

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. 2009-23, page 177.

Certain cost-sharing payments; Forest Health Protection Program. This ruling states that the Forest Health Protection Program (FHPP) is substantially similar to the type of programs described in section 126(a)(1) through (8) of the Code within the meaning of section 126(a)(9). Consequently, all or a portion of cost-share payments received under the FHPP is eligible for exclusion from gross income to the extent permitted by section 126.

Notice 2009-60, page 181.

This notice invites public comments regarding the Service's review of issues concerning tax return preparers.

Notice 2009-61, page 181.

This notice informs market participants that for purposes of sections 871, 881, 1441, and 1442 of the Code, Treasury and the Service are considering issuing future guidance regarding the proper treatment of Fails Charges and that the Service will not challenge a position adopted by a taxpayer or withholding agent that a Fails Charge is not subject to a U.S. gross-basis taxation if that Fails Charge is paid prior to December 31, 2010, unless guidance is issued before that date.

EXEMPT ORGANIZATIONS

T.D. 9454, page 178.

Final regulations under section 6033 of the Code describes the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notification (e-Postcard) including certain information required by section 6033(i)(1)(A) through (F).

ADMINISTRATIVE

T.D. 9454, page 178.

Final regulations under section 6033 of the Code describes the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notification (e-Postcard) including certain information required by section 6033(i)(1)(A) through (F).

REG-152166-05, page 183.

This document withdraws the notice of proposed rulemaking published on April 19, 1996, in the Federal Register and contains proposed regulations relating to the issuance of Taxpayer Assistance Orders.

Finding Lists begin on page ii.



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 126.—Certain Cost-Sharing Payments

26 CFR 16A.126-1: *Certain cost-sharing payments — in general.*

Certain cost-sharing payments; Forest Health Protection Program. This ruling states that the Forest Health Protection Program (FHPP) is substantially similar to the type of programs described in section 126(a)(1) through (8) of the Code within the meaning of section 126(a)(9). Consequently, all or a portion of cost-share payments received under the FHPP is eligible for exclusion from gross income to the extent permitted by section 126.

Rev. Rul. 2009-23

ISSUE

Is the Forest Health Protection Program (FHPP) substantially similar to the type of programs described in § 126 (a)(1) through (8) of the Internal Revenue Code, so that the FHPP is within the scope of § 126(a)(9) and, thereby, all or a portion of cost-sharing payments received under the FHPP is eligible for exclusion from gross income to the extent permitted by § 126?

FACTS

The FHPP, authorized under the provisions of § 8 of the Cooperative Forestry Assistance Act of 1978, Pub. L. No. 95-313, 92 Stat. 368, as amended by Title XII, 1218 of the International Narcotics Control Act of 1990, Pub. L. No. 101-624, 104 Stat. 3525, 3531, is a program to protect forests, trees, and wood products, stored wood, and wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States.

The U.S. Forest Service administers the FHPP on behalf of the U.S. Department of Agriculture (USDA), by working in partnership with state forestry and agriculture agencies. The state agencies work with nonindustrial private forest landowners to identify and implement appropriate management practices. The FHPP includes

cost-sharing assistance to landowners that volunteer to participate in the program.

A landowner who wishes to participate in the FHPP must enter into a contract or cooperative agreement with the USDA pursuant to which the landowner agrees to establish an acceptable integrated pest management strategy as determined by the Secretary of Agriculture that will prevent, retard, control, or suppress gypsy moth infestations, southern pine beetle infestations, spruce budworm infestations, or other major insect infestations and receives cost-sharing payments in exchange. The cost-sharing payments under the program are not less than 50 percent and not more than 75 percent of the cost of implementing the pest management strategy.

The Secretary of Agriculture has determined that cost-sharing payments under the FHPP are primarily for the purpose of conserving and restoring woodlands resources. In addition, the Secretary of Agriculture has informed the Treasury Department that the USDA believes that the FHPP is a small watershed program.

LAW AND ANALYSIS

Under § 126(a), gross income does not include the excludable portion of payments received under certain conservation programs set forth in § 126(a)(1) through (8). Section 126(a)(9) provides that a small watershed program administered by the Secretary of Agriculture also is eligible for § 126 treatment if the Secretary of the Treasury or his delegate determines that the program is substantially similar to the type of programs described in § 126(a)(1) through (8). See § 16A.126-1(d) of the Temporary Income Tax Regulations Relating to the Partial Exclusion for Certain Cost-Sharing Payments for rules permitting the Commissioner to make these determinations and announce them in the Internal Revenue Bulletin, and for the definition of “small watershed.”

If the Commissioner has determined that a program is substantially similar to the type of programs described in § 126(a)(1) through (8), taxpayers receiving cost-sharing payments under that program must determine what portion (if

any) of the cost-sharing payments is excludable from gross income under § 126. Under § 126(b), the excludable portion of a payment is limited to the portion that (1) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, (2) does not increase substantially the annual income derived from the property, and (3) is not properly associated with a deductible expense. See § 126(b) and § 16A.126-1, relating to the partial exclusion of certain cost-sharing payments, to determine what portion of the cost-sharing payments is excludable from gross income under § 126.

HOLDING

The Internal Revenue Service accepts the USDA's conclusion that the FHPP is a small watershed program. Accordingly, the FHPP will be treated for purposes of § 126 as a small watershed program administered by the Secretary of Agriculture. In addition, the Commissioner has determined that the FHPP is substantially similar, within the meaning of § 126(a)(9), to the type of programs described in § 126(a)(1) through (8).

Payments received under the FHPP are limited to a percentage of the cost of implementing an integrated pest management strategy and qualify as cost-sharing payments. The cost-sharing payments received under the FHPP are eligible for exclusion from gross income to the extent permitted by § 126.

See § 126(b) and § 16A.126-1 to determine the extent to which cost-sharing payments under the FHPP are excludable from gross income under § 126.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue ruling, contact Ms. Bernardini at (202) 622-3110 (not a toll-free call).

Section 6033.—Returns by Exempt Organizations

26 CFR 1.6033-6: Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006).

T.D. 9454

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Notification Requirement for Tax-Exempt Entities Not Currently Required to File

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations as required by section 6033(i)(1) describing the time and manner in which certain tax-exempt organizations not currently required to file an annual information return under section 6033(a)(1) are required to submit an annual electronic notice including certain information required by section 6033(i)(1)(A) through (F). These regulations affect tax-exempt organizations whose annual gross receipts are not normally in excess of \$25,000.

DATES: *Effective Date:* These regulations are effective on July 23, 2009.

Applicability Date: These regulations are applicable to annual periods beginning after 2006.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum at (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6033(i)(1) relating to the notification requirement for entities not currently required to

file an annual information return under section 6033(a)(1). Section 6033(i)(1) was added by section 1223(a) of the Pension Protection Act of 2006, Public Law No. 109-208, 120 Stat. 1090 (2006) (PPA 2006), effective for annual periods beginning after 2006. Section 6033(i)(1) requires the Treasury Secretary to promulgate regulations that describe the time and manner in which certain tax-exempt organizations not currently required to file an annual information return are to submit an annual electronic notification including information set forth in section 6033(i)(1)(A) through (F).

On November 15, 2007, temporary regulations (T.D. 9366, 2007-2 C.B. 1232) were published in the **Federal Register** (72 FR 64147) satisfying the requirement that the Treasury Secretary promulgate regulations as described in the preceding paragraph. Those temporary regulations were corrected on November 23, 2007 (72 FR 65667) and December 14, 2007 (72 FR 71060). A notice of proposed rulemaking (REG-104942-07, 2007-2 C.B. 1264) cross-referencing the temporary regulations was published in the **Federal Register** (72 FR 64174) on November 15, 2007.

The IRS and the Treasury Department received four written comments from the public in response to the proposed and temporary regulations. No hearing was requested or held. After consideration of the comments received, it was determined that the proposed regulations would be finalized without change. Accordingly, the proposed regulations are adopted as amended by this Treasury decision and the corresponding temporary regulations are removed. The final regulations retain the provisions of the proposed and temporary regulations and make minor typographical changes.

Explanation of Revisions and Summary of Comments

One comment pointed out that there is no *de minimis* rule regarding the amount of income an organization receives during the year which would exempt it from having to submit an electronic notification. Section 6033(i) does not provide a *de minimis* rule, nor does it provide discretionary authority for the IRS and the Treasury Department

to establish a *de minimis* exception for reporting under section 6033(i)(1).

Another comment objected to the requirement that the notification be submitted electronically. The IRS and the Treasury Department note that the statute requires that information be submitted electronically, and makes no provision for paper notification. However, as stated in the preamble to the temporary regulations, if an organization that is required to submit an annual electronic notification files a complete Form 990, "Return of Organization Exempt From Income Tax," or Form 990-EZ, "Short Form Return of Organization Exempt From Income Tax," the annual notification required under section 6033(i) shall be deemed satisfied. The annual notification requirement is not satisfied if the Form 990 or Form 990-EZ contains only those items of information that would have been required by submitting the notification in electronic form.

One comment asked about the intent of the regulations and the application of the requirement to submit electronic notification to organizations that are local chapters or clubs of larger organizations. The intent of the regulations, which were required by statute, is to provide the public with the most accurate information about tax-exempt organizations. With respect to organizations that are local chapters or clubs of larger organizations, if the organization is a subordinate of a parent organization and the subordinate is included on the parent's group return, the subordinate need not submit the electronic notification. However, if an organization is not part of a group return and is a separate legal entity that meets the criteria for submitting the electronic notification, it must submit Form 990-N, "Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required To File Form 990 or 990-EZ."

Finally, another comment asked about the applicability of the electronic notification requirement to Qualified State and Local Political Organizations (QSLPOs). QSLPOs are not organizations described in section 501(c) that are required to file a return under section 6033(a); therefore, the provisions of these final regulations do not apply to them. However, QSLPOs may have other reporting requirements under section 6033(g).

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.

It is hereby certified that the collection of information in §1.6033-6 will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601) is not required. The effect of these regulations on small entities flows directly from the statute these regulations implement. Section 6033(i)(1) requires that certain entities submit annual notification, in electronic form, setting forth: the legal name of the organization; any name under which such organization operates or does business; the organization's mailing address and Internet Web site address (if any); the organization's taxpayer identification number; the name and address of a principal officer; and evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were 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 Monice Rosenbaum of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Section 1.6033-6 also issued under 26 U.S.C. 6033(i)(1).***

Par. 2. Section 1.6033-6 is added to read as follows:

§1.6033-6 Notification requirement for entities not required to file an annual information return under section 6033(a)(1) (taxable years beginning after December 31, 2006)—(a) In general.

Except as otherwise provided in this paragraph, every organization exempt from taxation under section 501(a) that is not required to file a return described in §1.6033-2(a)(2), other than an organization described in section 401(a) or 501(d), shall submit annually, in electronic form, a notification setting forth the items described in paragraph (c) of this section and such other information as may be prescribed in the instructions and publications issued with respect to the notification.

(b) *Organizations not required to submit annual electronic notification.* (1) An organization exempt from taxation under section 501(a) that is required to file or files an annual information return under section 6033(a)(1) shall not submit an annual electronic notification under section 6033(i). This includes the following types of organizations:

(i) Any organization included in a group return for that year under §1.6033-2(d).

(ii) All private foundations required to file under §1.6033-2(a)(2)(i) Form 990-PF, "Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation."

(iii) Section 509(a)(3) supporting organizations required to file under §1.6033-2(a)(2)(i) Form 990, "Return of Organization Exempt From Income Tax," or Form 990-EZ, "Short Form Return of Organization Exempt From Income Tax."

(iv) A section 501(c)(21) black lung trust required to file under §1.6033-2(a)(2)(i) Form 990-BL, "Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons."

(v) Any organization that is required to file or files an annual information return under section 6033(a)(1) on any other form prescribed by the Internal Revenue Service for that purpose.

(2) An organization exempt from taxation under section 501(a) that is not required to file a return under section 6033(a)(1) is also not required to submit an annual electronic notification under section 6033(i). This includes the following types of organizations:

(i) A church, an interchurch organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (as defined in §1.6033-2(h)).

(ii) An exclusively religious activity of any religious order.

(iii) A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.

(iv) An educational organization (below college level) described in section 170(b)(1)(A)(ii), that has a program of a general academic nature, and that is affiliated (within the meaning of §1.6033-2(h)(2)) with a church or operated by a religious order.

(v) A State institution, the income of which is excluded from gross income under section 115(a).

(vi) An organization described in section 501(c)(1).

(vii) An organization that is a governmental unit or an affiliate of a governmental unit exempt from Federal income tax under section 501(a).

(3) If an organization exempt from taxation under section 501(a) is not described in paragraph (b)(1) or (2) of this section, the organization must submit an annual electronic notification. Thus, a black lung trust that normally has gross receipts of \$25,000 or less is not required to file Form 990-BL but is required to submit an annual electronic notification. A section 509(a)(3) supporting organization of a religious organization that normally has gross receipts of \$5,000 or less is not required to file Form 990 or Form 990-EZ but is required to submit an annual electronic notification.

(c) *Additional notification requirements*—(1) *In general.* Any organization

described in paragraph (a) of this section shall submit an annual electronic notification described in section 6033(i)(1). The annual electronic notification shall—

- (i) Be in electronic form; and
- (ii) Set forth—

(A) The legal name of the organization;

(B) Any name under which the organization operates or does business;

(C) The organization's mailing address and Internet Web site address (if any);

(D) The organization's taxpayer identification number;

(E) The name and address of a principal officer;

(F) Evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1); and

(G) Additional information necessary to process the notification.

(2) The mailing address required by section 6033(i)(1)(C) and submitted in the annual electronic notification shall be the organization's last known address as provided by §301.6212-2(a) of this chapter. This last known address may be updated as provided under §301.6212-2 of this chapter, or by clear and concise notification. The Internal Revenue Service will use this last known address as the organization's address of record and will direct all mailings to this address.

(3) By submitting the annual electronic notification described in paragraph (c)(1) of this section, an organization acknowledges that it is not required to file a return under section 6033(a) because its annual gross receipts are not normally in excess of \$25,000. In order to make this determination, the organization must keep records that enable it to calculate its gross

receipts. All organizations are required to maintain records under section 6001. These records will provide evidence of the continuing basis for the organization's exemption from the filing requirements under section 6033(a)(1).

(4) If an organization that is required to submit an annual electronic notification files a complete Form 990 or Form 990-EZ, the annual electronic notification requirement shall be deemed satisfied. The annual electronic notification requirement is not satisfied if the Form 990 or Form 990-EZ contains only those items of information that would have been required by submitting the notification in electronic form. Also, the filing of a complete Form 990 or Form 990-EZ, rather than the submission of an annual electronic notification, is the filing of a return that starts the period of limitations for assessment under section 6501(g)(2).

(d) *No effect on other filing requirements.* An organization that is relieved from filing an information return under section 6033(a) is still subject to the requirements of §§1.6033-2(i) and (j), concerning: notice regarding changes in character, operations, or purpose; provision of additional information; duty to file other returns of information; and duty to file unrelated business tax returns. If an organization is required to file an unrelated business tax return, Form 990-T, "*Exempt Organization Business Income Tax Return*," the filing of that return does not relieve the organization from the requirement of submitting an annual electronic notification under section 6033(i).

(e) *Accounting period for submitting annual electronic notification.* An annual electronic notification required by this sec-

tion shall be on the basis of the established annual accounting period of the organization. If the organization has no established accounting period, the annual electronic notification shall be on the basis of the calendar year.

(f) *Time and place for submitting annual electronic notification.* The annual electronic notification required by this section shall be submitted on or before the 15th day of the fifth calendar month following the close of the period for which the notification is required to be submitted. Thus, an organization with an accounting period ending December 31, 2007, is required to submit an annual electronic notification by May 15, 2008. The notification shall be submitted in accordance with instructions and publications, including those provided at the Internal Revenue Service Web site for exempt organizations.

(g) *Effective/applicability date.* These regulations are applicable to annual periods beginning after 2006.

§1.6033-6T [Removed].

Par. 3. Section 1.6033-6T is removed.

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

Approved July 15, 2009.

Michael Mundaca,
*Acting Assistant Secretary
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on July 22, 2009, 8:45 a.m., and published in the issue of the Federal Register for June 23, 2009, 74 F.R. 36395)

Part III. Administrative, Procedural, and Miscellaneous

Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

Notice 2009-60

PURPOSE

This notice invites public comments regarding the Internal Revenue Service's review of issues concerning tax return preparers. In June 2009, the Service announced plans to propose a comprehensive set of recommendations by the end of 2009 regarding how the tax return preparer community can help increase taxpayer compliance and how to ensure that tax return preparers meet both uniform and high ethical standards of conduct. See IR-2009-57 (June 4, 2009). The Service is seeking the input of tax preparers, the associated industry, consumer groups, and taxpayers before any recommendations are made.

To assist in developing its proposals and to ensure that input is received from a broad range of stakeholders, the Service has scheduled a number of meetings in Washington, D.C., and around the country with constituent groups. See IR-2009-66 (July 14, 2009). In this notice, the Service is requesting written comments from all affected persons and entities. The information collected will assist the Service in drafting recommendations.

REQUESTS FOR PUBLIC COMMENT

The Service requests comments on 1) how the tax return preparer community can assist in increasing taxpayer compliance and 2) how to ensure that tax return preparers meet both uniform and high ethical standards of conduct. The Service is particularly interested in any comments regarding:

- What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services currently monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved?

- How do differences in regulation and oversight affect how the various groups of tax return preparers interact with the Service and taxpayers?
- Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?
- What, if any, service and outreach should be provided to tax return preparers and taxpayers? Who should provide (and bear the costs for) these needed services?
- Should tax return preparers be subject to a code of ethics, and, if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?
- What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ?
- What, if any, responsibility should tax return preparer professional organizations have for the education, training, and conduct of their members?
- If tax return preparation services should be regulated, what, if any, special regulatory provisions should be made for individuals who are already tax return preparers, licensed attorneys, certified public accountants, enrolled agents, or software providers?
- What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community?

Written comments should be sent to: CCPA:LPD:PR (Notice 2009-60), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2009-60), Courier's Desk, Internal Revenue Service, 1111 Constitution

Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2009-60" in the subject line of any electronic communications.

All comments will be available for public inspection and copying. Because the Service intends to make recommendations by December 31, 2009, comments, if any, must be received by August 31, 2009.

DRAFTING INFORMATION

The principal author of this notice is Richard S. Goldstein of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice, contact Richard S. Goldstein at (202) 622-3400 (not a toll-free call).

Treatment of Fails Charges for Purposes of Sections 871, 881, 1441 and 1442

Notice 2009-61

In response to persistent delivery failures in the pay-for-delivery market for U.S. Treasury securities (U.S. Treasuries) during the fall of 2008, a new trading practice governing failed deliveries of U.S. Treasuries has been voluntarily adopted by many market participants (including the Federal Reserve Bank of New York and most dealers, custodians, and asset managers of U.S. Treasuries).

Under the new practice, if one party (the "Failing Party") fails to deliver U.S. Treasuries to another party (the "Non-Failing Party") by the date previously agreed to by the parties, the Failing Party will pay an amount (called a "Fails Charge") to the Non-Failing Party. The Fails Charge accrues daily and, if properly claimed by the Non-Failing Party, is due and payable in the month following the month in which the Failing Party actually delivers the

promised U.S. Treasury.¹ The new Fails Charge practice was adopted by market participants to preserve and enhance the efficiency of the secondary market for U.S. Treasuries by reducing the incidence of delivery failures, especially in low interest rate environments, where the economic incentive to deliver timely is reduced.

Many market participants have indicated that there is a lack of clarity regarding the treatment of these Fails Charges for purposes of sections 871, 881, 1441, and 1442 of the Internal Revenue Code (the “Code”), which relate to gross-basis taxation of foreign persons not otherwise subject to U.S. net-basis taxation. As a result, these market participants suggest that unless guidance is provided, there may be

disruptions in the secondary market for U.S. Treasuries as various withholding agents take various positions with respect to the proper characterization of Fails Charges for those purposes.

This notice announces that the Treasury Department and the Internal Revenue Service (Service) are considering issuing guidance regarding the circumstances, if any, in which Fails Charges are subject to U.S. gross-basis taxation. Any such guidance regarding the treatment of a Fails Charge under sections 871, 881, 1441, and 1442 of the Code will be prospective in effect. In light of the complexity of the issues raised by the proper treatment of Fails Charges for U.S. federal tax purposes and the need for guidance, the Service will not

challenge a position taken by a taxpayer or a withholding agent that a Fails Charge that is paid on or before December 31, 2010, is not subject to U.S. gross-basis taxation unless contrary guidance has been issued effective before that date.

DRAFTING INFORMATION

The principal author of this notice is Anthony J. Marra of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Anthony J. Marra at (202) 622-3870 (not a toll-free call).

¹ More information about this new Fails Charge trading practice can be found at <http://www.newyorkfed.org/tmpg/> or <http://www.ny.frb.org/tmpg/newsandevents.html>

Part IV. Items of General Interest

Withdrawal of Notice of Proposed Rulemaking and Notice of Proposed Rulemaking

Taxpayer Assistance Orders

REG-152166-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking published on April 19, 1996, in the *Federal Register* and contains proposed regulations relating to the issuance of Taxpayer Assistance Orders (TAOs). The IRS is issuing these proposed regulations to provide guidance relating to the issuance of a TAO. These proposed regulations are necessary because the existing regulations do not reflect changes to the law made by the Taxpayer Bill of Rights II (TBOR 2), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004 (AJCA). The action taken in these proposed regulations will affect IRS employees in cases where a TAO is being considered or issued.

DATES: Written or electronic comments and requests for a public hearing must be received by October 26, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-152166-05), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. 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-152166-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20044, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-152166-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Janice R. Feldman, (202) 622-8488; concerning submissions of comments, Richard.A.Hurst@irs.counsel.treas.gov (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 7811 of the Internal Revenue Code (Code) authorizes the NTA to issue a TAO when a taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS and the law and the facts support relief. A TAO may be issued to direct that the operating division or function take a specific action, cease a specific action, or refrain from taking a specific action or to order the IRS to review at a higher level, expedite consideration of, or reconsider a taxpayer's case. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the Commissioner, the Deputy Commissioner, or the NTA. Appeal procedures are provided in the Internal Revenue Manual (IRM).

Proposed regulations were published on April 19, 1996, in the *Federal Register* (GL-1-96, 1996-1 C.B. 769 [61 FR 17265]). The proposed regulations limited the authority to modify or rescind TAOs to the Ombudsman, the Commissioner, and the Deputy Commissioner, and, with the written authorization of one of these officials, a district director, a service center director, a compliance center director, a regional director of appeals (director), or the superiors of a director. Following the publication of the proposed regulations, Congress enacted TBOR 2, Public Law 104-168, 110 Stat. 1452 (1996), which, among other things, authorized only the Taxpayer Advocate, the Commissioner, or the Deputy Commissioner to modify or rescind a TAO. In light of the enactment of TBOR 2, this document withdraws the proposed regulations published in the *Federal Register* on April 19, 1996.

This document also contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301

relating to TAOs under section 7811. Temporary regulations (T.D. 8246, 1989-1 C.B. 320) were published on March 22, 1989, in the *Federal Register* (54 FR 11699). Final regulations (T.D. 8403, 1992-1 C.B. 436) were published on March 23, 1992, in the *Federal Register* (57 FR 9975). After the final regulations were published, sections 101 and 102 of TBOR 2, Public Law 104-168, 110 Stat. 1452 (1996), amended section 7811 by changing the name of the Ombudsman to the Taxpayer Advocate, providing that TAOs may order the IRS to take certain affirmative actions, and restricting who may modify or rescind a TAO. Section 1102 of RRA 98, Public Law 105-206, 112 Stat. 685 (1998), further amended section 7811, by providing examples of significant hardship and replacing "Taxpayer Advocate" with "National Taxpayer Advocate." Section 881(c) of AJCA, Public Law 108-357, 118 Stat. 1418 (2004) clarified that a TAO applies to personnel performing services under a qualified tax collection contract to the same extent as it applies to IRS personnel. Thus, this document contains a new notice of proposed rulemaking implementing the amendments under section 7811 pursuant to the enactment of TBOR 2, RRA 98, the Community Renewal Tax Relief Act of 2000, and AJCA and also to provide guidance on issues that have arisen in the administration of section 7811. Section 301.7811-1(e) of the existing regulations, which concerns the suspension of statutes of limitations, is not being revised as part of this proposed rulemaking as changes to that section may involve changes to IRS computer processing systems and will be dealt with at a later date.

Explanation of Provision

1. Significant Hardship

Under Section 301.7811-1(a)(4)(ii) of the existing regulations, *significant hardship* means "serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the internal revenue laws are being administered by the Internal Revenue Service." RRA 98 clarified the meaning of the term *significant hardship* by provid-

ing a nonexclusive list of types. Section 7811(a)(2) provides that *significant hardship* includes: (1) an immediate threat of adverse action; (2) a delay of more than 30 days in resolving taxpayer account problems; (3) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or (4) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted. Thus, the proposed regulations list the statutory types and also provide guidance with regard to what constitutes significant hardship under the delay standard and other criteria. Significant hardship under the 30-day delay standard is met when a taxpayer does not receive a response by the date promised by the IRS, or when the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

2. Distinction Between Significant Hardship and Issuance of TAO

The proposed regulations discuss the distinction between a finding of “significant hardship” and “the issuance of a TAO.” The proposed regulations are designed to clarify that a finding by the NTA that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief.

3. Compliance with the TAO

The proposed regulations explain that a TAO is an order by the NTA to the IRS and that the IRS will comply with the terms of the TAO unless it is appealed and then modified or rescinded by the Commissioner, the Deputy Commissioner, or the NTA. If a TAO is modified or rescinded by the Commissioner or Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. Furthermore, the proposed regulations clarify that a TAO is not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to

supplement these procedures if a taxpayer is about to suffer or is suffering a significant hardship. Thus, a taxpayer’s right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer’s seeking assistance from the Taxpayer Advocate Service (TAS).

4. Form of Request

The proposed regulations provide that a request for a TAO shall be made on a Form 911, “*Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*” (or other specified form) or in a written statement that provides sufficient information for TAS to determine the nature of the harm or the need for assistance.

5. Scope of the TAO

The proposed regulations provide that the NTA can issue a TAO directing an action in the circumstances outlined in section 7811(b). Section 7811(b) provides that the NTA may issue a TAO ordering the IRS within a specified time to (i) release levied property, or (ii) cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer under: (A) chapter 64 (relating to collection); (B) chapter 70, subchapter B (relating to bankruptcy and receiverships); (C) chapter 78 (relating to discovery of liability and enforcement of title); or (D) any other provision of law specifically described by the NTA in the TAO. Consistent with the list of specific subchapter and chapters of the Code in section 7811(b), the proposed regulations provide that the phrase “any provision of law” refers to other provisions of the internal revenue laws similar to the provisions enumerated in the statute.

The proposed regulations further provide that in circumstances where the statute does not authorize the issuance of a TAO to order a specific action, if the NTA determines that the taxpayer is suffering or about to suffer a significant hardship and that the issuance of a TAO is appropriate, the NTA may issue a TAO seeking to expedite, review, or reconsider an action at a higher level. Although the statute does not expressly state that a TAO may be issued to request that the IRS expedite, review, or reconsider at a higher level an action, the

statute and the legislative history support this interpretation.

As initially enacted, section 7811(b) did not grant the Ombudsman (the predecessor to the NTA) the authority to order affirmative actions. At that time, section 7811(b) provided that a TAO could order either the release of levy or could order the IRS to cease or refrain from taking an action under the three enumerated chapters of the Code listed in the statute. Thus, under the initial version of section 7811(b)(2), except for releasing levies, TAOs could not be issued to take affirmative actions. For example, a TAO could order the IRS to refrain from filing a Notice of Federal Tax Lien (NFTL), but it could not require the IRS to release an NFTL. Delegation Order (DO) 239 (01–31–92) remedied this problem by delegating to the Ombudsman the authority to order affirmative acts. Congress also recognized the deficiency in the law and amended section 7811(b) as part of TBOR 2 to allow TAOs to be issued with respect to affirmative acts by inserting the words “take any action as permitted by law” into the statute. The Committee Report to TBOR 2, H. Rep. No. 104–506, 104th Cong., 2nd Sess., at 1148 (1996), explains how the existing law was deficient in that, for example, it did not allow a TAO to be issued to expedite a refund or review the validity of a tax deficiency. The report explains that the reason for amendment to section 7811(b) was to allow a TAO to be issued “for a review of the appropriateness of the proposed action.” Thus, consistent with the legislative history and the statutory amendments, the proposed regulations provide that where the statute does not authorize the issuance of a TAO to order a specific action, if the NTA determines that a taxpayer is suffering or about to suffer a significant hardship and that relief is appropriate, the NTA may issue a TAO seeking to expedite, review, or reconsider an action at a higher level.

6. Who is Subject to a TAO

The proposed regulations provide rules regarding who is subject to a TAO. Generally, a TAO can be issued to any operating division or function of the IRS. Due to the sensitivity and importance of criminal investigations, the proposed regulations provide that a TAO may not be issued if the action ordered in the TAO could reasonably

be expected to impede a criminal investigation. The IRS Criminal Investigation division (CI) will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Procedures for handling cases where the NTA questions CI's initial determination will be added to the IRM.

The rule for issuing a TAO to the Office of Chief Counsel has been updated to reflect the reorganization of the IRS as well as statutory changes. The existing regulations provide that: "[a] taxpayer assistance order may generally not be issued . . . to enjoin an act of the Office of Chief Counsel (with the exception of Appeals)." Due to a reorganization of the Office of Chief Counsel, effective October 1, 1995, Appeals is no longer a component of the Office of Chief Counsel. Accordingly, the proposed regulations eliminate the parenthetical reference to Appeals in §301.7811-1(c)(3). The NTA continues to have the authority to issue TAOs to Appeals. Additionally, at the time that the existing regulations were finalized, the Ombudsman could not issue a TAO to order an affirmative act, other than a release of levy. As discussed in this preamble, under the current version of the statute, the NTA has much broader authority regarding the ability to order an affirmative act. Thus, the term "enjoin" has also been eliminated, and the rule under the proposed regulations is that: "[g]enerally a TAO may not be issued to the Office of Chief Counsel."

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The information required under these proposed regulations is already required by the current regulations and the Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)." In addition, the Form 911 takes minimal time

and expense to prepare, and the filing of a Form 911 is optional. Therefore, preparing the Form 911 does not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Furthermore, the substance of the regulations does not concern the Form 911, but the procedures the Taxpayer Advocate Service (TAS) or the Internal Revenue Service (IRS) must follow with respect to taxpayer assistance orders. Therefore, any burden created by these regulations is on the TAS or IRS, not taxpayers. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Janice R. Feldman, Office of the Special Counsel (National Taxpayer Advocate Program) (CC:NTA).

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Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on April 19, 1996 (61 FR 17265) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7811-1 is amended by revising paragraphs (a), (b), (c) and (d), removing paragraphs (f), (g), (h) and redesignating paragraph (h) as (f) and revising newly designated paragraph (f) to read as follows:

§301.7811-1 Taxpayer Assistance Orders

(a) *Authority to issue*—(1) *In general*. When an application for a Taxpayer Assistance Order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined*. The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application*. The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship*—(i) *Determination required*. Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term Defined*. The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. A significant hardship also includes, but is not limited to:

(A) An immediate threat of adverse action;

(B) A delay of more than 30 days in resolving taxpayer account problems;

(C) The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

(D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(iii) *A delay of more than 30 days in resolving taxpayer account problems is further defined.* A delay of more than 30 days in resolving taxpayer account problems exists under the following conditions:

(A) When a taxpayer does not receive a response by the date promised by the IRS; or

(B) When the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

(iv) *Examples of significant hardship.* The provisions of this section are illustrated by the following examples:

Example 1. Immediate threat of adverse action. The IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, A will lack the funds necessary to have the procedure. A is experiencing an immediate threat of adverse action.

Example 2. Delay of more than 30 days. B files a Form 4506, "Request for Copy of Tax Return." B does not receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. B is experiencing a delay of more than 30 days.

Example 3. Significant costs. The IRS sends XYZ, Inc. several notices requesting payment of the outstanding employment taxes owed by XYZ, Inc. and four of its subsidiaries. The IRS contends that XYZ, Inc. and the four subsidiaries have small employment tax balances with respect to 12 employment tax quarters totaling \$10X. XYZ, Inc. provides documentation to the IRS which it contends shows that if all payments were applied to each entity correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 60 tax periods (12 quarters for each of the five entities) involved, to comply with this request XYZ, Inc. will need to hire an accountant, who estimates he will charge at least \$5X to organize all the records and provide a detailed analysis of how the payments should have been applied. XYZ, Inc. is facing significant costs.

Example 4. Irreparable injury. D has arranged with a bank to refinance his mortgage to lower his monthly payment. D is unable to make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. The IRS refuses to subordinate the federal

tax lien, as permitted by IRC section 6325(d), or discharge the property subject to the lien, as permitted by IRC section 6325(b). As a result, the bank will not allow D to refinance. D is facing an irreparable injury if relief is not granted.

(5) *Distinction Between Significant Hardship and the Issuance of a TAO.* A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

(b) *Generally.* A TAO is an order by the NTA to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the NTA, Commissioner or the Deputy Commissioner. If a TAO is modified or rescinded by the Commissioner or Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. The NTA may not make a substantive determination of any tax liability. A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship. A request for a TAO shall be made on a Form 911, "Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)" (or other specified form) or in a written statement that provides sufficient information for TAS to determine the nature of the harm or the need for assistance. A taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from TAS.

(c) *Contents of Taxpayer Assistance Orders.* After establishing that the taxpayer is facing significant hardship and determining that the facts and law support relief to the taxpayer, the NTA may issue a TAO ordering the IRS within a specified time to—

(1) *Release a Levy.* Release levied property (to the extent that the IRS may by law release such property); or

(2) *Take Certain Other Actions.* Cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer pursuant to—

(i) Chapter 64 (relating to collection);

(ii) Chapter 70, subchapter B (relating to bankruptcy and receiverships);

(iii) Chapter 78 (relating to discovery of liability and enforcement of title); or

(iv) Any other provision of the internal revenue laws specifically described by the NTA in the TAO.

(3) *Expedite, Review or Reconsider an Action at a Higher Level.* Although the NTA may not make the substantive determination, a TAO may be issued to require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

(4) *Examples.* The following examples assume the existence of significant hardship:

Example 1. J contacts a local taxpayer advocate because a wage levy is causing financial difficulties. The NTA determines that the levy should be released as it is causing economic hardship (within the meaning of section 6343(a) and Treas. Reg. §301.6343-1(b)(4)). The NTA may issue a TAO ordering the IRS to release the levy in whole or in part by a specified date.

Example 2. The IRS rejects K's offer in compromise. K files a Form 911, "Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)." The NTA discovers facts that support acceptance of the offer in compromise. The NTA may issue a TAO ordering the IRS to reconsider its rejection of the offer or to review the rejection of the offer at a higher level. The TAO may include NTA analysis of and recommendation for resolving the case.

Example 3. L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, "Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)." The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include TAS analysis of and recommendation for resolving the case.

(d) *Issuance.* A TAO may be issued to any office, operating division, or function of the IRS. A TAO shall apply to persons performing services under a qualified

tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as the order applies to IRS employees. A TAO will not be issued to IRS Criminal Investigation division (CI), or any successor IRS division responsible for the criminal investigation function, if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. CI will determine whether the action ordered in the TAO could rea-

sonably be expected to impede an investigation. Generally, a TAO may not be issued to the Office of Chief Counsel.

* * * * *

(f) *Effective applicability date.* These regulations are applicable for TAOs issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**,

except that paragraph (e) is applicable beginning March 20, 1992.

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on July 24, 2009, 8:45 a.m., and published in the issue of the Federal Register for July 27, 2009, 74 F.R. 36973)

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 List¹

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Modified by
Rev. Proc. 2009-33, 2009-29 I.R.B. *150*

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