number will be incremented for every file sent. For example, if it is your first original file for the calendar year and your TCC is 44444, the IRS assigned file name would be ORIG.44444.0001. **Record the file name.** This information will be needed by IRS/ECC-MTB to identify the file, if assistance is required.

.05 If a file was submitted timely and is bad, the filer will have up to 60 days from the date the file was sent to transmit an acceptable file. If an acceptable file is not received within 60 days, then the payer could be subject to late filing penalties.

.06 The following definitions have been provided to help distinguish between a correction and a replacement:

- A **correction** is an information return submitted by the transmitter to correct an information return that was previously submitted to and successfully processed by IRS/ECC-MTB, but contained erroneous information. (See Note.)

**Note: Corrections should only be made to forms that have been submitted incorrectly, not the entire file.**

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE System indicated the original/correction file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE System. (See Note.)

**Note: Filers should never transmit anything to IRS/ECC-MTB as a "Replacement" file unless the CHECK FILE STATUS option on the FIRE System indicates the file is bad.**

.07 *Prior year data may be submitted, however, each tax year must be submitted in a separate file transmission.*

## Sec. 5. PIN Requirements

.01 Filers will be prompted to create a PIN consisting of 10 numeric characters when establishing their initial logon name and password.

.02 The PIN is required each time an ORIGINAL, CORRECTION, or REPLACEMENT file is sent electronically and is permission to release the file. It is not needed for a TEST file. An authorized agent may enter their PIN, however, the payer is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If you forget your PIN, please call **toll-free 1-866-455-7438** for assistance.

## Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 8027, 1098, 1099, 5498, W-2G, and 1042-S.

.02 A transmitter must have a TCC (see Part A, Sec. 6) before a file can be transmitted.

.03 Within 5 days, the results of the electronic transmission will be e-mailed to you providing you provide an accurate e-mail address on the "Verify Your Filing Information" screen. If you are using e-mail filtering software, configure your software to accept e-mail from [fire@irs.gov](mailto:fire@irs.gov) and [irs.e-helpmail@irs.gov](mailto:irs.e-helpmail@irs.gov). If after receiving the e-mail it indicates that your file is bad, you must log into the FIRE System and go to the CHECK FILE STATUS area of the FIRE System to determine what the errors are in your file. If you do not receive an e-mail in 5 business days, log back into the FIRE System and click on CHECK FILE STATUS to view the results of your file.

## Sec. 7. Connecting to the FIRE System

.01 Point your browser to <http://fire.irs.gov> to connect to the FIRE System.

.02 If you are running pop-up blocking software, disable it if you have problems uploading the file.

.03 Before connecting, have your TCC and TIN available.

.04 Your browser must support SSL 128-bit encryption.

**First time connection to the FIRE System** (If you have logged on previously, skip to Subsequent Connections to the FIRE System.)

Click "**Create New Account**".

Fill out the registration form and click "**Submit**".

Enter your **User ID** (most users logon with their first and last name).

Enter and verify your **password** (the password is user assigned and must be 8 alpha/numerics, containing at least 1 uppercase, 1 lowercase and 1 numeric). FIRE may require you to change the password once a year.

Click "**Create**".

If you receive the message "**Account Created**", click "**OK**".

Enter and verify your 10-digit self-assigned PIN (Personal Identification Number).

Click "**Submit**".

If you receive the message "**Your PIN has been successfully created!**", click "**OK**".

Read the bulletin(s) and/or click "**Click here to continue**".

### **Subsequent connections to the FIRE System**

Click "**Log On**".

Enter your **User ID** (most users logon with their first and last name).

Enter your **password** (the password is user assigned and is case sensitive).

Read the bulletins and/or click "**Click here to continue**".

### **Uploading your file to the FIRE System**

At Menu Options:

Click "**Send Information Returns**".

Enter your **TCC**:

Enter your **TIN**:

Click "**Submit**".

## Uploading your file to the FIRE System

The system will then display the company name, address, city, state, ZIP Code, phone number, contact and e-mail address. This information will be used to e-mail the transmitter regarding this transmission. Update as appropriate and/or Click "**Accept**".

**Note: Please ensure that the e-mail is accurate so that the correct person receives the e-mail and it does not return to us undeliverable. If you are using SPAM filtering software, please configure it to allow an e-mail from [fire@irs.gov](mailto:fire@irs.gov) and [irs.e-helpmail@irs.gov](mailto:irs.e-helpmail@irs.gov).**

Click one of the following:

**Original File**

**Correction File**

**Test File** (This option will only be available November through mid-February.)

**Replacement File** (Click on the file to be replaced.)

- **Electronic Replacement** (file was originally transmitted on this system)

Click the file to be replaced.

- **Mag Media Replacement** (file was originally sent on some type of magnetic media). Enter the alpha character from the letter (L-2494) that was returned. It is located on the top right on the letter under "Refer Reply To:" For example, if the letter indicates TCC 44444A, the alpha code that would be entered is "A". Click "**Submit**".

Enter your 10-digit PIN.

Click "**Submit**".

Click "**Browse**" to locate the file and open it.

Click "**Upload**".

**When the upload is complete, the screen will display the total bytes received and tell you the name of the file you just uploaded.**

If you have more files to upload for that TCC:

Click "**File Another?**"; otherwise,

Click "**Main Menu**".

**If you do not receive an e-mail in 5 business days or your e-mail indicates the file is bad, log back into the FIRE System and click on CHECK FILE STATUS to view the results of your file.**

## Checking your FILE STATUS

At the Main Menu:

Click "**Check File Status**".

Enter your **TCC**:

Enter your **TIN**:

Click "**Search**".

If "Results" indicate:

**"Good, Released"** — File has been released to our mainline processing.

**"Bad"** — Correct the errors and timely resubmit the file as a "replacement".

## Checking your FILE STATUS

**“Not yet processed”** — File has been received, but we do not have results available yet. Please check back in a few days.

Click on the desired file for a detailed report of your transmission.

When you are finished, click on **Main Menu**.

Click **“Log Out”**.

Close your Web Browser.

## **Sec. 8. Common Problems and Questions Associated with Electronic Filing**

.01 The following are the major errors associated with electronic filing:

### NON-FORMAT ERRORS

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#### **1. SPAM filters are not set to receive e-mail from [fire@irs.gov](mailto:fire@irs.gov) and [irs.e-helpmail@irs.gov](mailto:irs.e-helpmail@irs.gov).**

*If you want to receive e-mails concerning your files, processing results, reminders and notices, set your SPAM filter to receive e-mail from [fire@irs.gov](mailto:fire@irs.gov) and [irs.e-helpmail@irs.gov](mailto:irs.e-helpmail@irs.gov).*

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#### **2. Incorrect e-mail provided.**

*When the “Verify Your Filing Information” screen is displayed, make sure your correct e-mail is displayed. If not, please update with the correct e-mail.*

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#### **3. Transmitter does not check the FIRE System to determine file acceptability.**

The results of your file transfer are posted to the FIRE System within 5 business days. If the correct e-mail address was provided on the “Verify Your Filing Information” screen when the file was sent, an e-mail will be sent regarding your FILE STATUS. If the results in the e-mail indicate “Good, Released” and you agree with the “Count of Payees”, then you are finished with this file. If you have any other results, please follow the instructions in the Check File Status option. If the file contains errors, you can get an online listing of the errors. Date received and number of payee records is also displayed.

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#### **4. Replacement file is not submitted timely.**

If your file is bad, correct the file and timely resubmit as a replacement.

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#### **5. Transmitter compresses several files into one.**

Only compress one file at a time. For example, if you have 10 uncompressed files to send, compress each file separately and send 10 separate compressed files.

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#### **6. Transmitter sends an original file that is good, and then sends a correction file for the entire file even though there are only a few changes.**

The correction file, containing the proper coding, should only contain the records requiring correction, not the entire file.

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#### **7. File is formatted as EBCDIC.**

All files submitted electronically must be in standard ASCII code. All alpha characters must be uppercase.

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#### **8. Transmitter has one TCC number, but is filing for multiple companies, which TIN should be used when logging into the system to send the file?**

When sending the file electronically, you will need to enter the TIN of the company assigned to the TCC. When you upload the file, it will contain the TINs for the other companies that you are filing for. This is the information that will be passed forward.

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#### **9. Transmitter sent the wrong file, what should be done?**

Call us as soon as possible toll-free 1-866-455-7438. We may be able to stop the file before it has been processed. **Please do not send a replacement for a file that is marked as a good file.**

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## Part C. Filing Specifications and Record Layout

.01 If the file does not meet these specifications, IRS/ECC-MTB will request a replacement file. Filers are encouraged to submit a test prior to submitting the actual file. Contact IRS/ECC-MTB toll-free 1-866-455-7438 for further information.

*Note 1: For tax year 2008 filed in calendar year 2009, IRS/ECC-MTB will no longer accept tape cartridges. Electronic filing will be the ONLY acceptable method for filing Form 8027.*

*Note 2: The only allowable characters in name and address fields are alphas, numeric characters, and blanks. Punctuation such as periods, hyphens, ampersands, slashes and commas are not allowed and will cause your file to be rejected. For example, O'Hurley's Bar & Grill, 210 N. Queen St., Suite #300 must be entered as OHurleys Bar Grill 210 N Queen St Suite 300.*

### Sec. 1. Record Format and Layout

#### FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
1	Establishment Type	1	<p><b>Required.</b> This number identifies the kind of establishment. Enter the number which describes the type of establishment, as shown below:</p> <ol style="list-style-type: none"> <li>1. for an establishment that serves evening meals only (with or without alcoholic beverages).</li> <li>2. for an establishment that serves evening meals and other meals (with or without alcoholic beverages).</li> <li>3. for an establishment that serves only meals other than evening meals (with or without alcoholic beverages).</li> <li>4. for an establishment that serves food, if at all, only as an incidental part of the business of serving alcoholic beverages.</li> </ol>
2-6	Establishment Serial Numbers	5	<p><b>Required.</b> These five-digit Serial Numbers are for identifying individual establishments of an employer reporting under the same EIN. The employer shall assign each establishment a unique number. <b>Numeric characters only.</b></p>
7-46	Establishment Name	40	<p><b>Required.</b> Enter the name of the establishment. Left-justify and fill unused positions with blanks. <b>Allowable characters are alphas, numeric, and blanks.</b></p>
47-86	Establishment Street Address	40	<p><b>Required.</b> Enter the mailing address of the establishment. Street address should include number, street, apartment or suite number (use P O Box only if mail is not delivered to street address). Left-justify and blank fill. <b>Allowable characters are alphas, numeric, and blanks.</b></p>
87-111	Establishment City	25	<p><b>Required.</b> Enter the city, town, or post office. Left-justify and blank fill. <b>Allowable characters are alphas, numeric, and blanks.</b></p>
112-113	Establishment State	2	<p><b>Required.</b> Enter the state code from the state abbreviations table in Part A, Sec. 7.</p>
114-122	Establishment ZIP Code	9	<p><b>Required.</b> Enter the complete nine-digit ZIP Code of the establishment. If using a five-digit ZIP Code, left-justify the five-digit ZIP Code and fill the remaining four positions with blanks.</p>
<p><b>Note: Must be nine numeric characters or 5 numeric characters and four blanks. Do not enter the dash.</b></p>			
123-131	Employer Identification Number	9	<p><b>Required.</b> Enter the nine-digit number assigned to the employer by IRS. <b>Do not enter hyphens, alphas, all 9s or all zeros.</b></p>
132-171	Employer Name	40	<p><b>Required.</b> Enter the name of the employer as it appears on your tax forms (e.g., Form 941). Any extraneous information must be deleted. Left-justify and blank fill. <b>Allowable characters are alphas, numeric, and blanks.</b></p>

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**FORM 8027 RECORD FORMAT**

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Field Position	Field Title	Length	Description and Remarks
172–211	Employer Street Address	40	<b>Required.</b> Enter mailing address of employer. Street address should include number, street, apartment or suite number (use P O Box only if mail is not delivered to street address). Left-justify and blank fill. <b>Allowable characters are alphas, numeric, and blanks.</b>
212–236	Employer City	25	<b>Required.</b> Enter the city, town, or post office. Left-justify and blank fill. <b>Allowable characters are alphas, numeric, and blanks.</b>
237–238	Employer State	2	<b>Required.</b> Enter the state code from the state abbreviations table in Part A, Sec. 7.
239–247	Employer ZIP Code	9	<b>Required.</b> Enter the complete nine-digit ZIP Code of the establishment. If using a five-digit ZIP Code, left-justify the five-digit ZIP Code and fill the remaining four positions with blanks.
<b>Note: Must be nine numeric characters or 5 numeric characters and four blanks. Do not enter the dash.</b>			
248–259	Charged Tips	12	<b>Required.</b> Enter the total amount of tips that are shown on charge receipts for the calendar year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
260–271	Charged Receipts	12	<b>Required.</b> Enter the total sales for the calendar year other than carry-out sales or sales with an added service charge of 10 percent or more, that are on charge receipts with a charged tip shown. This includes credit card charges, other credit arrangements, and charges to a hotel room unless the employer's normal accounting practice consistently excludes charges to a hotel room. Do not include any state or local taxes in the amount reported. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
272–283	Service Charge Less Than 10 Percent	12	<b>Required.</b> Enter the total amount of service charges less than 10 percent added to customer's bills and were distributed to your employees for the calendar year. In general, service charges added to the bill are not tips since the customer does not have a choice. These service charges are treated as wages and are included on Form W-2. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
284–295	Indirect Tips Reported	12	<b>Required.</b> Enter the total amount of tips reported by indirectly tipped employees (e.g., bussers, service bartenders, cooks) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
296–307	Direct Tips Reported	12	<b>Required.</b> Enter the total amount of tips reported by directly tipped employees (e.g., servers, bartenders) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>

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**FORM 8027 RECORD FORMAT**

<b>Field Position</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
308–319	Total Tips Reported	12	<b>Required.</b> Enter the total amount of tips reported by all employees (both indirectly tipped and directly tipped) for the calendar year. Do not include tips received in December of the prior tax year but not reported until January. Include tips received in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
320–331	Gross Receipts	12	<b>Required.</b> Enter the total gross receipts from the provision of food and/or beverages for this establishment for the calendar year. Do not include receipts for carry-out sales or sales with an added service charge of 10 percent or more. Do not include in gross receipts charged tips (field positions 248–259) shown on charge receipts unless you have reduced the cash sales amount because you have paid cash to tipped employees for tips they earned that were charged. Do not include state or local taxes in gross receipts. If you do not charge separately for food or beverages along with other services (such as a package deal for food and lodging), make a good faith estimate of the gross receipts attributable to the food or beverages. This estimate must reflect the cost of providing the food or beverages plus a reasonable profit factor. Include the retail value of complimentary food or beverages served to customers if tipping for them is customary and they are provided in connection with an activity engaged in for profit whose receipts would not be included as gross receipts from the provision of food or beverages (e.g., complimentary drinks served to customers at a gambling casino). Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
332–343	Tip Percentage Rate Times Gross Receipts	12	<b>Required.</b> Enter the amount determined by multiplying Gross Receipts for the year (field positions 320–331) by the Tip Percentage Rate (field positions 344–347). For example, if the value of Gross Receipts is “000045678900” and Tip Percentage Rate is “0800”, multiply \$456,789.00 by .0800 to get \$36,543.12 and enter “000003654312”. If tips are allocated using other than the calendar year, enter zeros; this may occur if you allocated tips based on the time period for which wages were paid or allocated on a quarterly basis. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
344–347	Tip Percentage Rate	4	<b>Required.</b> Enter 8 percent (0800) unless a lower rate has been granted by the IRS. <i>The determination letter must follow the electronic submission. See Part A, Sec. 4, .06 for details.</i> <b>Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>
348–359	Allocated Tips	12	<b>Required.</b> If Tip Percentage Rate times Gross Receipts (field positions 332–343) is greater than Total Tips Reported (field positions 308–319), then the difference becomes Allocated Tips. Otherwise, enter all zeros. If tips are allocated using other than the calendar year, enter the amount of allocated tips from your records. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. <b>If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollars signs, or commas.</b>



**FORM 8027 RECORD FORMAT**

<b>Field Position</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
360	Allocation Method	1	<b>Required.</b> Enter the allocation method used if Allocated Tips (field positions 348–359) are greater than zero as follows: 0) if allocated tips are equal to zero. 1) for allocation based on hours worked. 2) for allocation based on gross receipts. 3) for allocation based on a good faith agreement. <i>The good faith agreement must follow the electronic submission. See Part A, Sec. 4, .05 for details.</i>
<b>Note: The method of allocation of tips based on the number of hours worked as described in Section 31.6053–3(f)(1)(iv) may be utilized only by an employer that employs less than the equivalent of 25 full-time employees at the establishment during the payroll period. Section 31.6053–3(j)(19) provides that an employer is considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period if the average number of employee hours worked per business day during the payroll period is less than 200 hours.</b>			
361–364	Number of Directly Tipped Employees	4	<b>Required.</b> Enter the total number (must be greater than zero) of directly tipped employees employed by the establishment for the calendar year. Right-justify and zero fill. <b>Numeric characters only.</b>
365–369	Transmitter Control Code (TCC)	5	<b>Required.</b> Enter the 5-digit Transmitter Control Code assigned by the IRS.
370	Corrected 8027 Indicator	1	<b>Required.</b> Enter blank for original return. Enter “G” for corrected return. A corrected return must be a complete new return replacing the original return.
371	Final Return Indicator	1	<b>Required.</b> Enter the appropriate code: <i>F) if this is the last time you will file Form 8027</i> <i>N) if this is <b>not</b> the last time you will file Form 8027</i> <i>Do not enter a blank.</i>
372	Charge Card Indicator	1	<b>Required.</b> Enter the appropriate code: 1) if your establishment accepts credit cards, debit cards or other charges. 2) if your establishment does not accept credit cards, debit cards or other charges.
373	ATIP Indicator	1	<b>Required.</b> Enter “T” if you are participating in the Attributed Tip Income Program; otherwise, enter a blank.
374	Liable/Not Liable Indicator	1	<b>Required.</b> Enter the appropriate code: <i>N) if you are not liable to file Form 8027</i> <i>Y) if you are liable to file Form 8027</i> <i>Do not enter a blank.</i>
375–378	Tax Year	4	<b>Required.</b> Enter the 4-digit tax year.
379	Prior Year Indicator	1	<b>Required.</b> Enter a “P” <b>only</b> if reporting prior year data; otherwise, enter a blank.
380	Test File Indicator	1	<b>Required for test files only.</b> Enter “T” if this is a test file; otherwise, enter a blank.
381–410	Reserved	30	Enter blanks.

**FORM 8027 RECORD FORMAT**

<b>Field Position</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
411-418	<i>Record Sequence Number</i>	8	<b>Required.</b> Enter the number of the record as it appears within your file. The first record in your file will be "1" and each record, thereafter, must be incremented by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example the first record in the file would appear as "00000001", followed by "00000002", "00000003" and so on until you reach the final record of the file.
419-420	Blank	2	Enter blanks or CR/LF characters.

**FORM 8027 RECORD LAYOUT**

Establishment Type	Establishment Serial Numbers	Establishment Name	Establishment Street Address
1	2-6	7-46	47-86

Establishment City	Establishment State	Establishment ZIP Code	Employer Identification Number
87-111	112-113	114-122	123-131

Employer Name	Employer Street Address	Employer City	Employer State
132-171	172-211	212-236	237-238

Employer ZIP Code	Charged Tips	Charged Receipts	Service Charge Less Than 10 Percent
239-247	248-259	260-271	272-283

Indirect Tips Reported	Direct Tips Reported	Total Tips Reported	Gross Receipts
284-295	296-307	308-319	320-331

Tip Percentage Rate Times Gross Receipts	Tip Percentage Rate	Allocated Tips	Allocation Method
332-343	344-347	348-359	360

Number of Directly Tipped Employees	Transmitter Control Code (TCC)	Corrected 8027 Indicator	Final Return Indicator
361-364	365-369	370	371

**FORM 8027 RECORD LAYOUT – Continued**

<i>Charge Card Indicator</i>	<i>ATIP Indicator</i>	<i>Liable/Not Liable Indicator</i>	<i>Tax Year</i>	<i>Prior Year Indicator</i>
372	373	374	375–378	379

<i>Test File Indicator</i>	<i>Reserved</i>	<i>Record Sequence Number</i>	<i>Blank or CR/LF</i>
380	381–410	411–418	419–420

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Tax Return Preparer Penalties Under Sections 6694 and 6695

#### REG-129243-07

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (Code) and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007. The proposed regulations affect tax return preparers and provide guidance regarding the amended provisions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 18, 2008. Outlines of topics to be discussed at the public hearing scheduled for Monday, August 18, 2008, must be received by Monday, August 4, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-129243-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-129243-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/Regs> (IRS REG-129243-07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael E. Hara, (202) 622-4910, and Matthew S. Cooper, (202) 622-4940; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 18, 2008. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information;

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

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

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

The collection of information in this proposed regulation is in §§1.6060-1(a)(1), 1.6107-1,

1.6694-2(c)(3), 20.6060-1(a)(1), 20.6107-1, 25.6060-1(a)(1), 25.6107-1, 26.6060-1(a)(1), 26.6107-1, 31.6060-1(a)(1), 31.6107-1, 40.6060-1(a)(1), 40.6107-1, 41.6060-1(a)(1), 41.6107-1, 44.6060-1(a)(1), 44.6107-1, 53.6060-1(a)(1), 53.6107-1, 54.6060-1(a)(1), 54.6107-1, 55.6060-1(a)(1), 55.6107-1, 56.6060-1(a)(1), 56.6107-1, 156.6060-1(a)(1), 156.6107-1, 157.6060-1(a)(1), and 157.6107-1. This information is necessary to make the record of the name, taxpayer identification number, and principal place of work of each tax return preparer, make each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under section 6694. The collection of information is required to comply with the provisions of section 8246 of the Small Business and Work Opportunity Tax Act of 2007. The likely respondents are tax return preparers and their employers.

Estimated total annual reporting burden: 10,679,320 hours.

Estimated average annual burden per respondent: 15.6 hours.

Estimated number of respondents: 684,268.

Estimated frequency of responses: 127,801,426.

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

#### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Generation-Skipping Transfer Tax Regulations (26 CFR part 26), the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), the Highway Use Tax Regulations, (26 CFR part 41), the Wagering Tax Reg-

ulations (26 CFR part 44), the Foundation and Similar Excise Tax Regulations (26 CFR part 53), the Pension Excise Tax Regulations (26 CFR part 54), the Excise Tax on Real Estate Investment Trusts and Regulated Investment Companies Regulations (26 CFR part 55), the Public Charity Excise Tax Regulations (26 CFR part 56), the Excise Tax on Greenmail Regulations (26 CFR part 156), the Excise Tax on Structured Settlement Factoring Transactions Regulations (26 CFR part 157), and the Regulations on Procedure and Administration (26 CFR part 301) implementing the amendments to tax return preparer penalties under sections 6694 and 6695 (and the related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36)) made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190) (May 25, 2007) (the 2007 Act).

In accordance with the 2007 Act, these proposed regulations amend existing regulations defining income tax return preparers to broaden the scope of that definition to include preparers of estate, gift, and generation-skipping transfer tax returns, employment tax returns, excise tax returns, and returns of exempt organizations. These proposed regulations also revise current regulations to amend the standards of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694. In addition, these proposed regulations reflect changes to the computation of the section 6694 tax return preparer penalty made by the 2007 Act. These regulations also amend current regulations under the penalty provisions of section 6695 to conform them with changes made by the 2007 Act expanding the scope of that statute beyond income tax returns. The Treasury Department and the IRS intend to finalize these proposed regulations by the end of 2008, with the expectation that the final regulations will be applicable to returns and claims for refund filed (and advice given) after the date that final regulations are published in the **Federal Register**, but in no event sooner than December 31, 2008.

#### *History of the Tax Return Preparer Penalty Provisions*

The 2007 Act amended section 6694 to expand the definition of tax return pre-

parer, broaden the scope of the tax return preparer penalties to include preparers of returns other than income tax returns, revise the standards of conduct that tax return preparers must meet to avoid imposition of penalties, and change the computation of the tax return preparer penalties. The 2007 Act did not amend a number of other Code sections related to tax return preparer conduct, nor did it directly address the tax regulations, published guidance, and case law that have developed since enactment of the preparer penalty regime as part of the Tax Reform Act of 1976, Public Law 94–455 (90 Stat. 1688) (October 4, 1976) (the 1976 Act).

The Treasury Department and the IRS believe that the recent amendments to the tax return preparer penalty provisions necessitate a comprehensive review and overhaul of all the tax return preparer penalties and related regulatory provisions. These proposed regulations are the first significant step in this process. Because the proposed regulations were drafted with consideration of the existing regulations and the legislative history of the statutory provisions that were amended by the 2007 Act, a brief review of the legislative and regulatory history leading up to the recent amendments is appropriate in order to place the proposed regulatory changes reflecting the 2007 Act amendments in context.

#### *The Tax Reform Act Of 1976*

The provisions in section 7701(a)(36) defining income tax return preparers, and the provisions in sections 6694, and 6695, imposing various penalties on income tax return preparers, were first enacted by the 1976 Act. Sections 6107 and 6109, imposing an obligation on return preparers to furnish and maintain copies of returns and include an identifying number on those returns, were also enacted by the 1976 Act.

As originally enacted, section 7701(a)(36)(A) defined the term *income tax return preparer* to mean any person who prepared for compensation, or who employed one or more persons to prepare for compensation, any income tax return or income tax claim for refund, or a “substantial portion” of such return or claim. Section 7701(a)(36)(B) excluded from the definition of income tax return preparer persons who merely provided mechanical

assistance in the preparation of a return or claim for refund, or who prepared returns and claims as an employee of the taxpayer or in a fiduciary capacity. The legislative history to the 1976 Act explained that whether or not a portion of a return constituted a substantial portion of a tax return was to be determined by examining both the length and complexity of that particular portion of the return and the amount of tax liability involved. The legislative history noted, however, that the filling out of a single schedule would generally not be considered a substantial portion of that return unless that particular schedule was the dominant portion of the entire tax return. The legislative history also provided that a person who prepared a return for compensation may be an income tax return preparer even though that person did not actually place figures on a taxpayer’s return. See S. Rep. No. 94–938, 94<sup>th</sup> Cong., 2<sup>d</sup> Sess. 349–359 (1976).

As originally enacted, section 6694(a) imposed a “first tier” penalty of \$100 if any part of an understatement was due to the negligent or intentional disregard of rules or regulations by an income tax return preparer. Section 6694(b) imposed a “second tier” penalty of \$500 if any part of an understatement was due to a willful attempt in any manner to understate tax liability by an income tax return preparer. Section 6695(b) imposed a penalty of \$25 if an income tax return preparer failed to sign a return or claim for refund in the manner prescribed by regulations. Sections 6695(a), (c), (d), and (e) also imposed penalties of \$25 if an income tax return preparer failed to comply with the various identification rules in sections 6107(a), 6109(a)(4), 6107(b) and 6060.

The House and Senate Reports to the 1976 Act, H. Rep. No. 94–658, 94<sup>th</sup> Cong., 1<sup>st</sup> Sess. at 274 (1975) and S. Rep. No. 94–938 at 349–50, and the Joint Committee on Taxation’s General Explanation of the Tax Reform Act of 1976, 94<sup>th</sup> Cong., 2<sup>d</sup> Sess. at 346 (1976), explained the need for the new tax return preparer penalty regime by noting the significant number of fraudulent returns and tax return preparers engaged in abusive practices. The legislative history further explained that, under prior law, it was often difficult for the IRS to detect any individual case of improper return preparation. This was because the IRS

generally had no way of knowing whether the return was prepared by the taxpayer or by a tax return preparer who may have engaged in abusive practices involving a number of returns. Further, even when the IRS could trace the improper preparation of tax returns to an individual tax return preparer, the only sanctions available were criminal penalties, which were often considered inappropriate, cumbersome, and ineffective deterrents because of the cost and length of time involved in prosecuting those cases. The legislative history makes clear that Congress intended the tax return preparer penalties to aid the IRS in detecting returns that were incorrectly prepared and to deter tax return preparers from engaging in improper conduct. See S. Rep. No. 94-938, at 350-51 (1976).

Regulations implementing certain of the amendments made by the 1976 Act were published on December 29, 1976, as T.D. 7451, 1977-1 C.B. 371 [41 FR 56631], and later amended on March 31, 1977, by T.D. 7473, 1977-1 C.B. 386 [42 FR 17124]. Additional regulations were published on April 1, 1977, as T.D. 7475, 1977-1 C.B. 401 [42 FR 17452], and November 23, 1977, as T.D. 7519, 1978-1 C.B. 319 [42 FR 17452] (the November 1977 final regulations).

The November 1977 final regulations applied the tax return preparer penalty provisions to persons who did not sign the return or claim for refund, or make or control the entries on the return or claim for refund, including tax professionals who rendered advice that was directly related to the determination of the existence, characterization, or amount, of an entry on a return or claim for refund. By including a broad definition of tax return preparer, the Treasury Department and the IRS intended the regulations to increase advisor care and to monitor careless or deceptive members of the profession. The November 1977 final regulations reflected the considered view that excluding nonsigning tax professionals from the reach of section 6694 could result in a lack of accountability for positions taken on a return, as taxpayers could escape penalty liability because they employed tax return preparers, tax return preparers could escape liability because they relied on nonsigning tax professionals' opinions, and nonsign-

ing tax professionals could escape liability because they would not be considered tax return preparers. The November 1977 final regulations also reflected a concern with the possible exemption of tax attorneys and other professionals involved in preparing more complex returns while at the same time subjecting to penalties preparers of less sophisticated returns who did not rely on the work of others.

The November 1977 final regulations also adopted the safe harbor provisions of §301.7701-15(b)(2), which excluded from the definition of a tax return preparer persons providing tax advice (other than those signing the return) if the amounts of gross income, deductions, or credits giving rise to the understatement were less than \$2,000; or less than \$100,000 and also less than 20 percent of the gross income (or, for an individual, the individual's adjusted gross income) shown on the return or claim for refund.

#### *Omnibus Budget Reconciliation Act of 1989*

Sections 6694 and 6695 were amended by the Improved Penalty Administration and Compliance Tax Act of 1989, enacted as title G of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), Public Law 101-239 (103 Stat. 2106) (December 19, 1989). The OBRA 1989 amended section 6694(a) to remove the prior link to negligence or intentional disregard of rules or regulations and instead impose a \$250 penalty on an income tax return preparer who understated a taxpayer's tax liability on an income tax return or claim for refund if the understatement was due to a position for which there was not a "realistic possibility" of being sustained on its merits, and the tax return preparer knew or reasonably should have known of such position. The revised section 6694(a) penalty did not apply, however, if the position was "not frivolous" and was adequately disclosed, or if there was reasonable cause for the position taken and the tax return preparer acted in good faith. The OBRA 1989 also amended section 6694(b) to impose a \$1,000 penalty on a tax return preparer who understated a taxpayer's tax liability on an income tax return or claim for refund if the understatement was due to the tax return preparer's willful attempt to understate tax liability or the tax return pre-

parer's reckless or intentional disregard of rules or regulations.

The OBRA 1989 also made uniform the tax return preparer penalties that apply for each failure by a tax return preparer to: (1) furnish a copy of a return or claim for refund to the taxpayer under section 6695(a); (2) sign the return or claim for refund under section 6695(b); (3) furnish his or her identification number under section 6695(c); or (4) file a correct information return under section 6695(e). The unified penalty amount was \$50 for each failure, with a limit of \$25,000 for the total amount of penalties that could be imposed for any single type of failure.

The OBRA 1989 also consolidated the negligence, substantial understatement and valuation misstatement penalties applicable to taxpayers. These penalties were consolidated into a single accuracy-related penalty regime under section 6662. The new accuracy-related penalty for a substantial understatement of income tax generally would not be imposed, however, if (1) there was "substantial authority" for the taxpayer's treatment of the item giving rise to the understatement, or (2) relevant facts affecting the tax treatment of the item were adequately disclosed in the return or in a statement attached to the return and there was a "reasonable basis" for the tax treatment of the item.

By adopting the "realistic possibility" standard for tax return preparers, and the higher "substantial authority" standard for taxpayers with respect to undisclosed positions, OBRA 1989 created a disparity between the penalty treatment of tax return preparers and most taxpayers subject to income tax.

Regulations were published on December 31, 1991, as T.D. 8382, 1992-1 C.B. 392 [56 FR 67509], which amended the regulations under section 6694 to conform the income tax return preparer regulations with the statutory changes made by OBRA 1989 and to make other changes.

#### *The Small Business and Work Opportunity Tax Act of 2007*

Section 8246 of the 2007 Act amended sections 6694 and 7701(a)(36) and made conforming changes to other Code provisions to make tax return preparer penalties applicable to a broader range of tax returns.

The 2007 Act's amendments to section 6694 also changed the standards of conduct that tax return preparers must meet in order to avoid imposition of penalties in the event that a return prepared results in an understatement of tax. For undisclosed positions, the 2007 Act replaced the "realistic possibility" standard with a standard requiring the tax return preparer to "reasonably believe that the tax treatment of the position is more likely than not" the proper treatment. For disclosed positions, the 2007 Act replaced the "not-frivolous" standard with a standard requiring the tax return preparer to have a "reasonable basis" for the tax treatment of the position.

The 2007 Act also increased the first-tier penalty under section 6694(a) from \$250 to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim for refund with respect to which the penalty was imposed. In addition, the 2007 Act increased the second-tier penalty under section 6694(b) from \$1,000 to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer. The amendments made by the 2007 Act are effective for tax returns prepared after the date of enactment, May 25, 2007.

#### *Notice 2008-13*

Notice 2008-13, 2008-3 I.R.B. 282, was released on December 31, 2007 and provided interim guidance under the 2007 Act regarding: (1) the relevant categories of tax returns or claims for refund for purposes of applying the penalty under section 6694(a); (2) the definition of "tax return preparer" under sections 6694 and 7701(a)(36); (3) the date a return is deemed prepared; (4) the standards of conduct applicable to tax return preparers for disclosed and undisclosed positions taken on tax returns; and (5) the penalty compliance obligations applicable to tax return preparers. Additional guidance was provided in Notice 2008-12, 2008-3 I.R.B. 280, with respect to the implementation of the tax return preparer signature requirement of section 6695(b), and in Notice 2008-11, 2008-3 I.R.B. 279, which clarified the earlier transition relief provided in Notice 2007-54, 2007-27 I.R.B. 12 (July 2, 2007). Notice 2008-46, 2008-18 I.R.B.

868, was released on April 16, 2008 and added certain returns and documents to Exhibits 1, 2, and 3 of Notice 2008-13.

#### **Explanation of Provisions**

In developing these proposed regulations, the Treasury Department and the IRS recognize that the majority of tax return preparers serve the interests of their clients and the tax system by preparing complete and accurate returns. Tax return preparers are critical to ensuring compliance with the Federal tax laws and are an important component in the IRS's administration of those laws. The proposed regulations intend to balance the interests of the IRS in curtailing the activities of noncompliant tax return preparers against the burden imposed on all tax return preparers in complying with the requirements imposed by the 2007 Act and these proposed regulations.

The Treasury Department and the IRS also recognize that the government has a number of tools to monitor and sanction tax return preparers, and will continue to coordinate the application of penalties under sections 6694, 6695, 6695A, 6700, 6701, 6702, and Circular 230, as well as other applicable penalties and criminal sanctions.

The IRS will assess penalties under section 6694 in appropriate cases. In keeping with a balanced enforcement program for tax return preparers, the IRS intends to modify its internal guidance so that a referral by revenue agents to the IRS Office of Professional Responsibility (OPR) will not be *per se* mandatory when the IRS assesses a tax return preparer penalty under section 6694(a) against a tax return preparer who is also a practitioner within the meaning of Circular 230. This change is consistent with the general administrative recommendations made in the legislative history of the amendments made by OBRA 1989 to the section 6694 penalty. See H.R. Conf. Rep. 101-386, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. at 662 (1989). In matters involving non-willful conduct, the IRS will generally look for a pattern of failing to meet the required penalty standards under section 6694(a) before making a referral to OPR, although any egregious conduct subjecting a tax return preparer to penalty may also form a basis for a referral to OPR.

#### *Proposed Changes*

The following is a summary of the proposed changes to the existing regulations affecting tax return preparers. The changes included in these proposed regulations are discussed in order of the Code sections to which they relate. When appropriate, cross-references to definitional sections are included. Significantly, the definition of tax return preparer, which maintains the concepts in the existing regulations of signing and nonsigning tax return preparers, is located at the end of these proposed regulations in §301.7701-15, and that section is cross-referenced in the relevant sections of the regulations under sections 6694 and 6695.

#### *Furnishing of Copy of the Tax Return*

Section 1.6107-1(a), which requires signing tax return preparers to furnish the taxpayer a copy of the prepared return, is proposed to be amended to provide that for electronically filed Forms 1040EZ, "*Income Tax Return for Single and Joint Filers With No Dependents*," and Forms 1040A, "*U.S. Individual Income Tax Return*," filed for the 2009, 2010 and 2011 taxable years, the return information may be provided on a replica of a Form 1040, "*U.S. Individual Income Tax Return*," that provides all of the return information. For other electronically filed returns, the information may be provided on a replica of an official form that provides all of the information. This amendment addresses the IRS' transitional issues in implementing the Modernized e-File platform for the Form 1040 series of returns.

#### *Date Return is Prepared*

Proposed §1.6694-1(a)(2) defines the date a return or claim for refund is prepared as the date it is signed by the tax return preparer, and also provides that if the tax return preparer fails to sign the return when otherwise required to do so, the date the return is deemed prepared is the date the return is filed. In the case of a nonsigning tax return preparer, the relevant date is the date the person provides the advice on the position that results in the understatement. This date will be determined based on all the facts and circumstances.

### *Defining the Preparer Within a Firm*

Current §1.6694-1(b)(1) provides a “one preparer per firm” rule. Specifically, if a signing tax return preparer is associated with a firm, that individual, and no other individual in the firm, is treated as a tax return preparer with respect to the return or claim for purposes of section 6694. Under the current regulations, if two or more individuals associated with a firm are tax return preparers with respect to a return or claim for refund, and none of them is the signing tax return preparer, only one of the individuals is a nonsigning tax return preparer with respect to that return or claim for purposes of section 6694. In such a case, ordinarily, the individual who is a tax return preparer for purposes of section 6694 is the individual with overall supervisory responsibility for the advice given by the firm with respect to the return or claim. The “one preparer per firm” rule and the corollary rule included in §1.6694-2(d)(5) of the current regulations precluding a tax return preparer from relying on the advice of an individual associated with the tax return preparer’s same firm for purposes of penalty protection were intended to eliminate the administrative difficulty of attempting to apply the section 6694 penalty on an intra-firm basis.

The Treasury Department and the IRS believe that the amendments to section 6694 made by the 2007 Act, together with the evolution in existing business practices and the increased complexity of the Federal tax law that has created an increased need for specialization, require reconsideration of the “one preparer per firm” rule. Specifically, the Treasury Department and the IRS believe this evolution requires the adoption of a framework that centers on the return or claim for refund on a position-by-position basis, with the focus of any penalty on the position(s) giving rise to the understatement on the return or claim for refund and any responsible parties with respect to such position(s). Thus the Treasury Department and the IRS believe that the “one preparer per firm” rule is no longer appropriate and have proposed to adopt a framework defining a preparer-per-position within a firm.

Under both the current and the proposed regulations, an individual is a tax return preparer subject to section 6694 if the indi-

vidual is primarily responsible for the position on the return or claim for refund giving rise to the understatement.

Under proposed §1.6694-1(b)(1), only one person within a firm will be considered primarily responsible for each position giving rise to an understatement and, accordingly, be subject to the penalty. In the course of identifying the individual who is primarily responsible for the position, the IRS may advise multiple individuals within the firm that it may be concluded that they are the individual within the firm who is primarily responsible. In some circumstances, there may be more than one tax return preparer who is primarily responsible for the position(s) giving rise to an understatement if multiple tax return preparers are employed by, or associated with, different firms.

Proposed §1.6694-1(b)(2) provides that the individual who signs the return or claim for refund as the tax return preparer will generally be considered the person that is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement. The “one preparer per firm” rule, however, is revised by these proposed regulations if it is concluded based upon information received from the signing tax return preparer (or other relevant information from a source other than the signing tax return preparer) that another person within the signing tax return preparer’s same firm was primarily responsible for the position(s) giving rise to the understatement. In this situation, the “one preparer per firm” rule in the current regulations could unduly limit the IRS to assessing the penalty against a person who may have overall responsibility in terms of signing the return, but who may lack detailed knowledge of, or responsibility for, a problematic return position, and who reasonably relied on another professional at the same firm with greater knowledge of, and responsibility for, the accuracy of a position giving rise to the understatement.

The Treasury Department and the IRS believe that amending the regulations to better target the person or persons responsible for the position(s) giving rise to the understatement will further compliance and result in more equitable administration of the tax return preparer penalty regime.

Proposed §1.6694-1(b)(3) establishes a similar rule for situations when there are one or more nonsigning tax return prepar-

ers at the same firm. If there are one or more nonsigning tax return preparers at the firm and no signing tax return preparer within the firm, the individual within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement is the tax return preparer who is primarily responsible for the position for purposes of section 6694. Additionally, if after the application of proposed §1.6694-1(b)(2) it is concluded that the signer is not primarily responsible for the position or the IRS cannot conclude which individual (as between the signing tax return preparer and other persons within the firm) is primarily responsible for the position, the individual nonsigning tax return preparer within the firm with overall supervisory responsibility for the position(s) is the tax return preparer who is primarily responsible for the position(s) giving rise to the understatement.

This rule in proposed §1.6694-1(b)(3) is intended to address the potential for uncertainty regarding the identification of the primarily responsible tax return preparer prior to the time of the expiration of the period of limitations on making an assessment under section 6694(a). The proposed rule is distinguished from the current “one preparer per firm” rule in the current regulations because under the proposed rule the IRS may assess the penalty against either the signing tax return preparer or the nonsigning tax return preparer with overall supervisory responsibility for the position(s) giving rise to an understatement depending on the facts and circumstances. Specifically, when the facts indicate that the signing tax return preparer is the primarily responsible tax return preparer under proposed §1.6694-1(b)(1) and (b)(2), the IRS may assess the section 6694 penalty against that individual when appropriate under the statute and regulations. In situations when the facts indicate that the nonsigning tax return preparer with overall supervisory responsibility is the primarily responsible tax return preparer under proposed §1.6694-1(b)(1) and (b)(3), the IRS may assess the section 6694 penalty against that individual when appropriate. In situations when it is unclear which individual, as between the signer and other nonsigning tax return preparers at the firm, the IRS may assess the section 6694 penalty against the nonsigning tax return preparer with over-



all supervisory responsibility with respect to the position giving rise to the understatement when appropriate. The Treasury Department and the IRS specifically request comments regarding the approach taken in these proposed regulations and any recommendations to improve this rule.

As described in this preamble, conforming rules are included in §1.6694-1(f) of the proposed regulations regarding computation of the “income derived (or to be derived)” from the firm and the individual(s) associated with the firm, in order to ensure that the same income is not counted twice in determining the amount of income subject to the section 6694 penalty.

#### *Reliance on Information Provided*

Section 1.6694-1(e) of the current regulations allows a tax return preparer generally to rely in good faith without verification upon information furnished by the taxpayer. Proposed §1.6694-1(e) allows similar reliance, but provides that a tax return preparer may not rely on information provided by taxpayers with respect to legal conclusions on Federal tax issues.

The proposed regulations expand on the current regulations to provide that a tax return preparer may rely in good faith and without verification on information furnished by another advisor, another tax return preparer, or other party (even when the advisor or tax return preparer is within the tax return preparer’s same firm). Similarly, a tax return preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer, and must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. The Treasury Department and the IRS believe that this expansion of the current rules regarding reliance is necessary given the heightened standards imposed on tax return preparers by the 2007 Act and the increased complexity of the tax law, which often requires signing and nonsigning tax return preparers to rely on the work of others in ensuring compliance.

#### *Income Derived Determination in Computing Penalty Amount*

Proposed §1.6694-1(f) defines “income derived (or to be derived)” with respect to a return or claim for refund as all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with whom the tax return preparer is associated, income derived (or to be derived) means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation where a firm that employs the individual tax return preparer (or the firm with which the individual tax return preparer is associated) is subject to a penalty under section 6694(a) or (b), income derived (or to be derived) means all compensation the firm receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

If the tax return preparer or the tax return preparer’s firm has multiple engagements related to the same return or claim for refund, only those engagements relating to the position(s) taken on the return or claim for refund that gave rise to the understatement are considered for purposes of computing the income derived (or to be derived). In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with whom the tax return preparer is associated, income derived (or to be derived) means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the relevant firm engagements.

The proposed regulations also provide that only compensation for time spent on tax advice that is given with respect to events that have occurred at the time the advice is rendered and that relates to the position(s) giving rise to the understatement will be taken into account for purposes of calculating the section 6694 penalty. This rule is intended to be consistent with the definition of tax return preparer in §301.7701-15(b)(2)(i).

The proposed regulations provide that it may be concluded, based upon information received from the tax return preparer, that an appropriate allocation of compensation attributable to the position(s) giving rise to the understatement on the return or claim for refund is less than the total amount of compensation associated with the engagement. For example, it may be concluded that the number of hours of the engagement spent on the position(s) giving rise to the understatement may be less than the total hours associated with the engagement. If this is concluded, the amount of the penalty will be calculated based upon the compensation attributable to the position(s) giving rise to the understatement. Otherwise, the total amount of compensation from the engagement will be the amount of income derived for purposes of calculating the penalty under section 6694.

The proposed regulations also clarify that the amount of penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived (or to be derived) by the firm from the relevant engagement(s) relating to the position(s) giving rise to an understatement. The portion of the total amount of penalty assessed against the individual tax return preparer shall not exceed 50 percent of the individual’s compensation attributable to the engagement that relates to the position(s) giving rise to an understatement. In other words, the same income will not be taken into consideration more than once in calculating the penalty against an individual tax return preparer and the individual tax return preparer’s firm. The Treasury Department and the IRS also anticipate that Circular 230 will be revised to state that the IRS generally will not stack the section 6694 penalty and monetary penalties under 31 U.S.C. section 330 with respect to the same conduct.

## *Firm Liability*

Proposed §§1.6694–2(a)(2) and 1.6694–3(a)(2) are the same as §§1.6694–2(a)(2) and 1.6694–3(a)(2) of the current regulations regarding when a firm is liable for the section 6694(a) or (b) penalty with one exception. Proposed §§1.6694–2(a)(2)(iii) and 1.6694–3(a)(2)(iii) provide that a firm is also subject to the penalty when the firm’s review procedures were disregarded by the firm through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

## *Reasonable Belief of More Likely Than Not*

Proposed §1.6694–2(b)(1) provides that the “reasonable belief that the position would more likely than not be sustained on its merits” standard will be satisfied if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer’s due diligence. In determining the level of diligence in a particular case, the IRS will take into account the tax return preparer’s experience with the area of tax law and familiarity with the taxpayer’s affairs, as well as the complexity of the issues and facts in the case. The proposed regulations also provide that a tax return preparer may meet the “reasonable belief that the position would more likely than not be sustained on its merits” standard if a position is supported by a well-reasoned construction of the applicable statutory provision despite the absence of other types of authority, or if the tax return preparer relies on information or advice furnished by a taxpayer, advisor, another tax return preparer, or other party (even when the advisor or tax return preparer is within the tax return preparer’s same firm), as provided in proposed §1.6694–1(e).

Proposed §1.6694–2(b)(2) provides that a tax return preparer may not rely on unreasonable assumptions, while proposed §1.6694–2(b)(3) states that the authorities contained in §1.6662–4(d)(3)(iii) (or any successor provision) are to be considered in determining whether a position satisfies the “more likely than not” standard. Proposed §1.6694–2(b)(4) also provides examples that illustrate positions meeting the “reasonable belief that the position would more likely than not be sustained on its merits” standard.

## *Reasonable Basis*

Proposed §§1.6694–2(c)(1) and (2) establish that the “reasonable basis” standard that must be met for disclosed positions is the same standard as defined in §1.6662–3(b)(3) (or any successor provision). The proposed regulations also provide that, to meet the “reasonable basis” standard, a tax return preparer may rely in good faith, without verification, upon information furnished by a taxpayer, advisor, another tax return preparer, or other party (even when the advisor or tax return preparer is within the tax return preparer’s same firm), as provided in proposed §1.6694–1(e).

## *Adequate Disclosure*

Section 1.6694–2(c)(3) builds on the current regulations and the interim guidance provided in Notice 2008–13 and provides the rules for disclosure of a position for which there is a “reasonable basis” but for which the tax return preparer does not have a “reasonable belief that the position would more likely than not be sustained on its merits.”

For a signing tax return preparer within the meaning of §301.7701–15(b)(1), the proposed regulations provide that a position may be disclosed in one of five ways. First, the position may be disclosed on a properly completed and filed Form 8275, *Disclosure Statement*, or Form 8275–R, *Regulation Disclosure Statement*, as appropriate, or on the tax return in accordance with the annual revenue procedure. See Revenue Procedure 2008–14, 2008–7 I.R.B. 435 (February 19, 2008). Second, for income tax returns, if the position does not meet the “substantial authority” standard described in §1.6662–4(d), disclosure of the position is adequate if the tax return

preparer provides the taxpayer with a prepared tax return that includes the appropriate disclosure. Third, for income tax returns, if the position meets the “substantial authority” standard, disclosure of the position is adequate if the tax return preparer advises the taxpayer of all of the penalty standards applicable to the taxpayer under section 6662. Fourth, for income tax returns, if the position may be described as a tax shelter under section 6662(d)(2)(C) or a reportable transaction to which section 6662A applies, disclosure of the position is adequate if the tax return preparer advises the taxpayer that there needs to be at a minimum “substantial authority” for the position, that the taxpayer must possess a “reasonable belief that the tax treatment was more likely than not” the proper treatment, and that disclosure will not protect the taxpayer from assessment of an accuracy-related penalty. Fifth, for tax returns or claims for refund that are subject to penalties other than the accuracy-related penalty for substantial understatements under sections 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. This fifth rule is intended to address the situation when the penalty standard applicable to the taxpayer is based on compliance with requirements other than disclosure on the return (for example, section 6662(e)). In order to establish that the tax return preparer’s disclosure obligation was satisfied, the tax return preparer must document contemporaneously in the tax return preparer’s files that the information or advice required by the proposed regulations was provided.

In the case of a nonsigning tax return preparer within the meaning of §301.7701–15(b)(2), the position may be disclosed in one of three ways. First, the position may be disclosed on a properly completed and filed Form 8275, *Disclosure Statement*, or Form 8275–R, *Regulation Disclosure Statement*, as appropriate, or on the tax return in accordance with the annual revenue procedure. Second, a nonsigning tax return preparer may meet the disclosure standards if the nonsigning tax return preparer advises the taxpayer of all opportunities to avoid penalties under section 6662 that could apply to the position and advises the taxpayer of the standards for disclosure to the extent applicable. Third, disclosure

of a position is adequate if a nonsigning tax return preparer advises another tax return preparer that disclosure under section 6694(a) may be required. The nonsigning tax return preparer must document contemporaneously in the tax return preparer's files that this advice required by the proposed regulations was provided.

In order to satisfy the disclosure standards when the position is not disclosed on or with the return, each return position for which there is a "reasonable basis" but for which the tax return preparer does not have a "reasonable belief that the position would more likely than not be sustained on the merits" must be addressed by the tax return preparer. Thus, the advice to the taxpayer with respect to each position must be particular to the taxpayer and tailored to the taxpayer's facts and circumstances. No form of a general boilerplate disclaimer will satisfy these standards. Proposed §1.6694-2(c)(iv) provides that disclosure in the case of items attributable to a pass-through entity is adequate if made at the entity level in accordance with the rules in §1.6662-4(f)(5). For example, a tax return preparer of a partnership tax return need only advise the partnership in order to satisfy any of the above disclosure rules and does not need to advise each individual partner in the partnership of the applicable penalties.

#### *Reasonable Cause*

Proposed §1.6694-2(d) maintains the rules in the current regulations regarding reasonable cause and good faith, except that §1.6694-2(d) is proposed to be revised to provide that whether a position is supported by a generally accepted administrative or industry practice is an additional factor to consider in determining whether the tax return preparer acted with reasonable cause and good faith. This provision is intended to address situations in the absence of published guidance when administrative or industry practice has developed that would not reasonably be subject to challenge by the IRS.

The reasonable cause factor regarding reliance on advice of another tax return preparer is also expanded to allow a tax return preparer to reasonably rely on information or advice furnished by a taxpayer, advisor, another tax return preparer, or other party (even when the advisor or

tax return preparer is within the tax return preparer's same firm), as provided in proposed §1.6694-1(e).

#### *Electronically Signed Returns*

Proposed §1.6695-1(b)(2) provides that, in the case of an electronically signed tax return, a tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The tax return preparer, however, must furnish all of the information to the taxpayer contemporaneously with furnishing the Form 8879, *IRS e-file Signature Authorization*, or similar IRS e-file signature form. The information may be furnished on a replica of an official form that provides all of the information.

#### *Due Diligence for Earned Income Credit*

Proposed §1.6695-2(b)(3) establishes a reasonableness standard for signing tax return preparers' due diligence requirements with respect to determining eligibility for the earned income credit and adds examples.

#### *Claims for Refund or Credit by Tax Return Preparers or Appraisers*

Proposed §1.6696-1, discussing the procedures for filing claims for credit or refund for penalties assessed against tax return preparers under sections 6694 or 6695, is revised to also cover the new appraiser penalty under section 6695A. Section 6695A was enacted by section 1219 of the Pension Protection Act of 2006 (Public Law 109-280 (120 Stat. 780, 1084-86) (August 17, 2006)), as amended by the Tax Technical Corrections Act of 2007 (Public Law 110-172 (121 Stat. 2473, 2474) December 29, 2007)). A separate regulation project will provide guidance under section 6695A.

#### *Definition of Tax Return Preparer*

Proposed §§301.7701-15(b)(1) and (2) add to the section 7701 regulations the definitions of "signing tax return preparer" and "nonsigning tax return preparer" that are included in §1.6694-1 of the current regulations. Proposed §301.7701-15(b)(1) provides that a *signing tax return preparer* is any tax return preparer who signs or who is required to

sign a return or claim for refund as a tax return preparer pursuant to §1.6695-1(b).

Proposed §301.7701-15(b)(2) provides that a *nonsigning tax return preparer* is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of §301.7701-15(b)(3) with respect to events that have occurred at the time the advice is rendered. In determining whether an individual is a nonsigning tax return preparer, the proposed regulations provide that any time spent on advice that is given with respect to events that have occurred, which is less than 5 percent of the aggregate time incurred by the person with respect to the position(s) giving rise to the understatement will not be taken into account in determining whether an individual is a nonsigning tax return preparer. The Treasury Department and the IRS believe that this less than 5 percent test will encourage tax professionals who principally rendered advice regarding events that had not yet occurred to provide follow-up advice requested by a taxpayer without the concern that, by providing such advice to a taxpayer, the advisor would become a tax return preparer under proposed §§301.7701-15(b)(2) and (3).

Consistent with the current regulations and the legislative history of the 1976 Act, proposed §301.7701-15(b)(3)(i) clarifies that whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined based upon all facts and circumstances, and a single tax entry may constitute a substantial portion of the tax required to be shown on a return. The proposed regulations include additional factors to consider in determining whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion, such as the size and complexity of the item relative to the taxpayer's gross income and the size of the understatement attributable to the item compared to the taxpayer's reported tax liability.

Proposed §301.7701-15(b)(3)(ii) increases the *de minimis* exception in determining a substantial portion of a return or claim for refund for nonsigning tax return preparers. Under the proposed regulations, the *de minimis* exception applies if the item giving rise to the understatement is (i) less than \$10,000, or (ii) less than

\$400,000 if the item is also less than 20 percent of the taxpayer's gross income (or, for an individual, the individual's adjusted gross income). This *de minimis* rule does not apply for signing tax return preparers within the meaning of §301.7701-15(b)(1). This change to the regulations updates the current *de minimis* amounts to reflect the passage of time since those amounts were set in 1977. The Treasury Department and the IRS are considering whether other *de minimis* rules applicable to nonsigning tax return preparers of non-income tax returns are warranted.

Consistent with the interim guidance set forth in Notice 2008-13, §301.7701-15(b)(4) is proposed to be amended by revising the definitions of "return" and "claim for refund" to only include preparers of returns and claims for refund that are specifically identified in published guidance in the Internal Revenue Bulletin. The Treasury Department and the IRS will publish this guidance simultaneously with the publication of final regulations and will likely maintain the three tiered approach used in the exhibits to Notice 2008-13, subject to any appropriate modifications. Under the substantial portion rule in section 7701(a)(36)(A), preparation of a broad range of information returns, schedules, and other documents can subject a person to the section 6694 penalties even though the documents may not themselves give rise to an understatement. Accordingly, the Treasury Department and the IRS believe that including a list of returns or other documents, the preparation of which may subject a tax return preparer to penalties, will further compliance by not unduly increasing the burden on persons preparing information returns and other documents.

### *Cross-References*

Conforming changes are made in §§1.6060-1, 1.6107-1, 1.6109-2, 1.6694-0, 1.6694-1, 1.6694-4, 1.6695-1, 1.6695-2, 1.6696-1, and 301.7701-15 to replace references to income tax return preparers with references to tax return preparers, consistent with the provisions of the 2007 Act. Conforming cross references are also made to Part 20, Estate Tax; Estates of Decedents Dying After August 16, 1954; Part 25, Gift Tax; Gifts

Made After December 31, 1954; Part 26, Generation-Skipping Transfer Tax Under the Tax Reform Act of 1986; Part 31, Employment Taxes and Collection of Income Tax at Source; Part 40, Procedural Excise Tax; Part 41, Highway Use Tax; Part 44, Wagering Tax; Part 53, Foundation and Similar Excise Taxes; Part 54, Pension Excise Taxes; Part 55, Excise Tax on Real Estate Investment Trusts and Regulated Investment Company Taxes; Part 56, Public Charity Excise Taxes; Part 156, Excise Tax on Greenmail; and Part 157, Excise Tax on Structured Settlement Factoring Transactions; to conform these parts with the provisions in Parts 1 and 301, consistent with the provisions of the 2007 Act.

### **Availability of IRS Documents**

The IRS notices referred to in this preamble are published in the Internal Revenue Bulletin and are available at <http://www.irs.gov>.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6), requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rules affect tax return preparers. The IRS estimates there are 38,566 tax return preparation firms and 260,338 self-employed tax return preparers that qualify as small entities. Therefore, the IRS has determined that these proposed rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the proposed rule will not be significant. The

statute and proposed regulations would require entities that employ tax return preparers to retain a record of the name, taxpayer identification number and principal place of work of each tax return preparer employed. The IRS estimates that this would not require purchase of additional software and would take five minutes per tax return preparer employed. The statute and proposed regulations would also require tax return preparers to retain a complete copy of a return (or claim for refund) or a list of the name, taxpayer identification number and taxable year for each return (or claim for refund) and the name of the tax return preparer required to sign the return or claim for refund. Many tax return preparers have copying machines or scanners and already make copies of the returns prepared, and the IRS estimates this would not require the purchase of additional equipment. The IRS estimates that it would take an average of five minutes to make copies or prepare a record of the returns prepared. Accordingly, the burden on employers of tax return preparers to make a record of the name, taxpayer identification number, and principal place of work of each employed tax return preparer, and a copy of each return or claim for refund prepared, or a record, is insignificant.

The proposed regulations also allow the tax return preparer to generally avoid imposition of the tax return preparer penalties under section 6694 in cases when a tax return position meets the "substantial authority" standard but not the "reasonable belief that the position would more likely than not be sustained on its merits" standard if the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer, and contemporaneously documents in the tax return preparer's files that this information or advice was provided. Often, tax return preparers will choose not to advise the taxpayer of the applicable penalty standards and will instead disclose the position on a properly completed and filed Form 8275, "Disclosure Statement," or Form 8275-R, "Regulation Disclosure Statement," as appropriate, or on the tax return in accordance with the annual revenue procedure. In those instances when the tax return preparer elects to advise the taxpayer of the penalty standards, the IRS estimates that it would take an average of 15 minutes to document this

advice. Accordingly, the burden on those who choose this option is insignificant.

Although the proposed regulations also conform the standards of conduct and tax return preparer penalties to the provisions of the 2007 Act, tax return preparers already enroll in educational seminars or training programs to keep up to date with the latest changes to the Code, and the provisions of the 2007 Act and the proposed regulations will generally be part of that training.

Moreover, these proposed regulations are required to comply with the provisions of section 8246 of the 2007 Act and flow directly from amendments to the Code contained in the 2007 Act.

Based on these facts, the IRS hereby certifies that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. Comments are requested on the examples in the proposed regulations, and commentators are specifically invited to suggest changes to these examples or to suggest new examples that they believe would better illustrate the principles that should be included in the final regulations. The IRS and the Treasury Department also request comments on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Monday, August 18, 2008, at 10:00 a.m. in the IRS Auditorium, Internal Revenue

Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 18, 2008 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Monday, August 4, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal authors of these proposed regulations are Matthew S. Cooper and Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

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## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301 are proposed to be amended as follows:

### PART 1—INCOME TAXES

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

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

Section 1.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 1.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 1.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 1.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 2. Section 1.6060-1 is amended by revising the section heading and paragraphs (a) and (c) and adding paragraph (d) to read as follows:

### *§1.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* (1) Each person who employs one or more signing tax return preparers to prepare any return of tax or claim for refund of tax, other than for the person, at any time during a return period shall satisfy the requirements of section 6060 of the Internal Revenue Code by—

(i) Retaining a record of the name, taxpayer identification number, and principal place of work during the return period of each tax return preparer employed by the person at any time during that period; and

(ii) Making that record available for inspection upon request by the Commissioner.

(2) The record described in this paragraph (a) must be retained and kept available for inspection for the 3-year period following the close of the return period to which that record relates.

(3) The person may choose any form of documentation to be used under this section as a record of the signing tax return preparers employed during a return period. However, the record must disclose on its face which individuals were employed as tax return preparers during that period.

(4) For the definition of the term "signing tax return preparer," see section 7701(a)(36) and §301.7701-15(b)(1) of this chapter. For the definition of the term "return period," see paragraph (b) of this section.

(5)(i) For purposes of this section, any individual who, in acting as a signing tax return preparer, is not employed by another tax return preparer shall be treated as his or her own employer. Thus, a sole proprietor shall retain and make available a record with respect to himself (or herself) as provided in this section.

(ii) A partnership shall, for purposes of this section, be treated as the employer of the partners of the partnership and shall retain and make available a record with respect to the partners and others employed by the partnership as provided in this section.

\* \* \* \* \*

(c) *Penalty.* For the civil penalty for failure to retain and make available a record of the tax return preparers employed during a return period as required under this section, or for failure to include an item in the record required to be retained and made available under this section, see §1.6695-1(e).

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 3. Section 1.6107-1 is revised to read as follows:

*§1.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *Furnishing copy to taxpayer.* A person who is a signing tax return preparer of any return of tax or claim for refund of tax under the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer (or nontaxable entity) not later than the time the return or claim for refund is presented for the signature of the taxpayer (or nontaxable entity). For electronically filed Forms 1040EZ, “*Income Tax Return for Single and Joint Filers With No Dependents*,” and Form 1040A, “*U.S. Individual Income Tax Return*,” filed for the 2009, 2010 and 2011 taxable years, the information may be provided on a replica of a Form 1040, “*U.S. Individual Income Tax Return*,” that provides all of the information. For other electronically filed returns, the information may be provided on a replica of an official form that provides all of the information. The signing tax return preparer may, at its option, request a receipt or other evidence from the taxpayer (or nontaxable entity) sufficient to show satisfaction of the requirement of this paragraph (a).

(b) *Copy or record to be retained.* (1) A person who is a signing tax return preparer of any return or claim for refund shall—

(i)(A) Retain a completed copy of the return or claim for refund; or

(B) Retain a record, by list, card file, or otherwise of the name, taxpayer identification number, and taxable year of the taxpayer (or nontaxable entity) for whom the return or claim for refund was prepared,

and the type of return or claim for refund prepared;

(ii) Retain a record, by retention of a copy of the return or claim for refund, maintenance of a list or card file, or otherwise, for each return or claim for refund presented to the taxpayer (or nontaxable entity), of the name of the individual tax return preparer required to sign the return or claim for refund pursuant to §1.6695-1(b); and

(iii) Make the copy or record of returns and claims for refund and record of the individuals required to sign available for inspection upon request by the Commissioner.

(2) The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for refund was presented for signature to the taxpayer (or nontaxable entity). In the case of a return that becomes due (with extensions, if any) during a return period following the return period during which the return was presented for signature, the material shall be retained and kept available for inspection for the 3-year period following the close of the later return period in which the return became due. For the definition of “return period,” see section 6060(c). If the person subject to the record retention requirement of this paragraph (b) is a corporation or a partnership that is dissolved before completion of the 3-year period, then all persons who are responsible for the winding up of the affairs of the corporation or partnership under state law shall be subject, on behalf of the corporation or partnership, to these record retention requirements until completion of the 3-year period. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors or general partners shall be subject, on behalf of the corporation or partnership, to the record retention requirements of this paragraph (b). For purposes of the penalty imposed by section 6695(d), such designated persons shall be deemed to be the tax return preparer and will be jointly and severally liable for each failure.

(c) *Tax return preparer.* For the definition of “signing tax return preparer,” see section 7701(a)(36) and §301.7701-15(b)(1) of this chapter. For

purposes of applying this section, in the case of—

(1) An arrangement between two or more signing tax return preparers, the person who employs one or more other signing tax return preparers to prepare any return or claim for refund for compensation other than for the person shall be considered to be the sole signing tax return preparer; and

(2) A partnership arrangement for the preparation of returns and claims for refund, the partnership shall be considered to be the sole signing tax return preparer.

(d) *Penalties.* (1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayers (or nontaxable entity) as required under paragraphs (a) of this section, see section 6695(a) and §1.6695-1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a record as required under paragraphs (b) of this section, see section 6695(d) and §1.6695-1(d).

(e) *Effective/applicability date.* This section is applicable to returns and claims for refund filed on the date that final regulations are published in the **Federal Register**.

Par. 4. Section 1.6109-2 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

*§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.*

(a) *Furnishing identifying number.* (1) Each return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by §1.6695-1(b) to sign the return or claim for refund. In addition, if there is an employment arrangement or association between the individual tax return preparer and another person (except to the extent the return prepared is for the person), the identifying number of the other person must also appear on the return or claim for refund. For the definition of the term “tax return preparer,” see section 7701(a)(36) and §301.7701-15 of this chapter.

(2) The identifying number of an individual tax return preparer is that individual’s social security account number, or

such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) If an individual tax return preparer described in paragraph (a)(2) of this section is employed by, or associated with, a person (whether an individual or entity) and prepares the return or claim for refund (other than a return prepared for the person), the identifying number is the person's employer identification number.

\* \* \* \* \*

(d) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**, but no sooner than December 31, 2008. For returns or claims for refund filed before January 1, 2000, see §1.6109-2A(a).

Par 5. Section 1.6694-0 is revised to read as follows:

*§1.6694-0 Table of contents.*

This section lists the captions that appear in §§1.6694-1 through 1.6694-4.

*§1.6694-1 Section 6694 penalties applicable to tax return preparers.*

- (a) Overview.
  - (1) In general.
  - (2) Date return is deemed prepared.
- (b) Tax return preparer.
  - (1) In general.
  - (2) Responsibility of signing tax return preparer.
  - (3) Responsibility of nonsigning tax return preparer.
  - (4) Tax return preparer and firm responsibility.
  - (5) Examples.
- (c) Understatement of liability.
- (d) Abatement of penalty where taxpayer's liability not understated.
- (e) Verification of information furnished by taxpayer or other third party.
  - (1) In general.
  - (2) Verification of information on previously filed returns.
  - (3) Examples.
- (f) Income derived (or to be derived) with respect to the return or claim for refund.
  - (1) In general.
  - (2) Compensation.

- (i) Multiple engagements.
- (ii) Reasonable allocation.
- (iii) Fee refunds.
- (iv) Reduction of compensation.
- (3) Individual and firm allocation.
- (4) Examples.
- (g) Effective/applicability date.

*§1.6694-2 Penalty for understatement due to an unreasonable position.*

- (a) In general.
  - (1) Proscribed conduct.
  - (2) Special rule for corporations, partnerships, and other firms.
- (b) Reasonable belief that the position would more likely than not be sustained on its merits.
  - (1) In general.
  - (2) No unreasonable assumptions.
  - (3) Authorities.
  - (4) Examples.
  - (5) Written determinations.
  - (6) When more likely than not standard must be satisfied.

(c) Exception for adequate disclosure of positions with a reasonable basis.

- (1) In general.
- (2) Reasonable basis.
- (3) Adequate disclosure.
  - (i) Signing tax return preparers.
  - (ii) Nonsigning tax return preparers.
    - (A) Advice to taxpayers.
    - (B) Advice to another tax return preparer.
  - (iii) Requirements for advice.
  - (iv) Pass-through entities.
  - (v) Examples.
- (d) Exception for reasonable cause and good faith.
  - (1) Nature of the error causing the understatement.
  - (2) Frequency of errors.
  - (3) Materiality of errors.
  - (4) Tax return preparer's normal office practice.
  - (5) Reliance on advice of others.
  - (6) Reliance on generally accepted administrative or industry practice.
- (e) Burden of proof.
- (f) Effective/applicability date.

*§1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

- (a) In general.
  - (1) Proscribed conduct.
  - (2) Special rule for corporations, partnerships, and other firms.

- (b) Willful attempt to understate liability.
- (c) Reckless or intentional disregard.
- (d) Examples.
- (e) Rules or regulations.
- (f) Section 6694(b) penalty reduced by section 6694(a) penalty.
- (g) Burden of proof.
- (h) Effective/applicability date.

*§1.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

- (a) In general.
- (b) Tax return preparer must bring suit in district court to determine liability for penalty.
- (c) Suspension of running of period of limitations on collection.
- (d) Effective/applicability date.

Par. 6. Section 1.6694-1 is revised to read as follows:

*§1.6694-1 Section 6694 penalties applicable to tax return preparers.*

(a) *Overview*—(1) *In general.* Sections 6694(a) and (b) impose penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return (including an amended or adjusted return) or claim for refund. The section 6694(a) penalty is imposed in an amount equal to the greater of \$1,000, or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of liability with respect to tax that is due to an undisclosed position for which the tax return preparer did not have a reasonable belief that the position would more likely than not be sustained on its merits (or due to a disclosed position for which there is no reasonable basis). The section 6694(b) penalty is imposed in an amount equal to the greater of \$5,000, or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of liability with respect to tax that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. See §1.6694-2 for rules relating to the penalty under section 6694(a). See §1.6694-3 for rules relating to the penalty under section 6694(b).

(2) *Date return is deemed prepared.* For purposes of the penalties under section 6694, a return or claim for refund is deemed prepared on the date it is signed by the tax return preparer. If a signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter fails to sign the return, the return is deemed prepared on the date the return is filed. See §1.6695-1 of this section. In the case of a nonsigning tax return preparer within the meaning of §301.7701-15(b)(2) of this chapter, the relevant date is the date the nonsigning tax return preparer provides the tax advice with respect to the position giving rise to the understatement. This date will be determined based on all the facts and circumstances.

(b) *Tax return preparer—(1) In general.* For purposes of this section, “tax return preparer” means any person who is a tax return preparer within the meaning of section 7701(a)(36) and §301.7701-15 of this chapter. An individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. There is only one individual within a firm who is primarily responsible for each position on the return or claim for refund giving rise to an understatement. In the course of identifying the individual who is primarily responsible for the position, the Internal Revenue Service may advise multiple individuals within the firm that it may be concluded that they are the individual within the firm who is primarily responsible. In some circumstances, there may be more than one tax return preparer who is primarily responsible for the position(s) giving rise to an understatement if multiple tax return preparers are employed by, or associated with, different firms.

(2) *Responsibility of signing tax return preparer.* The signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter will generally be considered the person who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement. It may be concluded, however, based upon information received from the signing tax return preparer (or other relevant information from a source other than the signing tax return preparer) that another person within the signing tax return preparer’s same firm was primarily responsible for

the position(s) on the return or claim for refund giving rise to an understatement.

(3) *Responsibility of nonsigning tax return preparer.* If there are one or more individuals within a firm who are nonsigning tax return preparers within the meaning of §301.7701-15(b)(2) of this chapter and there is no signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter for the return or claim for refund within that firm, the individual within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement is the tax return preparer who is primarily responsible for the position for purposes of section 6694. Additionally, if, after the application of paragraph (b)(2) of this section, it is concluded that the signing tax return preparer is not primarily responsible for the position or the IRS cannot conclude which individual (as between the signing tax return preparer and other persons within the firm) is primarily responsible for the position, the individual within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement is the tax return preparer who is primarily responsible for the position for purposes of section 6694.

(4) *Tax return preparer and firm responsibility.* To the extent provided in §§1.6694-2(a)(2) and 1.6694-3(a)(2), an individual and the firm that employs the individual, or the firm of which the individual is a partner, member, shareholder, or other equity holder, may both be subject to penalty under section 6694 with respect to the position(s) on the return or claim for refund giving rise to an understatement. If an individual (other than the sole proprietor) who is employed by a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a “firm” for purposes of this paragraph (b).

(5) *Examples.* The provisions of paragraph (b) of this section are illustrated by the following examples:

*Example 1.* Attorney A provides advice to Client C concerning the proper treatment of an item with respect to which all events have occurred on C’s income tax return. In preparation for providing that advice, A seeks advice regarding the proper treatment of the item from Attorney B, who is within the same firm as A, but A is the attorney who signs C’s return as a tax return preparer. B provides advice on the treatment of the item upon which A relies. B’s advice is reflected on C’s income tax return but no disclosure was made in accordance with §1.6694-2(c)(3). The advice constitutes preparation of a substantial portion of the re-

turn within the meaning of §301.7701-15(b)(3) and the IRS later challenges the position taken on the tax return, giving rise to an understatement of liability. For purposes of the regulations under section 6694, A is initially considered the tax return preparer with respect to C’s return and the IRS advises A that A may be subject to the penalty under section 6694 with respect to C’s return. Based upon information received from A or another source, it may be concluded that B had primary responsibility for the position taken on the return that gave rise to the understatement because B had overall supervisory responsibility for the position giving rise to an understatement.

*Example 2.* Same as *Example 1*, except that neither Attorney A nor any other attorney within A’s firm signs Client C’s return as a tax return preparer. Attorney B is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position giving rise to an understatement. Accordingly, B is the tax return preparer who is primarily responsible for the position on C’s return giving rise to an understatement and is subject to penalty under section 6694.

*Example 3.* Same as *Example 1*, except Attorney D, who works for a different firm than A, also provides advice on the same position upon which A relies. It may be concluded that D is also primarily responsible for the position on the return.

(c) *Understatement of liability.* For purposes of this section, an “understatement of liability” exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by the Internal Revenue Code (Code), or an overstatement of the net amount creditable or refundable with respect to any tax imposed by the Code. The net amount payable in a taxable year with respect to the return for which the tax return preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by the Code does not include additions to the tax, additional amounts, and assessable penalties imposed by subchapter 68 of the Code. Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the tax return preparer that is separate and apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer’s liability not understated.* If a penalty under section 6694(a) or (b) concerning a return or claim for refund has been assessed against one or more tax return preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability



relating to the position(s) on the return or claim for refund, then—

(1) The assessment shall be abated; and

(2) If any amount of the penalty was paid, that amount shall be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer or other party*—(1) *In general.* For purposes of sections 6694(a) and (b) (including meeting the reasonable belief that the position would more likely than not be sustained on its merits and reasonable basis standards in §§1.6694-2(b) and (c)(2), and demonstrating reasonable cause and good faith under §1.6694-2(d)), the tax return preparer generally may rely in good faith without verification upon information furnished by the taxpayer. A tax return preparer, however, may not rely on information provided by a taxpayer with respect to legal conclusions on Federal tax issues. A tax return preparer may also rely in good faith and without verification upon information furnished by another advisor, another tax return preparer or other party (including another advisor or tax return preparer at the tax return preparer's firm). The tax return preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence to verify independently information provided by the taxpayer, advisor, other tax return preparer, or other party. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist (for example, that the taxpayer maintain specific documents) before a deduction or credit may be claimed. The tax return preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition of the claiming of a deduction or credit.

(2) *Verification of information on previously filed returns.* For purposes of section 6694(a) and (b) (including meeting the reasonable belief that the position would

more likely than not be sustained on its merits and reasonable basis standards in §§1.6694-2(b) and (c)(2), and demonstrating reasonable cause and good faith under §1.6694-2(d)), a tax return preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS. For example, a tax return preparer who prepares an amended return (including a claim for refund) need not verify the positions on the original return. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. The tax return preparer must confirm that the position being relied upon has not been adjusted by examination or otherwise.

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* During an interview conducted by Preparer E, a taxpayer stated that he had made a charitable contribution of real estate in the amount of \$50,000 during the tax year, when in fact he had not made this charitable contribution. E did not inquire about the existence of a qualified appraisal or complete a Form 8283, *Noncash Charitable Contributions*, in accordance with the reporting and substantiation requirements under section 170(f)(11). E reported a deduction on the tax return for the charitable contribution, which resulted in an understatement of liability for tax, and signed the tax return as the tax return preparer. E is subject to a penalty under section 6694.

*Example 2.* While preparing the 2008 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099 for a bank account that produced significant taxable income in 2008. When F inquired about any other income, the taxpayer furnished the Form 1099 to F for use in preparation of the 2008 tax return. F did not know that the taxpayer owned an additional bank account that generated taxable income for 2008 and the taxpayer did not reveal this information to the tax return preparer notwithstanding F's general inquiry about any other income. F signed the taxpayer's return as the tax return preparer. F is not subject to a penalty under section 6694.

*Example 3.* In preparing a tax return, Accountant G relies on the advice of an actuary concerning the limit on deductibility under section 404(a)(1)(A) of a contribution by an employer to a qualified pension trust. On the basis of this advice, G completed and signed the tax return. It is later determined that there is an understatement of liability for tax that resulted from the incorrect advice provided by the actuary. G had no reason to believe that the advice was incorrect or incomplete, and the advice appeared reason-

able on its face. G was also not aware at the time the return was prepared of any reason why the actuary did not know all of the relevant facts or that the advice was no longer reliable due to developments in the law since the time the advice was given. G is not subject to a penalty under section 6694. The actuary, however, may be subject to penalty under section 6694 if the advice given by the actuary constitutes a substantial portion of the tax return within the meaning of §301.7701-15(b)(3) of this chapter.

(f) *Income derived (or to be derived) with respect to the return or claim for refund*—(1) *In general.* For purposes of sections 6694(a) and (b), *income derived (or to be derived)* means all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with whom the tax return preparer is associated, *income derived (or to be derived)* means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation where a firm that employs the individual tax return preparer (or the firm of which the individual tax return preparer is a partner, member, shareholder, or other equity holder) is subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§1.6694-2(a)(2) or 1.6694-3(a)(2), *income derived (or to be derived)* means all compensation the firm receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

(2) *Compensation*—(i) *Multiple engagements.* For purposes of applying paragraph (f)(1) of this section, if the tax return preparer or the tax return preparer's firm has multiple engagements related to the same return or claim for refund, only those engagements relating to the position(s) taken on the return or claim for

refund that gave rise to the understatement are considered for purposes of calculating the income derived (or to be derived) with respect to the return or claim for refund.

(ii) *Reasonable allocation.* For purposes of applying paragraph (f)(1) of this section, only compensation for tax advice that is given with respect to events that have occurred at the time the advice is rendered and that relates to the position(s) giving rise to the understatement will be taken into account for purposes of calculating the section 6694(a) and (b) penalties. If a lump sum fee is received that includes amounts not taken into account under the preceding sentence, the amount of income derived will be based on a reasonable allocation of the lump sum fee between the tax advice giving rise to the penalty and the advice that does not give rise to the penalty.

(iii) *Fee refunds.* For purposes of applying paragraph (f)(1) of this section, a refund to the taxpayer of all or part of the amount paid to the tax return preparer or the tax return preparer's firm will not reduce the amount of the section 6694 penalty assessed. A refund in this context does not include a discounted fee or alternative billing arrangement for the services provided.

(iv) *Reduction of compensation.* For purposes of applying paragraph (f)(1) of this section, it may be concluded based upon information provided by the tax return preparer or the tax return preparer's firm that an appropriate allocation of compensation attributable to the position(s) giving rise to the understatement on the return or claim for refund is less than the total amount of compensation associated with the engagement. For example, the number of hours of the engagement spent on the position(s) giving rise to the understatement may be less than the total hours associated with the engagement. If this is concluded, the amount of the penalty will be calculated based upon the compensation attributable to the position(s) giving rise to the understatement. Otherwise, the total amount of compensation from the engagement will be the amount of income derived for purposes of calculating the penalty under section 6694.

(3) *Individual and firm allocation.* For both an individual within a firm and a firm that employs the individual (or the firm of which the individual is a partner, member, shareholder, or other equity holder)

are subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§1.6694-2(a)(2) or 1.6694-3(a)(2), the amount of penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived (or to be derived) by the firm from the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. The portion of the total amount of the penalty assessed against the individual tax return preparer shall not exceed 50 percent of the individual's compensation as determined under paragraphs (f)(1) and (2) of this section.

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

*Example 1.* Signing Tax Return Preparer H is engaged by a taxpayer and paid a total of \$21,000. Of this amount, \$20,000 relates to research and consultation regarding a transaction that is later reported on a return, and \$1,000 for the activities relating to the preparation of the return. Based on H's hourly rates, a reasonable allocation of the amount of compensation related to the advice rendered prior to the occurrence of events that are the subject of the advice is \$5,000. The remaining compensation of \$16,000 is considered to be compensation related to the advice rendered after the occurrence of events that are the subject of the advice and return preparation. The income derived by H with respect to the return for purposes of computing the penalty under section 6694(a) is \$16,000, and the amount of the penalty imposed under section 6694(a) is \$8,000.

*Example 2.* Accountants I, J, and K are employed by Firm L. I is a principal manager of Firm L and provides corporate tax advice for the taxpayer after all events have occurred subject to an engagement for corporate tax advice. J provides international tax advice for the taxpayer after all events have occurred subject to a different engagement for international tax advice. K prepares and signs the taxpayer's return under a general tax services engagement. I's advice is the source of an understatement on the return and the advice constitutes preparation of a substantial portion of the return within the meaning of §301.7701-15(b) of this chapter. I is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position on the taxpayer's return giving rise to an understatement. Thus, I is the tax return preparer who is primarily responsible for the position on the taxpayer's return giving rise to the understatement. Because K's signature as the signing tax return preparer is on the return, the IRS advises K that K may be subject to the section 6694(a) penalty against K to the understatement. K provides information that I is the tax return preparer with primary responsibility for the position that gave rise to the understatement and K formed a reasonable belief that the position would more likely than not be sustained on the merits by relying on the advice provided by I. Furthermore, K

has reasonable cause because K relied on I for the advice on the corporate tax matter. The IRS, therefore, assesses the section 6694 penalty against I. The portion of the total amount of the penalty allocable to I does not exceed that part of I's compensation that is attributable to the corporate tax advice engagement. In the event that Firm L is also liable under the provisions in §1.6694-2(a)(2), the IRS assesses the section 6694 penalty in an amount not exceeding 50 percent of Firm L's firm compensation based on the engagement relating to the corporate tax advice services provided by I where there is no applicable reduction in compensation pursuant to §1.6694-1(f)(2)(iii).

*Example 3.* Same facts as *Example 2*, except that I provides the advice on the corporate matter when the events have not yet occurred. I's advice is the cause of an understatement position on the return but I is not a tax return preparer pursuant to §301.7701-15(b)(2) or (3) of this chapter. K has reasonable cause because K relied on I for the advice on the corporate tax matter and K is not limited to reliance on persons who provide post-transactional advice if such reliance is reasonable and in good faith. I, K and Firm L are not liable for the section 6694 penalty.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 7. Section 1.6694-2 is revised to read as follows:

*§1.6694-2 Penalty for understatement due to an unreasonable position.*

(a) *In general—(1) Proscribed conduct.* Except as otherwise provided in this section, a tax return preparer is liable for a penalty under section 6694(a) equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for any return or claim for refund that it prepares that results in an understatement of liability due to a position if the tax return preparer knew (or reasonably should have known) of the position and either—

(i) The position was not disclosed as provided in this section and there was not a reasonable belief that the position would more likely than not be sustained on its merits; or

(ii) The position was disclosed as provided in this section but there was no reasonable basis for the position.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(a) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other

equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) Such review procedures were disregarded by the corporation, partnership, or other firm entity through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Reasonable belief that the position would more likely than not be sustained on its merits*—(1) *In general.* A tax return preparer may “reasonably believe that a position would more likely than not be sustained on its merits” if the tax return preparer analyzes the pertinent facts and authorities, and in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. In reaching this conclusion, the possibility that the position will not be challenged by the Internal Revenue Service (IRS) (for example, because the taxpayer’s return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by §1.6662–4(d)(3)(ii) (or any successor provision) for purposes of determining whether substantial authority is present applies for purposes of determining whether the more likely than not standard is satisfied. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer’s diligence. In determining the level of diligence in a particular situation, the tax return preparer’s experience with the area of Federal tax law and familiarity with the taxpayer’s affairs, as well as the complexity of the issues and facts, will be taken into account. A tax return preparer may reasonably believe that a position more likely

than not would be sustained on its merits despite the absence of other types of authority if the position is supported by a well-reasoned construction of the applicable statutory provision. For purposes of determining whether the tax return preparer has a reasonable belief that the position would more likely than not be sustained on the merits, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer, advisor, other tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer’s firm), as provided in §1.6694–1(e).

(2) *No unreasonable assumptions.* A position must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. For example, a position must not be based on a representation or assumption that the tax return preparer knows, or has reason to know, is inaccurate.

(3) *Authorities.* The authorities considered in determining whether a position satisfies the more likely than not standard are those authorities provided in §1.6662–4(d)(3)(iii) (or any successor provision).

(4) *Examples.* The provisions of paragraphs (b)(1) through (b)(3) of this section are illustrated by the following examples:

*Example 1.* A new statute is silent as to whether the taxpayer may take advantage of certain tax benefits. The Treasury Department and the IRS have not issued any interpretative guidance for the newly enacted provision. A well-reasoned construction of the statutory text supports the position that a taxpayer may claim the tax benefits. Preparer M may avoid the section 6694(a) penalty by taking the position that M reasonably believed that the taxpayer’s position would more likely than not be sustained on its merits.

*Example 2.* After the passage of legislation containing a new statutory provision, a taxpayer engaged in a transaction that is adversely affected by the new provision. Prior law supported a position favorable to the taxpayer. Preparer N believes that the new statute is inequitable as applied to the taxpayer’s situation. The statutory language, however, is unambiguous as applied to the transaction to deny the result claimed by the taxpayer previously. In considering the new statutory provision as applied to the taxpayer’s position, N may not avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that the position would more likely than not be sustained on its merits.

*Example 3.* While preparing the taxpayer’s return, Preparer O determines that a statute is silent as to whether the taxpayer may take a certain position on

the taxpayer’s 2007 Federal income tax return. Three private letter rulings issued to other taxpayers in 2002 and 2003 support the taxpayer’s position. Temporary regulations issued in 2004, however, are clearly contrary to the taxpayer’s position. After the issuance of the temporary regulations, the earlier private letter rulings cease to be authorities and are not taken into account in determining whether the taxpayer’s position satisfies the reasonable belief that the position would more likely than not be sustained on its merits standard. Preparer O may not avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that the taxpayer’s position would more likely than not be sustained on its merits.

*Example 4.* In the course of researching whether an interpretation of a phrase in the Internal Revenue Code (Code) is a position that more likely than not will be sustained on its merits, Preparer P discovers that the only relevant authorities include decisions of five U.S. courts of appeal. Three U.S. courts of appeal have construed the language as being taxpayer favorable. Two other U.S. courts of appeal, however, have construed the identical language as being favorable to the government’s position. The U.S. court of appeals in the jurisdiction where the taxpayer is located has not addressed this issue. P reasonably believes that the taxpayer’s facts more closely parallel the facts involved in the three U.S. courts of appeals’ decisions that were taxpayer favorable. Under the analysis prescribed by §1.6662–4(d)(3)(ii), P may avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that a well-reasoned position consistent with the taxpayer favorable interpretation would more likely than not be sustained on its merits.

(5) *Written determinations.* The tax return preparer may avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably believed that the taxpayer’s position satisfies the “more likely than not” standard if the taxpayer is the subject of a “written determination” as provided in §1.6662–4(d)(3)(iv)(A).

(6) *When “more likely than not” standard must be satisfied.* For purposes of this section, the requirement that a position satisfies the “more likely than not” standard must be satisfied on the date the return is deemed prepared, as prescribed by §1.6694–1(a)(2).

(c) *Exception for adequate disclosure of positions with a reasonable basis*—(1) *In general.* The section 6694(a) penalty will not be imposed on a tax return preparer if the position taken has a reasonable basis and is adequately disclosed within the meaning of paragraph (c)(3) of this section. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (d) of this section.

(2) *Reasonable basis.* For purposes of this section, “reasonable basis” has the same meaning as in §1.6662-3(b)(3) or any successor provision of the accuracy-related penalty regulations. For purposes of determining whether the tax return preparer has a reasonable basis for a position, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer, advisor, other tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer’s firm), as provided in §1.6694-1(e).

(3) *Adequate disclosure*—(i) *Signing tax return preparers.* In the case of a signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter, disclosure of a position for which there is a reasonable basis but for which the tax return preparer does not have a reasonable belief that the position would more likely than not be sustained on the merits is adequate if the tax return preparer meets any of the following standards:

(A) The position is disclosed in accordance with §1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275, “*Disclosure Statement*,” or Form 8275-R, “*Regulation Disclosure Statement*,” as appropriate, or on the tax return in accordance with the annual revenue procedure described in §1.6662-4(f)(2)).

(B) For income tax returns, if the position would not meet the standard for the taxpayer to avoid a penalty under section 6662(d)(2)(B) without disclosure (no substantial authority), the tax return preparer provides the taxpayer with the prepared tax return that includes the disclosure in accordance with §1.6662-4(f).

(C) For income tax returns, if the position would otherwise meet the standard for nondisclosure under section 6662(d)(2)(B)(i) (substantial authority), the tax return preparer advises the taxpayer of all the penalty standards applicable to the taxpayer under section 6662. The tax return preparer must also contemporaneously document the advice in the tax return preparer’s files.

(D) For income tax returns, if section 6662(d)(2)(B) does not apply because the position may be described in section 6662(d)(2)(C) or section 6662A (a tax shelter, reportable transaction with a significant purpose of tax avoidance or evasion, or a listed transaction), the tax

return preparer advises the taxpayer that there needs to be at a minimum substantial authority for the position, that the taxpayer must possess a reasonable belief that the tax treatment was more likely than not the proper treatment in order to avoid a penalty under section 6662(d) or section 6662A as applicable, and that disclosure will not protect the taxpayer from assessment of an accuracy-related penalty if either section 6662(d)(2)(C) or 6662A applies to the position. The tax return preparer must also contemporaneously document the advice in the tax return preparer’s files.

(E) For returns or claims for refund that are subject to penalties pursuant to section 6662 other than the substantial understatement penalty under section 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under sections 6662. The tax return preparer must also contemporaneously document the advice in the tax return preparer’s files.

(ii) *Nonsigning tax return preparers.* In the case of a nonsigning tax return preparer within the meaning of §301.7701-15(b)(2) of this chapter, disclosure of a position that satisfies the reasonable basis standard but does not satisfy the reasonable belief that a position would more likely than not be sustained on its merits standard is adequate if the position is disclosed in accordance with §1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275 or Form 8275-R, as appropriate, or on the return in accordance with an annual revenue procedure described in §1.6662-4(f)(2)). In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (c)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* If a nonsigning tax return preparer provides advice to the taxpayer with respect to a position for which there is a reasonable basis but for which the nonsigning tax return preparer does not have a reasonable belief that the position would more likely than not be sustained on the merits, disclosure of that position is adequate if the tax return preparer advises the taxpayer of any opportunity to avoid penalties under section 6662 that could apply to the position, if relevant, and of the standards for disclosure to the extent

applicable. The tax return preparer must also contemporaneously document the advice in the tax return preparer’s files.

(B) *Advice to another tax return preparer.* If a nonsigning tax return preparer provides advice to another tax return preparer with respect to a position for which there is a reasonable basis but for which the nonsigning tax return preparer does not have a reasonable belief that the position would more likely than not be sustained on the merits, disclosure of that position is adequate if the tax return preparer advises the other tax return preparer that disclosure under section 6694(a) may be required. The tax return preparer must also contemporaneously document the advice in the tax return preparer’s files.

(iii) *Requirements for advice.* For purposes of satisfying the disclosure standards of paragraphs (c)(3)(i) and (ii) of this section, each return position for which there is a reasonable basis but for which the tax return preparer does not have a reasonable belief that the position would more likely than not be sustained on the merits must be addressed by the tax return preparer. The advice to the taxpayer with respect to each position, therefore, must be particular to the taxpayer and tailored to the taxpayer’s facts and circumstances. The tax return preparer is required to contemporaneously document the fact that the advice was provided. There is no general *pro forma* language or special format required for a tax return preparer to comply with these rules. No form of a general boilerplate disclaimer, however, is sufficient to satisfy these standards. A tax return preparer may choose to comply with the documentation standard in one document covering each position, or in multiple documents covering all of the positions.

(iv) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity is adequate if made at the entity level in accordance with the rules in §1.6662-4(f)(5) or at the entity level in accordance with the rules in paragraphs (c)(3)(i) or (ii) of this section.

(v) *Examples.* The provisions of paragraph (c)(3) of this section are illustrated by the following examples:

*Example 1.* An individual taxpayer hires Accountant Q to prepare its income tax return. Q does not reasonably believe that a particular position taken on the tax return would more likely than not be sustained on its merits although there is substantial authority for the position. Q prepares and signs the tax return with-

out disclosing the position taken on the tax return, but advises the individual taxpayer of the penalty standards applicable to the taxpayer under section 6662, and contemporaneously documents in Q's files that this advice was provided. The individual taxpayer signs and files the tax return without disclosing the position because the position meets the standards for nondisclosure under section 6662(d)(2)(B)(i). The IRS later challenges the position taken on the tax return, resulting in an understatement of liability. Q is not subject to a penalty under section 6694.

*Example 2.* Attorney R advises a large corporate taxpayer concerning the proper treatment of complex entries on the corporate taxpayer's tax return. R has reason to know that the tax attributable to the entries is a substantial portion of the tax required to be shown on the tax return within the meaning of §301.7701-15(b)(3). When providing the advice, R concludes that one position with respect to these entries does not meet the reasonable belief that the position would more likely than not be sustained on the merits standard and also does not have substantial authority, although the position meets the reasonable basis standard. R, in good faith, advises the corporate taxpayer that the position lacks substantial authority and the taxpayer will be subject to an accuracy-related penalty under section 6662 unless the position is disclosed in a disclosure statement included in the return. R also documents the fact that this advice was contemporaneously provided to the corporate taxpayer at the time the advice was provided. Neither R nor any other attorney within R's firm signs the corporate taxpayer's return as a tax return preparer, but the advice by R constitutes preparation of a substantial portion of the tax return and R is the individual with overall supervisory responsibility for the position giving rise to the understatement. Thus, R is a tax return preparer for purposes of section 6694. R, however, will not be subject to a penalty under section 6694.

(d) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if, considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the tax return preparer acted in good faith. Factors to consider include:

(1) *Nature of the error causing the understatement.* The error resulted from a provision that was complex, uncommon, or highly technical and a competent tax return preparer of tax returns or claims for refund of the type at issue reasonably could have made the error. The reasonable cause and good faith exception, however, does not apply to an error that would have been apparent from a general review of the return or claim for refund by the tax return preparer.

(2) *Frequency of errors.* The understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of er-

rors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant, or material that it should have been discovered during a review of the return or claim for refund. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* The understatement was not material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Tax return preparer's normal office practice.* The tax return preparer's normal office practice, when considered together with other facts and circumstances, such as the knowledge of the tax return preparer, indicates that the error in question would rarely occur and the normal office practice was followed in preparing the return or claim for refund in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims for refund and generally would include, in the case of a signing tax return preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding these rules, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims for refund.

(5) *Reliance on advice of others.* For purposes of demonstrating reasonable cause and good faith, a tax return preparer may rely without verification upon advice and information furnished by the taxpayer or other party, as provided in §1.6694-1(e). The tax return preparer may reasonably rely in good faith on the advice of, or schedules or other documents prepared by, the taxpayer, another advisor,

another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), and who the tax return preparer had reason to believe was competent to render the advice or other information. The advice or information may be written or oral, but in either case the burden of establishing that the advice or information was received is on the tax return preparer. A tax return preparer is not considered to have relied in good faith if—

(i) The advice or information is unreasonable on its face;

(ii) The tax return preparer knew or should have known that the other party providing the advice or information was not aware of all relevant facts; or

(iii) The tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the advice or information was no longer reliable due to developments in the law since the time the advice was given.

(6) *Reliance on generally accepted administrative or industry practice.* The tax return preparer reasonably relied in good faith on generally accepted administrative or industry practice in taking the position that resulted in the understatement. A tax return preparer is not considered to have relied in good faith if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the administrative or industry practice was no longer reliable due to developments in the law or IRS administrative practice since the time the practice was developed.

(e) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(a), the issues on which the tax return preparer bears the burden of proof include whether—

(1) The tax return preparer knew or reasonably should have known that the questioned position was taken on the return;

(2) There is reasonable cause and good faith with respect to such position; and

(3) The position was disclosed adequately in accordance with paragraph (c) of this section.

(f) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after

the date that final regulations are published in the **Federal Register**.

Par. 8. Section 1.6694-3 is amended by revising paragraphs (a), (c)(2) and (3), (d), (e), (f), (g) and (h) to read as follows:

*§1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general—(1) Proscribed conduct.* A tax return preparer is liable for a penalty under section 6694(b) equal to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer if any part of an understatement of liability for a return or claim for refund that is prepared is due to—

(i) A willful attempt in any manner to understate the liability for tax by a tax return preparer on the return or claim for refund; or

(ii) Any reckless or intentional disregard of rules or regulations by any such person.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(b) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(b);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) Such review procedures were disregarded by the corporation, partnership, or other firm entity through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

\* \* \* \* \*

(c) *Reckless or intentional disregard—(1)*\* \* \* \*

(2) A tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if

the position contrary to the rule or regulation has a reasonable basis as defined in §1.6694-2(c)(2) and is adequately disclosed in accordance with §1.6694-2(c)(3). In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation and, when disclosed in accordance with §1.6694-2(c)(3), the tax return preparer must identify the regulation being challenged. For purposes of this section, disclosure on the return in accordance with an annual revenue procedure under §1.6662-4(f)(2) is not applicable.

(3) In the case of a position contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) published by the Internal Revenue Service in the Internal Revenue Bulletin, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the tax return preparer reasonably believes that the position would more likely than not be sustained on its merits in accordance with §1.6694-2(b).

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples:

*Example 1.* A taxpayer provided Preparer S with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. S knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. S is subject to the penalty under section 6694(b).

*Example 2.* A taxpayer provided Preparer T with detailed check registers to compute the taxpayer's expenses. T, however, knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because T disregarded information provided in the check registers, T is subject to the penalty under section 6694(b).

*Example 3.* Preparer U prepares a taxpayer's return and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One U.S. Tax Court case has expressly invalidated that portion of the regulations. Under these facts, U will have a reasonable basis for the position as defined in §1.6694-2(c)(2) and will not be subject to the section 6694(b) penalty if the position is adequately disclosed in accordance with paragraph (c)(2) of this section because the position represents a good faith challenge to the validity of the regulations.

(e) *Rules or regulations.* The term *rules or regulations* includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the

Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin.

(f) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a tax return preparer may be subject under section 6694(b) for a return or claim for refund is reduced by any amount assessed and collected against the tax return preparer under section 6694(a) for the same return or claim for refund.

(g) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(b), the government bears the burden of proof on the issue of whether the tax return preparer willfully attempted to understate the liability for tax. See section 7427. The tax return preparer bears the burden of proof on such other issues as whether—

(1) The tax return preparer recklessly or intentionally disregarded a rule or regulation;

(2) A position contrary to a regulation represents a good faith challenge to the validity of the regulation; and

(3) Disclosure was adequately made in accordance with §1.6694-3(c)(2).

(h) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 9. Section 1.6694-4 is amended by revising paragraph (a) to read as follows:

*§1.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* (1) The Internal Revenue Service will investigate the preparation by a tax return preparer of a return of tax under the Internal Revenue Code (Code) or claim for refund of tax under the Code as described in §301.7701-15(b)(4) of this chapter, and will send a report of the examination to the tax return preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which there was not a reasonable belief that the position would more likely than not be sustained on its merits under section 6694(a) (or not a

reasonable basis for disclosed positions); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

\* \* \* \* \*

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 10. Section 1.6695-1 is revised to read as follows:

*§1.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *Failure to furnish copy to taxpayer.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax or claim for refund of tax under the Internal Revenue Code (Code), and who fails to satisfy the requirements imposed by section 6107(a) and §1.6107-1(a) to furnish a copy of the return or claim for refund to the taxpayer (or nontaxable entity), shall be subject to a penalty of \$50 for such failure, with a maximum penalty of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon a tax return preparer who furnishes a copy of the return or claim for refund to taxpayers who—

(i) Hold an elected or politically appointed position with the government of the United States or a state or political subdivision thereof; and

(ii) In order faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) An individual who is a tax return preparer as described in §301.7701-15 of this chapter with respect to a return of tax or claim for refund of tax under the Code that is not signed electronically shall sign the return

or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. For rules covering electronically signed returns, see paragraph (b)(2) of this section. For purposes of this paragraph (b), a return of tax shall not include information returns under subpart B and subpart C of Part III of Subtitle F. If the tax return preparer is unavailable for signature, another tax return preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) In the case of electronically signed tax returns, the tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The tax return preparer, however, must furnish all of the information that will be transmitted as the electronically signed tax return to the taxpayer contemporaneously with furnishing the Form 8879, “*IRS e-file Signature Authorization*,” or other similar Internal Revenue Service (IRS) e-file signature form. The information may be furnished on a replica of an official form. The tax return preparer shall electronically sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(3) If more than one tax return preparer is involved in the preparation of the return or claim for refund, the individual tax return preparer who has the primary responsibility as between or among the tax return preparers for the overall substantive accuracy of the preparation of such return or claim for refund shall be considered to be the signing tax return preparer for purposes of this paragraph (b) and §301.7701-15(b)(1) of this chapter. Any other tax return preparer as described in §301.7701-15(b)(2) of this chapter is not required to sign the return or claim for refund.

(4) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

*Example 1.* Law Firm A employs B, a lawyer, to prepare for compensation estate tax returns and claims for refund of taxes. Firm A is engaged by C to prepare a Federal estate tax return. Firm A assigns B to prepare the return. B obtains the information necessary for completing the return from C and makes determinations with respect to the proper ap-

plication of the tax laws to such information in order to determine the estate’s tax liability. B then forwards such information to D, a computer tax service that performs the mathematical computations and prints the return by means of computer processing. D then sends the completed estate tax return to B who reviews the accuracy of the return. B is the individual tax return preparer who is primarily responsible for the overall accuracy of the estate tax return. B must sign the return as tax return preparer.

*Example 2.* Partnership E is a national accounting firm that prepares returns and claims for refund of taxes for compensation. F and G, employees of Partnership E, are involved in preparing the Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, for H, a tax exempt organization. After they complete the return, including the gathering of the necessary information, analyzing the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, I, a supervisory employee of Partnership E, reviews the return. As part of this review, I reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are reviewed by J, an employee of Partnership E. The policies and practices of Partnership E require that K, a partner, finally review the return. The scope of K’s review includes reviewing the information provided and applying to this information his knowledge of H’s affairs, observing that Partnership E’s policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine H’s tax liability. K may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in I (or F and G), and other factors. K is the individual tax return preparer who is primarily responsible for the overall accuracy of H’s return. K must sign the return as tax return preparer.

*Example 3.* L corporation maintains an office in Seattle, Washington, for the purpose of preparing partnership returns for compensation. L makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from partners of a partnership and to make decisions with respect to the proper application of the tax laws to the information in order to prepare the partnership return and calculate the partnership’s distributive items. M, an individual, who has such an arrangement in Los Angeles with L, collects information from N, the general partner of a partnership, and completes a worksheet kit supplied by L that is stamped with M’s name and an identification number assigned to M by L. In this process, M classifies this information in appropriate categories for the preparation of the partnership return. The completed worksheet kit signed by M is then mailed to L. O, an employee in L’s office, reviews the worksheet kit to make sure it was properly completed. O does not review the information obtained from N for its validity or accuracy. O may, but did not, make the final decision with respect to the proper application of tax laws to the information provided. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to N with filing instructions. M is the



individual tax return preparer primarily responsible for the overall accuracy of the partnership return. M must sign the return as tax return preparer.

*Example 4.* P employs R, S, and T to prepare gift tax returns for taxpayers. After R and S have collected the information from a taxpayer and applied the tax laws to the information, the return form is completed by a computer service. On the day the returns prepared by R and S are ready for their signatures, R is away from the city for 1 week on another assignment and S is on detail to another office in the same city for the day. T may sign the gift tax returns prepared by R, provided that T reviews the information obtained by R relative to the taxpayer, and T reviews the preparation of each return prepared by R. T may not sign the returns prepared by S because S is available.

(5) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of \$50 for each failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the tax return preparer asserts reasonable cause for failure to sign, the IRS will require a written statement to substantiate the tax return preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause that arises despite ordinary care and prudence exercised by the individual tax return preparer.

(6) *Effective/applicability date.* This paragraph (b) is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

(c) *Failure to furnish identifying number.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirement of section 6109(a)(4) and §1.6109-2(a) to furnish one or more identifying numbers of signing tax return preparers or persons employing the signing tax return preparer (or with which the signing tax return preparer is associated) on a return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature shall be subject to a penalty of \$50 for each failure, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No more than one penalty of \$50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or record.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirements imposed upon him or her by section 6107(b) and §1.6107-1(b) and (c) (other than the record requirement described in both §1.6107-1(b)(2) and (3)) to retain and make available for inspection a copy of the return or claim for refund, or to include the return or claim for refund in a record of returns and claims for refund and make the record available for inspection, shall be subject to a penalty of \$50 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) A person may not, for returns or claims for refund presented to the taxpayers (or nontaxable entities) during any single return period, be subject to more than \$25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060 and §1.6060-1 and who fails to satisfy these requirements shall pay a penalty of \$50 for each such failure, with a maximum of \$25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

(f) *Negotiation of check.* (1) No person who is a tax return preparer as described in §301.7701-15 of this chapter may endorse or otherwise negotiate, directly or through an agent, a check for the refund of tax under the Code that is issued to a taxpayer other than the tax return preparer if the person was a tax return preparer of the return or claim for refund which gave rise to the refund check.

(2) Section 6695(f) and paragraphs (f)(1) and (3) of this section do not apply to a tax return preparer-bank that—

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a loan to the

taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

(3) A tax return preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(4) The tax return preparer shall be subject to a penalty of \$500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 11. Section 1.6695-2 is amended by revising the heading and paragraphs (a), (b)(3), (c) and (d) to read as follows:

*§1.6695-2 Tax return preparer due diligence requirements for determining earned income credit eligibility.*

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure.

(b) \* \* \*

(3) *Knowledge—(i) In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable



in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

*Example 1.* A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

*Example 2.* An 18 year-old female taxpayer with an infant has \$3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquiries to determine if the taxpayer is the qualifying child of her parents and, therefore, ineligible to claim the EIC.

*Example 3.* In March 2008, Mr. D has Preparer C prepare his tax year 2007 return using Married Filing Separate filing status, and an address of 25 Main Street, Mytown, Mystate. Two weeks later Mrs. D has C prepare her tax year 2007 return, and she asks C to use the Head of Household filing status, claiming two qualifying children, and the EIC. She tells C that her address is 25 Main Street, Mytown, Mystate. Mrs. D's filing status appears incorrect based on the filing status used by Mr. D. Therefore, C must make additional reasonable inquiries to determine Mrs. D's proper filing status.

*Example 4.* Taxpayer asks Preparer E to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned \$10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. E must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of

this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 12. Section 1.6696-1 is revised to read as follows:

*§1.6696-1 Claims for credit or refund by tax return preparers or appraisers.*

(a) *Notice and demand.* (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term "tax return preparer," see section 7701(a)(36) and §301.7701-15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and §301.7701-15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser.* A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer's or appraiser's estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer's or appraiser's employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer's or appraiser's employer or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required by paragraph (d) of this section, shall be verified by a written declaration by the tax return preparer or appraiser that

the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims.* (1) Unless paragraph (c)(2) of this section applies, a tax return preparer shall file a separate claim for each penalty assessed in each statement of notice and demand issued to the tax return preparer.

(2) A tax return preparer may file one or more consolidated claims for any or all penalties imposed on the tax return preparer by a single IRS Office under section 6695(a) and §1.6695-1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and §1.6695-1(b) (relating to failure to sign), section 6695(c) and §1.6695-1(c) (relating to failure to furnish identifying number), or under section 6695(d) and §1.6695-1(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a tax return preparer may file one consolidated claim for any or all penalties imposed on the tax return preparer by a single IRS Office under section 6695(e) and §1.6695-1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim.* Each claim for credit or refund for any penalty (or penalties) paid by a tax return preparer under section 6694 and §1.6694-1, or under section 6695 and §1.6695-1, or paid by an appraiser under section 6695A (and any subsequently issued regulations) shall include the following information, verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury:

(1) The tax return preparer's or appraiser's name.

(2) The tax return preparer's or appraiser's identification number. If the tax return preparer or appraiser is—

(i) An individual (not described in paragraph (d)(2)(iii) of this section) who is a citizen or resident of the United States, the tax return preparer's or appraiser's social security account number (or such alternative number as may be prescribed by the IRS in forms, instructions, or other appropriate guidance) shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed by another tax return preparer or appraiser to prepare the document

(or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) that employed one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer's or appraiser's employer identification number shall be provided.

(3) The tax return preparer's or appraiser's address where the IRS mailed the statement (or statements) of notice and demand and, if different, the tax return preparer's or appraiser's address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the IRS campus or office that issued the statement (or statements) of notice and demand for payment of the penalty (or penalties).

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document to which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer's (or nontaxable entity's) name and taxpayer identification number, and by the taxable year to which the document relates.

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim.

(iii) The total amount claimed.

(6) A statement setting forth in detail—

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the IRS of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding §301.6402(c) of this chapter, Form 6118, "Claim for Refund of Tax Return Preparer Penalties," is the form prescribed for making a claim as provided in this section.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the IRS campus or office that issued to the tax return preparer or appraiser the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and §1.6694-2(a)(3)(ii) and (4), and in section 6694(d) and §1.6694-1(c):

(A) A claim for a penalty paid by a tax return preparer under section 6694 and §1.6694-1, or under section 6695 and §1.6695-1, or by a appraiser under section 6695A (and any subsequently issued regulations) shall be filed within three years from the date the payment was made.

(B) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within three years from the first date of payment of any penalty included in the claim.

(ii) For purposes of this paragraph (g)(1), payment is considered made on the date payment is received by the IRS or, if applicable, on the date an amount is credited in satisfaction of the penalty.

(2) For purposes of determining whether a claim is timely filed, the rules under sections 7502 and 7503 and the provisions of §§1.7502-1, 1.7502-2, and 1.7503-1 apply.

(h) *Application of refund to outstanding liability of tax return preparer or appraiser.* The IRS may, within the applicable period of limitations, credit any amount of an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations) against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the tax return preparer or appraiser making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the tax return preparer or appraiser.

(i) *Interest.* (1) Section 6611 and §301.6611-1 of this chapter apply to the payment by the IRS of interest on an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) Section 6601 and §301.6601-1 of this chapter apply to the payment of interest by a tax return preparer or appraiser to the IRS on any penalty (or penalties) assessed against the tax return preparer under section 6694 and §1.6694-1, under sec-

tion 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(j) *Suits for refund of penalty.* (1) A tax return preparer or appraiser may not maintain a civil action for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations), unless the tax return preparer or appraiser has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and §1.6694-2(b), the periods of limitation contained in section 6532 and §301.6532-1 of this chapter apply to a tax return preparer's or appraiser's suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(ii) The rules under section 7503 and §301.7503-1 of this chapter apply to the timely commencement by a tax return preparer or appraiser of a suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(k) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

## PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 13. The authority citation for part 20 is amended by adding entries in numerical order to read in part as follows:

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

Section 20.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 20.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 20.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 20.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 14. Section 20.6060-1 is added to read as follows:

*§20.6060–1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 15. Section 20.6107–1 is added to read as follows:

*§20.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the estate, and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 16. Section 20.6109–1 is added to read as follows:

*§20.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each estate tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 17. Section 20.6694–1 is added to read as follows:

*§20.6694–1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of estate tax returns or claims see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 18. Section 20.6694–2 is added to read as follows:

*§20.6694–2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 19. Section 20.6694–3 is added to read as follows:

*§20.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 20. Section 20.6694–4 is added to read as follows:

*§20.6694–4 Extension of period of collection when preparer pays 15 percent*

*of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of the period of collection when a tax return preparer who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of the taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under sections 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 21. Section 20.6695–1 is added to read as follows:

*§20.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 22. Section 20.6696–1 is added to read as follows:

*§20.6696–1 Claims for credit or refund by tax return preparers or appraisers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer

who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 23. Section 20.7701-1 is added to read as follows:

*§20.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

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

Par. 24. The authority citation for part 25 is amended by adding entries in numerical order to read in part as follows:

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

Section 25.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 25.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 25.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 25.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 25. Section 25.6060-1 is added to read as follows:

*§25.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims

for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 26. Section 25.6107-1 is added to read as follows:

*§25.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 27. Section 25.6109-1 is added to read as follows:

*§25.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each gift tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 28. Section 25.6694-1 is added to read as follows:

*§25.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of gift tax returns or claims see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final reg-

ulations are published in the **Federal Register**.

Par. 29. Section 25.6694-2 is added to read as follows:

*§25.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 30. Section 25.6694-3 is added to read as follows:

*§25.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 31. Section 25.6694-4 is added to read as follows:

*§25.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules for the extension of period of collection when a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation of, assessment and collection of the penalties under section 6694(a) and (b), the

rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 32. Section 25.6695-1 is added to read as follows:

*§25.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 33. Section 25.6696-1 is added to read as follows:

*§25.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 34. Section 25.7701-1 is added to read as follows:

*§25.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986**

Par. 35. The authority citation for part 26 is amended by adding entries in numerical order to read in part as follows:

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

Section 26.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 26.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 26.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 26.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 36. Section 26.6060-1 is added to read as follows:

*§26.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 37. Section 26.6107-1 is added to read as follows:

*§26.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of generation-skipping

transfer tax under chapter 13 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the estate, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 38. Section 26.6109-1 is added to read as follows:

*§26.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each generation-skipping transfer tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 39. Section 26.6694-1 is added to read as follows:

*§26.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of generation-skipping transfer tax returns or claims see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 40. Section 26.6694-2 is added to read as follows:

*§26.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject

to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 41. Section 26.6694-3 is added to read as follows:

*§26.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 42. Section 26.6694-4 is added to read as follows:

*§26.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 43. Section 26.6695-1 is added to read as follows:

*§26.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 44. Section 26.6696-1 is added to read as follows:

*§26.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 45. Section 26.7701-1 is added to read as follows:

*§26.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after

the date that final regulations are published in the **Federal Register**.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 46. The authority citation for part 31 is amended by adding entries in numerical order to read in part as follows:

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

Section 31.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 31.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 31.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 31.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 47. Section 31.6060-1 is added to read as follows:

*§31.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 48. Section 31.6107-1 is added to read as follows:

*§31.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims

for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 49. Section 31.6109–2 is added to read as follows:

*§31.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each employment tax return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 50. Section 31.6694–1 is added to read as follows:

*§31.6694–1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of employment tax returns or claims of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 51. Section 31.6694–2 is added to read as follows:

*§31.6694–2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 52. Section 31.6694–3 is added to read as follows:

*§31.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 53. Section 31.6694–4 is added to read as follows:

*§31.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 54. Section 31.6695–1 is added to read as follows:

*§31.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 55. Section 31.6696–1 is added to read as follows:

*§31.6696–1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 56. Section 31.7701–1 is added to read as follows:

*§31.7701–1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

PART 40—EXCISE TAX  
PROCEDURAL REGULATIONS

Par. 57. The authority citation for part 40 is amended by adding entries in numerical order to read in part as follows:

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

Section 40.6060–1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 40.6109–2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 40.6695–1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 40.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 58. Section 40.6060–1 is added to read as follows:

*§40.6060–1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 59. Section 40.6107–1 is added to read as follows:

*§40.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims

for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 60. Section 40.6109–1 is added to read as follows:

*§40.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 61. Section 40.6694–1 is added to read as follows:

*§40.6694–1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of returns or claims for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 62. Section 40.6694–2 is added to read as follows:

*§40.6694–2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code (Code)

shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 63. Section 40.6694–3 is added to read as follows:

*§40.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 64. Section 40.6694–4 is added to read as follows:

*§40.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.



Par. 65. Section 40.6695-1 is added to read as follows:

*§40.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 66. Section 40.6696-1 is added to read as follows:

*§40.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under chapters 31, 32 (other than section 4181), 33, 34, 36 (other than section 4461), 38, and 39 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 67. Section 40.7701-1 is added to read as follows:

*§40.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES**

Par. 68. The authority citation for part 41 is amended by adding entries in numerical order to read in part as follows:

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

Section 41.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 41.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 41.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 41.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 69. Section 41.6060-1 is added to read as follows:

*§41.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of excise tax under section 4481 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 70. Section 41.6107-1 is added to read as follows:

*§41.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims

for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 71. Section 41.6109-2 is added to read as follows:

*§41.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.*

(a) *In general.* Each excise tax return or claim for refund under section 4481 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 72. Section 41.6694-1 is added to read as follows:

*§41.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 73. Section 41.6694-2 is added to read as follows:

*§41.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 74. Section 41.6694-3 is added to read as follows:

*§41.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 75. Section 41.6694–4 is added to read as follows:

*§41.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under section 4481 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 76. Section 41.6695–1 is added to read as follows:

*§41.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign a return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain

a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 77. Section 41.6696–1 is added to read as follows:

*§41.6696–1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under section 4481 of the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 78. Section 41.7701–1 is added to read as follows:

*§41.7701–1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 44—TAXES ON WAGERING;  
EFFECTIVE JANUARY 1, 1955**

Par. 79. The authority citation for part 44 is amended by adding entries in numerical order to read in part as follows:

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

Section 44.6060–1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 44.6109–2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 44.6695–1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 44.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 80. Section 44.6060–1 is added to read as follows:

*§44.6060–1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 81. Section 44.6107–1 is added to read as follows:

*§44.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 82. Section 44.6109–1 is added to read as follows:

*§44.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund of tax under sections 4401 or 4411 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 83. Section 44.6694–1 is added to read as follows:

*§44.6694–1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of wagering tax returns or claims for refund under sections 4401 or 4411, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 84. Section 44.6694–2 is added to read as follows:

*§44.6694–2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 85. Section 44.6694–3 is added to read as follows:

*§44.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 86. Section 44.6694–4 is added to read as follows:

*§44.6694–4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of*

*taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 87. Section 44.6695–1 is added to read as follows:

*§44.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 88. Section 44.6696–1 is added to read as follows:

*§44.6696–1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or

4411 of the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 89. Section 44.7701–1 is added to read as follows:

*§44.7701–1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 53—FOUNDATION AND SIMILAR EXCISE TAXES**

Par. 90. The authority citation for part 53 is amended by adding entries in numerical order to read in part as follows:

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

Section 53.6060–1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 53.6109–2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 53.6695–1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 53.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 91. Section 53.6060–1 is added to read as follows:

*§53.6060–1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 92. Section 53.6107–1 is added to read as follows:

*§53.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 93. Section 53.6109-1 is added to read as follows:

*§53.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.*

(a) *In general.* Each tax return or claim for refund under Chapter 42 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 94. Section 53.6694-1 is added to read as follows:

*§53.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund under Chapter 42 of the Internal Revenue Code, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 95. Section 53.6694-2 is added to read as follows:

*§53.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 96. Section 53.6694-3 is added to read as follows:

*§53.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 97. Section 53.6694-4 is added to read as follows:

*§53.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 98. Section 53.6695-1 is added to read as follows:

*§53.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 99. Section 53.6696-1 is added to read as follows:

*§53.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under Chapter 42 of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 100. Section 53.7701-1 is added to read as follows:

*§53.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

PART 54—PENSION EXCISE TAXES

Par. 101. The authority citation for part 54 is amended by adding entries in numerical order to read in part as follows:

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

Section 54.6060–1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 54.6109–2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 54.6695–1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 54.6695–2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 102. Section 54.6060–1 is added to read as follows:

*§54.6060–1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund under Chapter 43 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 103. Section 54.6107–1 is added to read as follows:

*§54.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 43 of subtitle D of the Internal Revenue Code, shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 104. Section 54.6109–1 is added to read as follows:

*§54.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.*

(a) *In general.* Each tax return or claim for refund of tax under Chapter 43 of subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 105. Section 54.6694–1 is added to read as follows:

*§54.6694–1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under Chapter 43 of subtitle D, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 106. Section 54.6694–2 is added to read as follows:

*§54.6694–2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 107. Section 56.6694–3 is added to read as follows:

*§54.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 108. Section 54.6694–4 is added to read as follows:

*§54.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 43 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 109. Section 54.6695–1 is added to read as follows:

*§54.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number

under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 110. Section 54.6696-1 is added to read as follows:

*§54.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under chapter 43 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 111. Section 54.7701-1 is added to read as follows:

*§54.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

#### PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 112. The authority citation for part 55 is amended by adding entries in numerical order to read in part as follows:

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

Section 55.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 55.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 55.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 55.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 113. Section 55.6060-1 is added to read as follows:

*§55.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund under chapter 44 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 114. Section 55.6107-1 is added to read as follows:

*§55.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 44 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 115. Section 55.6109-1 is added to read as follows:

*§55.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund of tax under chapter 44 of Subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 116. Section 55.6694-1 is added to read as follows:

*§55.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under chapter 44 of Subtitle D see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 117. Section 55.6694-2 is added to read as follows:

*§55.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 118. Section 55.6694-3 is added to read as follows:

*§55.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 119. Section 55.6694-4 is added to read as follows:

*§55.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under chapter 44 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 120. Section 55.6695-1 is added to read as follows:

*§55.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 121. Section 55.6696-1 is added to read as follows:

*§55.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 44 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 122. Section 55.7701-1 is added to read as follows:

*§55.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

#### PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 123. The authority citation for part 56 is amended by adding entries in numerical order to read in part as follows:

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

Section 56.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 56.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 56.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 56.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 124. Section 56.6060-1 is added to read as follows:

*§56.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 125. Section 56.6107-1 is added to read as follows:

*§56.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 41 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the estate, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 126. Section 56.6109-1 is added to read as follows:

*§56.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund for tax under chapter 41 of subtitle D prepared by one or more tax signing return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 127. Section 56.6694-1 is added to read as follows:

*§56.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under chapter 41 of subtitle D see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to re-

turns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 128. Section 56.6694-2 is added to read as follows:

*§56.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 129. Section 56.6694-3 is added to read as follows:

*§56.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 130. Section 56.6694-4 is added to read as follows:

*§56.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of

the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 131. Section 56.6695-1 is added to read as follows:

*§56.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 132. Section 56.6696-1 is added to read as follows:

*§56.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules relating to claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 133. Section 56.7701-1 is added to read as follows:

*§56.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 156—EXCISE TAX ON GREENMAIL**

Par. 134. The authority citation for part 156 is amended by adding entries in numerical order to read in part as follows:

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

Section 156.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 156.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 156.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 156.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 135. Section 156.6060-1 is added to read as follows:

*§156.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund under section 5881 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 136. Section 156.6107-1 is added to read as follows:

*§156.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code shall furnish a completed copy of the return or claim for



refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 137. Section 156.6109-1 is added to read as follows:

*§156.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund for tax under section 5881 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 138. Section 156.6694-1 is added to read as follows:

*§156.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5881 of the Internal Revenue Code, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 139. Section 156.6694-2 is added to read as follows:

*§156.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the In-

ternal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 140. Section 156.6694-3 is added to read as follows:

*§156.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 141. Section 156.6694-4 is added to read as follows:

*§156.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 142. Section 156.6695-1 is added to read as follows:

*§156.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 143. Section 156.6696-1 is added to read as follows:

*§156.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 144. Section 156.7701-1 is added to read as follows:

*§156.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

PART 157—EXCISE TAX ON  
STRUCTURED SETTLEMENT  
FACTORING TRANSACTIONS

Par. 145. The authority citation for part 157 is amended by adding entries in numerical order to read in part as follows:

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

Section 157.6060-1 also issued under 26 U.S.C. 6060(a). \* \* \*

Section 157.6109-2 also issued under 26 U.S.C. 6109(a). \* \* \*

Section 157.6695-1 also issued under 26 U.S.C. 6695(b). \* \* \*

Section 157.6695-2 also issued under 26 U.S.C. 6695(g). \* \* \*

Par. 146. Section 157.6060-1 is added to read as follows:

*§157.6060-1 Reporting requirements for tax return preparers.*

(a) *In general.* A person that employs (or engages) one or more tax return preparers to prepare a return or claim for refund for tax under section 5891 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 147. Section 157.6107-1 is added to read as follows:

*§157.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 148. Section 157.6109-1 is added to read as follows:

*§157.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund for tax under section 5891 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 149. Section 157.6694-1 is added to read as follows:

*§157.6694-1 Section 6694 penalties applicable to tax return preparer.*

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5891 of the Internal Revenue Code see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 150. Section 157.6694-2 is added to read as follows:

*§157.6694-2 Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 151. Section 157.6694-3 is added to read as follows:

*§157.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 152. Section 157.6694-4 is added to read as follows:

*§157.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 153. Section 157.6695-1 is added to read as follows:

*§157.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain

a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after the date that final regulations are published in the **Federal Register**.

Par. 154. Section 157.6696-1 is added to read as follows:

*§157.6696-1 Claims for credit or refund by tax return preparers.*

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Par. 155. Section 157.7701-1 is added to read as follows:

*§157.7701-1 Tax return preparer.*

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

**PART 301—PROCEDURE AND ADMINISTRATION**

Par. 156. The authority citation for part 301 continues to read in part as follows:

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

Par. 157. Section 301.7701-15 is amended to read as follows:

*§301.7701-15 Tax return preparer.*

(a) *In general.* A tax return preparer is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any

claim for refund of tax under the Internal Revenue Code (Code).

(b) *Definitions—(1) Signing tax return preparer.* A signing tax return preparer is any tax return preparer who signs or who is required to sign a return or claim for refund as a tax return preparer pursuant to §1.6695-1(b) of this chapter.

(2) *Nonsigning tax return preparer—(i) In general.* A nonsigning tax return preparer is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of paragraph (b)(3) of this section with respect to events that have occurred at the time the advice is rendered. In determining whether an individual is a nonsigning tax return preparer, time spent on advice that is given after events have occurred that represents less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement shall not be taken into account. Examples of nonsigning tax return preparers are tax return preparers who provide advice (written or oral) to a taxpayer (or to another tax return preparer) when that advice constitutes a substantial portion of the return within the meaning of paragraph (b)(3) of this section.

(ii) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

*Example 1.* Attorney A, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding a completed corporate transaction. The advice provided by A is directly relevant to the determination of an entry on the taxpayer's return and this advice constitutes a substantial portion of the return. A, however, does not prepare any other portion of the taxpayer's return and is not the signing tax return preparer of this return. A is considered a tax return preparer.

*Example 2.* Attorney B, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding the tax consequences of a proposed corporate transaction. Based upon this advice, the corporate taxpayer enters into the transaction. Once the transaction is completed, the corporate taxpayer does not receive any additional advice from B with respect to the transaction. B did not provide advice with respect to events that have occurred and is not considered a tax return preparer.

*Example 3.* The facts are the same as *Example 2*, except that Attorney B provides supplemental advice to the corporate taxpayer on a phone call after the transaction is completed. The time incurred on this supplemental advice by B represented less than 5 percent of the aggregate amount of time spent by B providing tax advice on the position. B is not considered a tax return preparer.

(3) *Substantial portion.* (i) Only a person who prepares all or a substantial portion of a return or claim for refund shall be considered to be a tax return preparer of the return or claim for refund. A person who renders tax advice on a position that is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund will be regarded as having prepared that entry. Whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined based upon whether the person knows or reasonably should know that the tax attributable to the schedule, entry, or other portion of a return or claim for refund is a substantial portion of the tax required to be shown on the return or claim for refund. A single tax entry may constitute a substantial portion of the tax required to be shown on a return. Factors to consider in determining whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion include but are not limited to—

(A) the size and complexity of the item relative to the taxpayer's gross income; and

(B) the size of the understatement attributable to the item compared to the taxpayer's reported tax liability.

(ii)(A) For purposes of applying the rules of paragraph (b)(3)(i) of this section to a nonsigning tax return preparer within the meaning of paragraph (b)(2) of this section only, if the schedule, entry, or other portion of the return or claim for refund involves amounts of gross income, amounts of deductions, or amounts on the basis of which credits are determined that are—

(1) Less than \$10,000; or

(2) Less than \$400,000 and also less than 20 percent of the gross income as shown on the return or claim for refund (or, for an individual, the individual's adjusted gross income), then the schedule or other portion is not considered to be a substantial portion.

(B) If more than one schedule, entry or other portion is involved, all schedules, entries or other portions shall be aggregated in applying this rule. This paragraph shall not apply to a signing tax return preparer within the meaning of paragraph (b)(1) of this section.

(iii) A tax return preparer with respect to one return is not considered to be a tax

return preparer of another return merely because an entry or entries reported on the first return may affect an entry reported on the other return, unless the entry or entries reported on the first return are directly reflected on the other return and constitute a substantial portion of the other return. For example, the sole preparer of a partnership return of income or small business corporation income tax return is considered a tax return preparer of a partner's or a shareholder's return if the entry or entries on the partnership or small business corporation return reportable on the partner's or shareholder's return constitute a substantial portion of the partner's or shareholder's return.

(iv) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

*Example 1.* Accountant C prepares a Form 8886, "Reportable Transaction Disclosure Statement", that is used to disclose reportable transactions. C does not prepare the tax return or advise the taxpayer regarding the tax return reporting position of the transaction to which the Form 8886 relates. The preparation of the Form 8886 is not directly relevant to the determination of the existence, characterization, or amount of an entry on a tax return or claim for refund. Rather, the Form 8886 is prepared by C to disclose a reportable transaction. C has not prepared a substantial portion of the tax return and is not considered a tax return preparer under section 6694.

*Example 2.* Accountant D prepares a schedule for an individual taxpayer's Form 1040, "U.S. Individual Income Tax Return", reporting \$4,000 in dividend income and gives oral or written advice about Schedule A, which results in a claim of a medical expense deduction totaling \$5,000, but does not sign the tax return. D is not a tax return preparer because the total aggregate amount of the deductions is less than \$10,000.

(4) *Return and claim for refund*—(i) *Return.* For purposes of this section, a return of tax is a return (including an amended or adjusted return) filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under the Code, if the type of return is identified in published guidance in the Internal Revenue Bulletin. A return of tax also includes any information return or other document identified in published guidance in the Internal Revenue Bulletin, and that reports information that is or may be reported on another taxpayer's return under the Code if the information reported on the information return or other document constitutes a substantial portion of the taxpayer's return within the meaning of paragraph (b)(3) of this section.

(ii) *Claim for refund.* For purposes of this section, a claim for refund of tax includes a claim for credit against any tax that is included in published guidance in the Internal Revenue Bulletin. A claim for refund also includes a claim for payment under section 6420, 6421, or 6427.

(c) *Mechanical or clerical assistance.* A person who furnishes to a taxpayer or other tax return preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical matter is considered a tax return preparer, even though that person does not actually place or review placement of information on the return or claim for refund. See also paragraph (b)(3) of this section.

(d) *Qualifications.* A person may be a tax return preparer without regard to educational qualifications and professional status requirements.

(e) *Outside the United States.* A person who prepares a return or claim for refund outside the United States is a tax return preparer, regardless of the person's nationality, residence, or the location of the person's place of business, if the person otherwise satisfies the definition of *tax return preparer*. Notwithstanding the provisions of §301.6109-1(g), the person shall secure an employer identification number if the person is an employer of another tax return preparer, is a partnership in which one or more of the general partners is a tax return preparer, is a firm entity in which one or more of the equity holders is a tax return preparer, or is an individual not employed by another tax return preparer.

(f) *Persons who are not tax return preparers.* (1) The following persons are not tax return preparers:

(i) An official or employee of the Internal Revenue Service (IRS) performing their official duties.

(ii) Any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the IRS, but only with respect to those returns prepared as part of the VITA program.

(iii) Any organization sponsoring or administering a VITA program established by the IRS, but only with respect to that sponsorship or administration.

(iv) Any individual who provides tax counseling for the elderly under a program established pursuant to section 163 of the

Revenue Act of 1978, but only with respect to those returns prepared as part of that program.

(v) Any organization sponsoring or administering a program to provide tax counseling for the elderly established pursuant to section 163 of the Revenue Act of 1978, but only with respect to that sponsorship or administration.

(vi) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (f)(2) and (3) of this section, but only with respect to those returns prepared as part of the LITC program.

(vii) Any organization that is a qualified LITC, as defined by section 7526, subject to the requirements of paragraphs (h)(2) and (3) of this section.

(viii) An individual providing only typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(ix) An individual preparing a return or claim for refund of a person, or an officer, a general partner, member, shareholder, or employee of a person, by whom the individual is regularly and continuously employed or compensated or in which the individual is a general partner.

(x) An individual preparing a return or claim for refund for a trust, estate, or other entity of which the person either is a fiduciary or is an officer, general partner, or employee of the fiduciary.

(xi) An individual preparing a claim for refund for a taxpayer in response to—

(A) A notice of deficiency issued to the taxpayer; or

(B) A waiver of restriction on assessment after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax under subtitle A.

(xii) A person who prepares a return or claim for refund for a taxpayer with no explicit or implicit agreement for compensation, even if the person receives an insubstantial gift, return service, or favor.

(2) Paragraphs (f)(1)(vi) and (vii) of this section apply only if any assistance with a return of tax or claim for refund is directly related to a controversy with the IRS for which the qualified LITC is providing assistance, or is an ancillary part of an LITC

program to inform individuals for whom English is a second language about their rights and responsibilities under the Code.

(3) Notwithstanding paragraph (f)(2) of this section, paragraphs (f)(1)(vi) and (f)(1)(vii) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under the Code, or if the LITC charges more than a nominal fee for its services.

(4) For purposes of paragraph (f)(1)(ix) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well.

(5) For purposes of paragraph (f)(1)(x) of this section, an estate, guardianship, conservatorship, committee, or any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

(6) *Examples.* The mechanical assistance exception described in paragraph (f)(1)(viii) of this section is illustrated by the following examples:

*Example 1.* A reporting agent received employment tax information from a client from the client's business records. The reporting agent did not render any tax advice to the client or exercise any discretion or independent judgment on the client's underlying tax positions. The reporting agent processed the client's information, signed the return as authorized by the client pursuant to Form 8655, *Reporting Agent Authorization*, and filed the client's return using the information supplied by the client. The reporting agent is not a tax return preparer.

*Example 2.* A reporting agent rendered tax advice to a client on determining whether its workers are employees or independent contractors for Federal tax purposes. For compensation, the reporting agent received employment tax information from the client, processed the client's information and filed the client's return using the information supplied by the client. The reporting agent is a tax return preparer.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after the date that final regulations are published in the **Federal Register**.

Linda E. Stiff,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 16, 2008, 8:45 a.m., and published in the issue of the Federal Register for June 17, 2008, 73 F.R. 34559)

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

### Alternative Simplified Credit Under Section 41(c)(5)

#### REG-149405-07

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9401) relating to the election and calculation of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code (ASC). The regulations implement changes to the credit for increasing research activities under section 41 made by the Tax Relief and Health Care Act of 2006 and will affect certain taxpayers claiming the section 41 credit. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 15, 2008. Outlines of topics to be discussed at the public hearing scheduled for September 25, 2008, must be received by September 4, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-149405-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-149405-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW,

Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-149405-07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, (202) 622-3040; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

#### Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to section 41. The temporary regulations provide guidance concerning the election and calculation of the alternative simplified credit under section 41(c)(5). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an election under these regulations, any economic impact is minimal because an election under these regulations generally will simplify the calculation of the credit and may result in a benefit to the taxpayer. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code,

these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and the Treasury Department invite taxpayers to submit comments on the proposed regulations and issues relating to the election and calculation of the ASC under section 41(c)(5). In particular, the IRS and the Treasury Department encourage taxpayers to submit comments on the following issues:

Should the regulations allow a controlled group to make an election to use the ASC both for computation of the group credit and computation of every member's stand-alone entity credit, even if the ASC does not provide the greatest stand-alone entity credit?

If so, how should that election be made and by whom?

What relief should be made available to taxpayers that have used methodologies inconsistent with the short taxable year rules provided in these regulations on tax returns filed after the effective date of section 41(c)(5) and prior to the publication of these regulations?

A public hearing has been scheduled for September 25, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must

submit electronic or written comments by September 15, 2008, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 4, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

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

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

Section 1.41-8 also issued under 26 U.S.C. 41(c)(4)(B);

Section 1.41-9 also issued under 26 U.S.C. 41(c)(5)(C); \* \* \*

Par. 2. Section 1.41-6 is amended by revising paragraphs (b)(1), (c)(2), (e) and (j) to read as follows:

*§1.41-6 Aggregation of expenditures.*

\* \* \* \* \*

(b)(1) [The text of the proposed amendment to §1.41-6(b)(1) is the same as the text of §1.41-6T(b)(1) published elsewhere in this issue of the Bulletin.]

(c) \* \* \*

(2) [The text of the proposed amendment to §1.41-6(c)(2) is the same as the text of §1.41-6T(c)(2) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

(e) [The text of the proposed amendment to §1.41-6(e) is the same as the text

of §1.41-6T(e) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(j) [The text of the proposed amendment to §1.41-6(j) is the same as the text of §1.41-6T(j) published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.41-8 is amended by revising paragraphs (b)(2), (b)(3), (b)(4) and (b)(5) to read as follows:

*§1.41-8 Alternative incremental credit.*

\* \* \* \* \*

(b)(2) through (b)(5) [The text of proposed §1.41-8(b)(2) through (b)(5) is the same as the text of §1.41-8T(b)(2) through (b)(5) published elsewhere in this issue of the Bulletin.]

Par. 4. Section 1.41-9 is added to read as follows:

*§1.41-9 Alternative simplified credit.*

[The text of proposed §1.41-9 is the same as the text of §1.41-9T (a) through (d) published elsewhere in this issue of the Bulletin.]

Steven T. Miller,  
*Acting Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 13, 2008, 11:51 a.m., and published in the issue of the Federal Register for June 17, 2008, 73 F.R. 34237)

## Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

### Announcement 2008-62

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction

for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that

are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 7, 2008, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

The Neil & Patricia Chiarello Charitable Supporting Organization  
West Milford, NJ  
The Jonathan Dreier Foundation  
Paradise Valley, AZ  
Fanwood-Scotch Plains Recycling Association, Inc.  
Fanwood, NJ  
A Mother's Love Child Care Center  
West Memphis, AR  
Northstar Family Foundation  
W. Valley City, UT  
Metro Fire Dept, Ltd.  
Warren, MI

# Definition of Terms

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

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

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

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

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.



## **Numerical Finding List<sup>1</sup>**

Bulletin 2008–27

### **Announcements:**

2008-62, 2008-27 I.R.B. 74

### **Notices:**

2008-55, 2008-27 I.R.B. 11

### **Proposed Regulations:**

REG-129243-07, 2008-27 I.R.B. 32

REG-149405-07, 2008-27 I.R.B. 73

### **Revenue Procedures:**

2008-34, 2008-27 I.R.B. 13

### **Revenue Rulings:**

2008-32, 2008-27 I.R.B. 6

2008-33, 2008-27 I.R.B. 8

### **Treasury Decisions:**

9401, 2008-27 I.R.B. 1

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2008–1 through 2008–26 is in Internal Revenue Bulletin 2008–26, dated June 30, 2008.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletin 2008–27

### **Revenue Procedures:**

#### **2006-29**

Superseded by

Rev. Proc. 2008-34, 2008-27 I.R.B. 13

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2008–1 through 2008–26 is in Internal Revenue Bulletin 2008–26, dated June 30, 2008.



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