

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

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Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

Notice 2010-31, page 594.

2009 nonconventional source fuel credit, section 45K inflation adjustment factor, and section 45K reference price. The notice announces the inflation adjustment factor, the reference price, and the credit amount for the nonconventional source fuel credit for coke or coke gas (other than from petroleum based products) for the 2009 calendar year.

Notice 2010-32, page 594.

This notice extends to taxable years that begin before January 1, 2010, the interim guidance provided in Notice 2008-116, 2008-52 I.R.B. 1372, and Notice 2008-32, 2008-1 C.B. 593, on the treatment under section 67 of the Code of investment advisory costs and other costs subject to the 2-percent floor under section 67(a) that are integrated as part of one commission or fee paid to a trustee or executor and are incurred by a trust other than a grantor trust or an estate. Notice 2008-116 modified and superseded.

Announcement 2010-22, page 602.

This document informs the public that Treasury and the Service will provide guidance on the implementation of FATCA. On March 18, 2010, the Hiring Incentives to Restore Employment (HIRE) Act of 2010, Pub. L. 111-147 (H.R. 2847) was enacted including FATCA, which makes a number of changes to the tax law affecting foreign account tax compliance. Treasury and the IRS are soliciting comments from the public to consider while drafting guidance projects.

EXEMPT ORGANIZATIONS

Announcement 2010-23, page 602.

A list is provided of organizations now classified as private foundations.

ESTATE TAX

REG-134235-08, page 596.

Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

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Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

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SELF-EMPLOYMENT TAX

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Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

EXCISE TAX

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Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

TAX CONVENTIONS

Announcement 2010-26, page 604.

This document contains a copy of the Competent Authority Agreement (“the Agreement”) entered into by the Competent Authorities of the United States and the Netherlands regarding the elimination of the Dutch “qualification” certification procedure used by certain U.S. tax-exempt trusts, companies, or other organizations for claiming treaty benefits from the Netherlands under Article 35 of the Convention between the Kingdom of the Netherlands and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

ADMINISTRATIVE

REG-134235-08, page 596.

Proposed regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

Part III. Administrative, Procedural, and Miscellaneous

Nonconventional Source Fuel Credit, Section 45K Inflation Adjustment Factor, and Section 45K Reference Price

Notice 2010-31

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2009. The inflation adjustment factor and the reference price are used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2009 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2009 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the taxable year. For calendar year 2009, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines “inflation adjustment factor” for a calendar year as a fraction the numerator of which is the

GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines “reference price” to mean with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term “barrel-of-oil equivalent” with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the credit shall be computed by substituting “2004” for “1979.” Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1) does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2009 is \$56.39.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2009 is 1.1343. The nonconventional source fuel credit is \$3.40 per barrel-of-oil equivalent (\$3.00 x 1.1343).

SECTION 5. DRAFTING INFORMATION CONTACT

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

Extension of Interim Guidance on Section 67 Limitations on Estates or Trusts

Notice 2010-32

This notice extends to taxable years that begin before January 1, 2010, the interim guidance provided in Notice 2008-116, 2008-52 I.R.B. 1372, and Notice 2008-32, 2008-1 C.B. 593, on the treatment under § 67 of the Internal Revenue Code of investment advisory costs and other costs subject to the 2-percent floor under § 67(a) that are integrated as part of one commission or fee paid to a trustee or executor (“Bundled Fiduciary Fee”) and are incurred by a trust other than a grantor trust (nongrantor trust) or an estate. Notice 2008-116 is modified and superseded.

BACKGROUND

On January 16, 2008, the Supreme Court of the United States issued its decision in *Michael J. Knight, Trustee of William L. Rudkin Testamentary Trust v. Commissioner*, 552 U.S. 181, 128 S. Ct. 782 (2008), holding that costs paid

to an investment advisor by a nongrantor trust or estate generally are subject to the 2-percent floor for miscellaneous itemized deductions under § 67(a). The IRS and the Treasury Department expect to issue regulations under § 1.67-4 of the Income Tax Regulations consistent with the Supreme Court's holding in *Knight*. The regulations also will address the issue raised when a nongrantor trust or estate pays a Bundled Fiduciary Fee for costs incurred in-house by the fiduciary, some of which are subject to the 2-percent floor and some of which are fully deductible without regard to the 2-percent floor. The regulations, however, will not be issued in time to be applicable to the 2009 taxable year.

Notice 2008-32 provided interim guidance that specifically addresses the treatment of a Bundled Fiduciary Fee. In short,

Notice 2008-32 provided that taxpayers would not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2008. Notice 2008-116 extended the interim guidance provided in Notice 2008-32 to any taxable years beginning before January 1, 2009.

EXTENSION OF INTERIM GUIDANCE

Taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2010. Instead, for each such taxable year, taxpayers may deduct the full amount of the Bundled Fiduciary Fee without regard to the 2-percent floor. Payments by the fiduciary to third par-

ties for expenses subject to the 2-percent floor are readily identifiable and must be treated separately from the otherwise Bundled Fiduciary Fee.

EFFECT ON OTHER DOCUMENTS

Notice 2008-116 is modified and superseded.

CONTACT INFORMATION

The principal authors of this notice are Jennifer N. Keeney and Bradford R. Poston of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer N. Keeney at (202) 622-3060 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Furnishing Identifying Number of Tax Return Preparer

REG-134235-08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 6109 of the Internal Revenue Code (Code) that provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax that they prepare. These proposed regulations provide guidance on the identifying number of a tax return preparer for tax returns and claims for refund filed before and after the proposed effective date. The proposed regulations describe how the IRS will define the identifying number of tax return preparers. Additional provisions of the proposed regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by April 26, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134235-08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134235-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS — REG-134235-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Murray at (202) 622-4940 (not a toll-free number); concerning submissions of comments and requests for a hearing, Richard Hurst at Richard.a.hurst@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by April 26, 2010.

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 collections 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 of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §1.6109-2(d) and (e). This information is required in order for the IRS to issue identifying numbers to tax return preparers who are eligi-

ble to receive them. Tax return preparers will need to apply for an identifying number as prescribed in forms, instructions, or other guidance. The use of a prescribed identifying number by tax return preparers on tax returns and claims for refund of tax will enable the IRS to accurately identify tax return preparers, to match tax return preparers to tax returns and claims for refund that they prepare, and to generally administer the internal revenue laws. The collection of information is mandatory. The likely respondents are tax return preparers and employers of tax return preparers.

Estimated total annual reporting burden: 300,000 hours.

Estimated average annual burden hours (or fraction of an hour) per respondent: varies from 10 to 20 minutes, with an estimated average of 15 minutes.

Estimated number of respondents: 1.2 million.

Estimated annual frequency of responses: once every three years.

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

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

Background

This document contains proposed amendments to regulations under section 6109 of the Code relating to furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. Section 6109 was added to the Code in 1961 (Public Law 87-397, 75 Stat. 828) and authorizes the Secretary to prescribe regulations for the inclusion of identifying numbers on a return, statement, or other document required to be filed with the IRS. In addition, section 6109(c) authorizes the Secretary "to require such information as may be necessary to assign an identifying number to any person."

Section 6109(a)(4) as originally enacted by section 1203(d) of the Tax Reform Act of 1976 (Public Law 94-455, 90 Stat. 1520) required return preparers to furnish on income tax returns and claims for refund of income tax an identifying number, as prescribed, to identify the preparer, the preparer's employer, or both. Section 8246(a)(2)(D)(i) of the Small Business and Work Opportunity Tax Act of 2007 (Public Law 110-28, 121 Stat. 112), amended section 6109(a)(4) to allow the IRS to prescribe that tax return preparers furnish identifying numbers on any tax returns or claims for refund they prepare. As currently prescribed in regulations, the identifying number of a tax return preparer who is an individual is the preparer's social security number (SSN) or alternative number as prescribed by the IRS. The proposed regulations provide that the identifying number of a tax return preparer is exclusively the number prescribed by the IRS. The proposed regulations will implement some of the recommendations made in Publication 4832, *Return Preparer Review* (Rev. 12-2009), published at the end of last year (the Report). The IRS and the Treasury Department believe that the implementation of the Report's recommendations, including the recommendations implemented by these regulations, will increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

1. Identifying Numbers Generally

Because an identifying number is unique to the person to whom assigned, the IRS is able to use the number to correctly identify the taxpayer or the tax return preparer. The use of identifying numbers allows the IRS to accurately and timely process returns and issue refunds, centralize information, post information to the correct taxpayer's account, and effectively administer the rules relating to tax return preparers.

2. Requiring Identifying Numbers from Tax Return Preparers

Tax return preparers generally must provide an identifying number on the tax returns they prepare and sign. Specif-

ically, under §1.6695-1(b), a signing tax return preparer, as defined under §301.7701-15(b)(1), must sign a return of tax or claim for refund after it is completed and before it is presented to the taxpayer for signature. A signing tax return preparer under §301.7701-15(b)(1) is a tax return preparer who has primary responsibility for the overall substantive accuracy of the preparation of a return of tax or claim for refund.

Under §1.6109-2(a)(1), a tax return preparer who must sign a tax return or tax refund claim must also include an identifying number with the preparer's signature. A return of tax includes an information return described in §301.7701-15(b)(4). If a signing tax return preparer has an employment arrangement or association with another person, then that other person's employer identification number (EIN) must also be included on the tax return or refund claim.

The identifying number of a signing tax return preparer, and the identifying number of any person with whom the preparer has an employment arrangement or association, must be included on electronically filed tax returns, as well as paper returns. Further, because of recent statutory changes, tax return preparers who prepare and file individual income tax returns (Form Series 1040) for their clients will soon be required to electronically file the returns, unless the tax return preparer reasonably expects to file only 10 or fewer individual income tax returns for the calendar year. *See* Section 17 of the Worker, Homeownership, and Business Assistance Act of 2009, Public Law 111-92, 123 Stat. 2984, 2997 (adding Code section 6011(e)(3)).

Tax return preparers who are required but fail to include their identifying number on a tax return or refund claim, or fail to include the identifying number of any person with whom they have an employment arrangement or association, are subject to a penalty under section 6695(c). A tax return preparer is not liable for the penalty if the failure to include an identifying number is due to reasonable cause and not due to willful neglect.

3. Preparer Tax Identification Numbers

Section 6109(a) initially provided that the identifying number of a tax return pre-

parer was the individual's SSN. Section 3710(a) of the IRS Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685) (RRA '98), allowed the IRS to prescribe an identifying number for tax return preparers other than the preparer's SSN. In response to section 3710(a) of RRA '98, the IRS developed and began to issue preparer tax identification numbers (PTINs). Tax return preparers currently may apply online for a PTIN using the e-services PTIN process on the IRS website at www.irs.gov or by filing Form W-7P, "Application for Preparer Tax Identification Number." Applying online is faster, and return preparers are encouraged to apply online. In the future, the IRS will prescribe the method to apply for a PTIN consistent with these proposed regulations. Currently, under §1.6109-2(a)(2), a tax return preparer may use as an identifying number on a tax return or claim for refund either the preparer's SSN or an "alternative number" prescribed by the IRS, including a PTIN. But an EIN, an Electronic Filing Identification Number (EFIN) (which is an identification number assigned to IRS e-file providers), or an Electronic Transmitter Identification Number (ETIN) (which is an identification number assigned to IRS e-file providers who electronically transmit tax returns to the IRS) is not a valid preparer identifying number.

4. Regulation of Tax Return Preparers

In June 2009, the IRS initiated a comprehensive review of tax return preparers, and in December 2009 the IRS published the Report describing its findings from that review. The Report recommended, in part, that tax return preparers be required to obtain and use a PTIN as the exclusive preparer identifying number and undergo a tax-compliance check. As discussed below, the proposed regulations implement those recommendations.

Under current law, any individual may prepare a tax return or claim for refund. The Report recommended that the IRS establish new eligibility standards that an individual must meet in order to prepare tax returns — including testing, continuing education, and tax compliance checks. The Report contemplates that only attorneys, certified public accountants, enrolled agents, as well as tax return preparers who

pass a minimum competency exam and meet other requirements (referred to as “registered tax return preparers”) will be eligible to prepare and sign tax returns and claims for refund. These proposed regulations do not establish the requirements to become a registered tax return preparer, which primarily will be set forth in future guidance under Treasury Department Circular No. 230, 31 CFR Part 10. After a transition period, however, it is intended that only individuals who satisfy the eligibility standards may obtain and use a PTIN as a tax return preparer.

Explanation of Provisions

1. Requiring the Use of PTINs

The proposed regulations provide that for tax returns or refund claims filed after December 31, 2010, the identifying number that a tax return preparer must include with the preparer’s signature on tax returns and refund claims is that prescribed by the IRS in forms, instructions, or other guidance. Tax return preparers will not be able to use an SSN as a preparer identifying number unless specifically prescribed by the IRS in forms, instructions, or other guidance. Instead, to the extent provided in forms and instructions, a tax return preparer will be required to use a PTIN as the identifying number unless the IRS prescribes in the future a replacement to the PTIN. Forms and instructions will be revised accordingly. The use of PTINs as the identifying number for tax return preparers will improve tax administration and tax compliance, benefit taxpayers and tax return preparers, and help maintain the confidentiality of SSNs.

For tax returns or claims for refund filed before January 1, 2011, the identifying number of a tax return preparer will remain the preparer’s SSN or PTIN. In the case of tax returns for taxable periods ending before January 1, 2011, and made on the appropriate forms prescribed for the taxable periods, but which are filed on or after January 1, 2011, tax return preparers must furnish on the returns the identifying number prescribed on the forms to be filed and in associated instructions.

For tax return preparation businesses and other persons having an employment arrangement or association with a tax return preparer, the business’s or employer’s

EIN continues to be the identifying number that must be included on tax returns and refund claims along with the tax return preparer’s signature and preparer identifying number. An individual tax return preparer, however, may not use an EIN as a preparer identifying number on a return, even if the preparer has an EIN (for example, as a sole proprietor). Tax return preparers who use their SSN, or an EIN, EFIN, or ETIN, instead of a valid PTIN, on tax returns or claims for refund filed after the effective date may be subject to the penalty under section 6695(c) unless the failure to include a valid PTIN is due to reasonable cause and not due to willful neglect.

2. Eligibility to Receive a PTIN

The proposed regulations provide that all tax return preparers must apply for a PTIN or other prescribed identifying number at the time and in the manner as may be prescribed by the IRS in forms, instructions, or other appropriate guidance. The proposed regulations also authorize the IRS to prescribe a user fee in connection with applying for, and renewing, a PTIN (or successor number similar to a PTIN). Except as provided in any transitional period, beginning after December 31, 2010, to obtain a PTIN, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer under future guidance to be provided in Circular 230.

Only for purposes of applying for and renewing a PTIN or other prescribed preparer identifying number, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all, of a tax return or claim for refund of tax. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701–15(b)(2), or who is an individual described in §301.7701–15(f). The proposed regulations provide several examples illustrating who is a tax return preparer required to apply for a PTIN.

As part of the process of applying for a PTIN, a tax return preparer may be subject to both an initial tax-compliance check and subsequent periodic checks, which could include a review of a preparer’s history of compliance with personal and business tax

filing and payment obligations. The tax-compliance check is intended to establish whether a tax return preparer has timely filed required personal and business tax returns and has paid taxes that are due or made other acceptable arrangements with the IRS, such as an approved installment agreement under section 6159. If a tax return preparer disregards any applicable requirements to obtain a prescribed identifying number and thereafter omits, when required to include, a valid identifying number on a tax return or claim for refund filed after the effective date, the preparer may be liable for the section 6695(c) penalty, unless the failure to include a valid identifying number was due to reasonable cause and not due to willful neglect.

The information a tax return preparer provides when the preparer initially applies for a PTIN or other prescribed identifying number will often become outdated or otherwise inaccurate. The IRS may require tax return preparers to regularly renew their identifying numbers and otherwise maintain updated information with the IRS. If a tax return preparer who is required to include an identifying number on a tax return or claim for refund filed after the effective date uses an expired identifying number, the tax return preparer may be liable for the section 6695(c) penalty, unless the use of the expired number was due to reasonable cause and not due to willful neglect.

The proposed regulations provide that if necessary for effective tax administration, the IRS may prescribe exceptions to any of the requirements, such as for an interim period while procedures are being implemented. For example, the IRS and the Treasury Department recognize that the procedures for becoming a registered tax return preparer may not be fully implemented when these regulations become effective. It is anticipated that transitional interim guidance will be provided to allow individuals who intend to become registered tax return preparers to obtain an interim PTIN or other interim identifying number that may be used as a preparer identifying number on tax returns and refund claims until the procedures are fully implemented. After the interim period, however, to obtain a PTIN, an individual will need to be an attorney, certified public accountant, enrolled agent, or registered

tax return preparer authorized to practice before the IRS under Circular 230.

Proposed Effective/Applicability Date

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

Special Analyses

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

It has been determined that an initial regulatory flexibility analysis under 5 U.S.C. 603 is required for this notice of proposed rulemaking. The analysis is set forth below under the heading, "Initial Regulatory Flexibility Analysis."

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.

Initial Regulatory Flexibility Analysis

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 "describe[s] the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605 of the Act 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. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)-(6). The IRS and the Treasury Department conclude that the proposed regulations, if promulgated (together with other contemplated guidance provided for in these regulations), will impact a substantial number of small entities and the economic impact will be significant. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why the agency action is being considered.

Taxpayers' reliance on paid tax return preparers has grown steadily in recent decades. Today, paid tax return preparers assist a majority of U.S. taxpayers in meeting their income tax filing obligations. Beyond preparing tax returns, tax return preparers also help educate taxpayers about the tax laws, and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. Competent tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor their tax return preparation activities. The proposed regulations are intended to advance tax administration by requiring all individuals who are paid to prepare all or substantially all of a tax return or claim for refund of tax to obtain a preparer identifying number prescribed by the IRS. Pursuant to the proposed regulations, the IRS will require individuals who sign tax returns or claims for refund to report the preparer's identifying number on a tax return or claim for refund when the return or refund claim is signed. The proposed regulations also provide that the IRS may require tax return preparers to apply for, and regularly renew, their identifying numbers. Under the proposed regulations, the IRS may prescribe a user fee payable when applying for a number and for renewal.

Further, the IRS and the Treasury Department conclude that taxpayers, tax return preparers, and overall tax administration will be best served through increased oversight of the tax return preparer industry. Mandating a single prescribed identifying number for all tax return preparers and assigning a prescribed number to registered tax return preparers is critical to effective oversight.

Statement of the objectives of, and the legal basis for, the proposed rule.

The principal objective of the proposed regulations is to enable the IRS to more accurately identify tax return preparers and the tax returns and refund claims associated with each tax return preparer. The proposed regulations do this by providing that the IRS may prescribe the use of identifying numbers for tax return preparers and the qualifications or other requirements necessary to obtain a valid number. The legal basis for these provisions is section 6109 of the Code, which authorizes the Secretary to prescribe the "identifying number for securing proper identification of" a tax return preparer and "to require such information as may be necessary to assign an identifying number to any person."

Description and estimate (where feasible) of the number of small entities subject to the proposed rule.

The proposed regulations apply to individuals who prepare tax returns and claims for refund of tax. The estimated number of paid tax return preparers is as high as 1.2 million, which means the proposed regulations are likely to impact a large number of individuals. Most paid tax return preparers are employed by firms. A substantial number of paid tax return preparers are employed at small tax return preparation firms or are self-employed tax return preparers. Any economic impact of these regulations on small entities generally will be on self-employed tax return preparers who prepare and sign tax returns or on small businesses that employ one or more individuals who sign tax returns.

The appropriate NAICS codes for tax return preparers are those for tax return preparation services (NAICS code 541213) and other accounting services (NAICS code 541219). Entities identified under either of these two codes are considered small under the Small Business Administration's size standards (13 CFR 121.201), if their annual revenue is less than \$7 million or \$8.5 million, respectively. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these proposed regulations are tax return preparers operating as or employed by small entities.

Description of the projected reporting, recordkeeping, and related requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

The proposed regulations do not directly impose any reporting, recordkeeping, or similar requirements on any small entities. Rather, the proposed regulations provide that the IRS may prescribe in forms, instructions, or other guidance (including regulations) requirements for identifying numbers for tax return preparers, regular renewal of identifying numbers, and payment of a user fee when applying for or renewing an identifying number. In addition, other guidance may require certain tax return preparers to complete competency testing, complete continuing education courses, and adhere to established rules of practice governing attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents.

Applying for an identifying number and subsequent renewal will require reporting of certain information, but are not expected to require recordkeeping. These activities also will not require the purchase or use of any special business equipment or software. To the extent it will be necessary to apply for a PTIN (or similar identifying number that replaces a PTIN) online at www.irs.gov, most if not all tax return preparation businesses have computers and Internet access. The IRS estimates that applying for a PTIN will take 10 to 20 minutes per individual, with an average of 15 minutes per individual.

Under other guidance that the IRS may issue, tax return preparers who apply to be registered tax return preparers and who regularly renew their status may be subject to recordkeeping requirements because they may be required to maintain specified records, such as documentation and educational materials relating to completion of continuing education courses. These requirements do not involve any specific professional skills other than general recordkeeping abilities already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that tax return preparers will annually spend approximately 30 minutes

to 1 hour in maintaining records relating to the continuing education requirements, depending on individual circumstances.

A separate regulation addressing reasonable user fees will be proposed in the near future. Tax return preparers may be required to pay a user fee when first applying for a PTIN and at every renewal. Small entities may be affected by these costs if the entities choose to pay some or all of these fees for their employees.

Under regulations to be issued in the future, tax return preparers may also incur costs for commercial continuing education courses and minimum competency examinations, plus incidental costs, such as for travel and accommodations in order to maintain their status as registered tax return preparers under Circular 230. Course prices can vary greatly, from free to hundreds of dollars. Many small tax return preparation firms may choose, as with the user fee, to bear these costs for their employees. In some cases, small entities may lose sales and profits while their employed tax return preparers attend training or educational classes or are studying and sitting for examinations. Some small entities that employ tax return preparers may even need to alter their business operations if a significant number of their employees cannot satisfy the necessary registration and competency requirements. The IRS and the Treasury Department conclude, however, that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to the proposed regulations.

Although each of the reporting and recordkeeping requirements and the costs identified above (in connection with the proposed regulations and the other anticipated guidance necessary to implement the Return Preparer Review) is not expected to singly result in a significant economic impact, taken together it is anticipated that they may have a significant economic impact on a substantial number of small entities.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The proposed regulations do not duplicate, overlap, or conflict with any Federal statutes or other rules.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities.

The IRS and the Treasury Department have determined that there are no viable alternatives to the proposed regulations that would enable the IRS to accurately identify tax return preparers, other than through the use of a prescribed identifying number, as provided in the proposed regulations.

More broadly, the IRS received a large volume of comments as part of the Return Preparer Review on the issue of increased oversight of tax return preparers generally and on the Report's proposed recommendations, including requiring tax return preparers to use a uniform prescribed identifying number. The comments were received from all categories of interested stakeholders, including tax professional groups representing large and small entities, IRS advisory groups, tax return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the proposed requirements.

As to the proposed requirements recommended in the Report, the IRS and the Treasury Department considered various alternatives in determining the best ways to effectuate proposed changes with respect to tax return preparers, including:

(1) Requiring all paid tax return preparers to comply with the ethical standards in Circular 230 or an ethics code similar to Circular 230, but not requiring any paid preparers to demonstrate their qualification and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to register with the IRS, complete annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all paid tax return preparers to pass a minimum competency examination and meet other registration requirements; and

(4) Requiring all paid tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other registration requirements, but "grandfather in" tax return preparers who have accu-

rately and competently prepared tax returns for a certain period of years.

After consideration of these and other alternatives and the responses received in the public comment process, the IRS and the Treasury Department conclude that the provisions of the proposed regulations will most effectively promote sound tax administration. The provisions in the proposed regulations for a single prescribed identifying number for tax return preparers will enable the IRS to accurately identify tax return preparers, match preparers with the tax returns and claims for refund they prepare, and better administer the tax laws with respect to tax return preparers and their clients. The provisions, in combination with anticipated guidance described above, also will ensure that qualified, competent, and ethical tax return preparers will be assigned prescribed preparer identifying numbers. The testing requirements that may be set forth in other guidance will establish a benchmark of minimum competency necessary for tax return preparers to obtain their professional credentials, while the continuing education requirements are intended to ensure that tax return preparers remain current on the Federal tax laws and continue to develop their tax knowledge. The extension in other, prospective guidance of the rules in Circular 230 to any paid tax return preparer will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise appropriately discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of qualification and competency standards is expected to increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

Comments and Requests for 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. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments that are submitted by the public

will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits 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 proposed regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

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

Par. 2. Section 1.6109-2 is amended by revising the section heading, revising paragraphs (a)(2) and (d), and adding paragraphs (e), (f), (g), (h), and (i) to read as follows:

§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.

(a) * * *

(2)(i) For tax returns or claims for refund filed on or before December 31, 2010, the identifying number of an individual tax return preparer is that individual's social security number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) For tax returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number or such other number prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

* * * * *

(d) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.

(e) The Internal Revenue Service may designate an expiration date for any preparer tax identification number or other prescribed identifying number and may further prescribe the time and manner for renewing a preparer tax identification number or other prescribed identifying number, including the payment of a user fee, as set forth in forms, instructions, or other appropriate guidance. The Internal Revenue Service may provide that any identifying number issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed as set forth in forms, instructions, or other appropriate guidance, including these regulations.

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the IRS may conduct a tax compliance check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

(g) Only for purposes of paragraphs (d), (e), and (f) of this section, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses

attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701-15(b)(2), or who is an individual described in §301.7701-15(f). The provisions of this paragraph (g) are illustrated by the following examples:

Example 1. Employee A, an individual employed by Tax Return Preparer B, assists Tax Return Preparer B in answering telephone calls, making copies, inputting client tax information gathered by B into the data fields of tax preparation software on a computer, and using the computer to file electronic returns of tax prepared by B. Although Employee A must exercise judgment regarding which data fields in the tax preparation software to use, A does not exercise any discretion or independent judgment as to the clients' underlying tax positions. Employee A, therefore, merely provides clerical assistance or incidental services and is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 2. The facts are the same as in *Example 1*, except that Employee A also interviews B's clients and obtains from them information needed for the preparation of tax returns. Employee A determines the amount and character of entries on the returns and whether the information provided is sufficient for purposes of preparing the returns. For at least some of B's clients, A obtains information and makes determinations that constitute all or substantially all of the tax return. Employee A is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. Employee A is a tax return preparer even if Employee A relies on tax preparation software to prepare the return.

Example 3. C is an employee of a firm that prepares tax returns and claims for refund of tax for compensation. C is responsible for preparing a Form 1040, "U.S. Individual Income Tax Return," for a client. C obtains the information necessary for completing the return during a meeting with the client, and makes determinations with respect to the proper application of the tax laws to the information in order to determine the client's tax liability. C completes the tax return and sends the completed return to employee D, who reviews the return for accuracy before signing it. Both C and D are tax return preparers required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

Example 4. E is an employee at a firm which prepares tax returns and claims for refund of tax for com-

penensation. The firm is engaged by a corporation to prepare its Federal income tax return on Form 1120, "U.S. Corporation Income Tax Return." Among the documentation that the corporation provides to E in connection with the preparation of the tax return is documentation relating to the corporation's potential eligibility to claim a recently enacted tax credit for the taxable year. In preparing the return, and specifically for purposes of the new tax credit, E (with the corporation's consent) obtains advice from F, a subject matter expert on this and similar credits. F advises E as to the corporation's entitlement to the credit and provides his calculation of the amount of the credit. Based on this advice from F, E prepares the corporation's Form 1120 claiming the tax credit in the amount recommended by F. The additional credit is one of many tax credits and deductions claimed on the tax return, and determining the credit amount does not constitute preparation of all or substantially all of the corporation's tax return under this paragraph (g). F will not be considered to have prepared all or substantially all of the corporation's tax return, and F is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. The analysis is the same whether or not the tax credit is a substantial portion of the return under §301.7701-15 of this chapter, and whether or not F is in the same firm with E. E is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration.

(i) *Effective/applicability date.* Paragraph (a)(2) of this section is effective for returns and claims for refund filed after the date that final regulations are published in the **Federal Register**. Paragraphs (d) through (h) of this section are effective after the date that final regulations are published in the **Federal Register**.

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

(Filed by the Office of the Federal Register on March 24, 2010, 11:15 a.m., and published in the issue of the Federal Register for March 26, 2010, 75 F.R. 1439)

Announcement Regarding Implementation of FATCA and Request for Comments

Announcement 2010-22

On March 18, 2010, the Hiring Incentives to Restore Employment (HIRE) Act of 2010, Pub. L. 111-147 (H.R. 2847) was enacted into law. Subtitle A of Title V of the HIRE Act (Subtitle A) made a number of changes to the tax law to improve tax compliance with respect to foreign accounts and cross-border transactions and authorized the Secretary to promulgate guidance to implement these changes.

The Treasury Department and the IRS request comments from the public regarding guidance projects and issues concerning the interpretation and implementation of Subtitle A. Send submissions to: CC:PA:LPD:PR (REG-146097-09), 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 (NOT-112379-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (NOT-112379-10).

The principal author of this announcement is Kathryn T. Holman of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Kathryn T. Holman at (202) 622-8556 (not a toll-free call).

Foundations Status of Certain Organizations

Announcement 2009-23

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in

section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

2nd Chance Sports, Inc., Columbus, MS
Africa Cancer Treatment,
Los Angeles, CA
Afuntummireku Heritage Society,
Asbury Park, NJ
Alternative Life Counseling,
Los Angeles, CA
American Argentine Art Association, Inc.,
Port St. Lucie, FL
Another Chance Outreach Ministry
International, Amory, MS
Assu-Ranch Care Consultants, Inc.,
Garland, TX
Atlanta Sound of Gospel, St. Paul, MN
Balm of Gilead Ministries, Wichita, KS
Bishop Ministries, Inc., Pearland, TX
Bokeelia Charitable Tournaments, Inc.,
Sarasota, FL
Bridgeway Ministries, Inc., Ashland, VA
Brown County General Hospital Services,
Georgetown, OH
Caribbean Community Foundation,
Baltimore, MD
Castles of America Preservation Society,
LTD, Peterson, MN
CDI - Utah, Caldwell, ID
Central Alabama Volunteer Examiner
Coordinator, Inc., Huntsville, AL
Changing Images, Inc., South Orange, NJ
Chenaniah Music Ministries,
Southfield, MI
Christian Center Family Services, Inc.,
Yulle, FL
Clear Creek Child Conservancy, Inc.,
Copperas Cove, TX
Community Potential, Inc.,
Binghamton, NY
Complete Baby Com, Inc., West End, NC
Education & Employment Exchange
Foundation, North Port, FL
Equipping Ministries with Technology,
Pekin, IL
Exousia Ministries, Houston, TX
Family Life to The Community,
Portsmouth, VA
Feed My Sheep Outreach, Inc.,
Beverly Hills, CA
Freedom-Forum Group Foundation,
San Juan Capistrano, CA

Future First, Minneapolis, MN
G.S. Community Development, Inc.,
Fort Worth, TX
Golden Star Christian Community
Outreach Center, Philadelphia, PA
Gospel Faith Organization, Mobile, AL
GRAA Education Foundation,
Redding, CT
Greater New Bethel Economic
Development Inc., Longview, TX
Habakkuks Revelation Center,
Pittsburg, CA
Hispanic-American Partnership, Inc.,
Las Vegas, NV
Houma Hurricane Baseball Team,
Houma, LA
International Vietnamese Mutual
Assistance Foundation,
Garden Grove, CA
Ishyirahamwe Ubumwe, Stockton, CA
Jeffrey Reiken-Johnson Clergy Public
Ministry, San Francisco, CA
Jobs-Readines and Development
Education Center, Arcola, TX
Joffe Foundation, Cincinnati, OH
Johnny R. Green Ministries, Inc.,
Houston, TX
Los Angeles Student Athlete,
Los Angeles, CA
Lutheran Housing Services #20,
Toledo, OH
Lutheran Housing Services #21,
Toledo, OH
Lutheran Housing Services #22,
Toledo, OH
Ministries of Divine Faith, Inc.,
Bainbridge, GA
Ministry of Salvation Outreach Ministries,
Irving, TX
Minnesota Multicultural Media
Consortium, Inc., Saint Paul, MN
Mission Possible Enterprises,
Gig Harbor, WA
National Wellness Foundation, Inc.,
San Diego, CA
Neighborhood Sports Academy,
Fort Wayne, IN
Neshoba County Community
Development Corporation,
Philadelphia, MS
New Beginning Community Development
Center COGOP, Fontana, CA
Our History Matters, Inc., La Mesa, CA
Parent Involvement in Education
Foundation, Culver City, CA
United in Love Family Service Center,
Fayetteville, NC

United States Jails & Prisons Forum, Inc.,
Bowie, MD
Reaching U Network, Inc., Miami, FL
Redemptive Network Ministries,
Chattanooga, TN
Redmond Parks Foundation,
Redmond, OR
Rose Project, Midland, TX
Seattle Youth Life Skills Center,
Seattle, WA
S E E A Inc., Cleveland, OH
Self Empowerment & Literacy
Foundation, Los Angeles, CA
Shadow Skate Complex, Columbia, MO
Shiloh Treatment Center California, Inc.,
Lake Jackson, TX
Sibis Enterprises, Inc., Schererville, IN
Skokos Foundation, Sandy, UT
Somali Community of Michigan,
Ypsilanti, MI
Southlake Arts Foundation, Inc.,
Southlake, TX
Speak Easy Language Development
and Learning Center, Inc.,
Pembroke Pines, FL
Spirit of the Sun, Inc., Broomfield, CO
Teachers Institute, Jamaica Plains, MS
Texas Team Handball Clubs, Inc.,
Austin, TX
Third Eye Group, Potomac, MD
Tigerpaid Foundation, San Francisco, CA
Timothy's Helping Hands,
Sauk Village, IL
Visual Voice, La Canada Flintridge, CA
Wings to Wings, Joppa, MD
World Missions Outreach Ministries,
Amarillo, TX
World Safety, Inc., Hempstead, TX

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

U.S-Netherlands: Elimination of the Dutch “Qualification” Certification

Announcement 2010–26

The following is a copy of the Competent Authority Agreement (“the Agreement”) entered into by the Competent Authorities of the United States and the Netherlands regarding the elimination of the Dutch “qualification” certification procedure used by certain U.S. tax-exempt trusts, companies, or other organizations for claiming treaty benefits from the Netherlands under Article 35 of the Convention between the Kingdom of the Netherlands and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The text of the Agreement is as follows:

COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the Netherlands and the United States hereby

amend Chapter III of the agreement that they entered into on August 6, 2007¹ (the “2007 MAP”), with respect to the “qualification” certification procedure used by certain U.S. tax-exempt trusts, companies, or other organizations for claiming treaty benefits from the Netherlands under Article 35 of the Convention between the Kingdom of the Netherlands and the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed on December 18, 1992, and amended by Protocols signed on October 13, 1993 and March 8, 2004 (the “Treaty”). This agreement constitutes a Mutual Agreement in accordance with Article 29 of the Treaty.

Elimination of the Dutch “qualification” certification

Under Chapter III of the 2007 MAP, a U.S. trust, company, or other organization that qualifies for benefits under Article 35 of the Treaty may request treaty benefits from the Netherlands under the exemption method by supplying an IRS Form 6166 or

a “qualification” certification issued by the competent Netherlands tax authorities.

This agreement amends Chapter III of the 2007 MAP by providing that a U.S. tax-exempt trust, company, or other organization may no longer apply for and receive a “qualification” certification from the Netherlands tax authorities after March 31, 2010. A U.S. resident that has been issued a “qualification” certification may continue to claim benefits using such certification for a period of three years beginning on April 1, 2010, provided that no material change in facts and circumstances has occurred. All other U.S. resident tax-exempt trusts, companies, or other organizations must provide an IRS Form 6166 to claim benefits under Article 35 of the Treaty after March 31, 2010. An IRS Form 6166 may be obtained by completing and sending Form 8802, *Application for U.S. Residency Certification*, to the appropriate IRS office identified in the Instructions to Form 8802.

Agreed to by the undersigned competent authorities:

Michael Danilack
U.S. Competent Authority

Edwin A. Visser
Netherlands Competent Authority

¹ Published in the Netherlands as IFZ2007/537M in *Stcrt.* 2007, 154 and in the United States as Announcement 2007–75, 2007–2 C.B. 540.

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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