

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

REG-153340-09, page 469.

Proposed regulations under section 6302 of the Code relate to Federal Tax Deposits (FTDs) by Electronic Funds Transfer (EFT) and provide rules requiring depositors to use EFT for all FTDs and eliminate rules regarding FTD coupons.

Rev. Proc. 2010-36, page 439.

This procedure provides a safe harbor that treats certain damage resulting from corrosive drywall as a casualty loss and provides a formula for determining the amount of the loss. This procedure applies to any individual who pays to repair damage to his or her personal residence or household appliances that results from corrosive drywall.

EXEMPT ORGANIZATIONS

REG-153340-09, page 469.

Proposed regulations under section 6302 of the Code relate to Federal Tax Deposits (FTDs) by Electronic Funds Transfer (EFT) and provide rules requiring depositors to use EFT for all FTDs and eliminate rules regarding FTD coupons.

Announcement 2010-79, page 475.

The IRS has revoked its determination that the Coach Ken Carter Foundation of Richmond, CA; and First Step, Inc., of Manahawkin, NJ, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

EMPLOYMENT TAX

REG-153340-09, page 469.

Proposed regulations under section 6302 of the Code relate to Federal Tax Deposits (FTDs) by Electronic Funds Transfer (EFT) and provide rules requiring depositors to use EFT for all FTDs and eliminate rules regarding FTD coupons.

SELF-EMPLOYMENT TAX

REG-153340-09, page 469.

Proposed regulations under section 6302 of the Code relate to Federal Tax Deposits (FTDs) by Electronic Funds Transfer (EFT) and provide rules requiring depositors to use EFT for all FTDs and eliminate rules regarding FTD coupons.

EXCISE TAX

REG-153340-09, page 469.

Proposed regulations under section 6302 of the Code relate to Federal Tax Deposits (FTDs) by Electronic Funds Transfer (EFT) and provide rules requiring depositors to use EFT for all FTDs and eliminate rules regarding FTD coupons.

(Continued on the next page)

Finding Lists begin on page ii.



ADMINISTRATIVE

Notice 2010–66, page 437.

Refundable adoption credit. This notice advises taxpayers that adoption credit amounts a taxpayer carries forward from earlier taxable years are refundable in 2010, and that taxpayers must attach certain documents to their tax returns to substantiate claims for the adoption credit.

Rev. Proc. 2010–35, page 438.

Adoption credit inflation adjustments. This procedure updates the provisions relating to the adoption credit in Rev. Proc. 2009–50, 2009–45 I.R.B. 617, which provides the inflation adjustments for 2010, to reflect the increased credit amount allowed under the Patient Protection and Affordable Care Act. Rev. Proc. 2009–50 modified.

Rev. Proc. 2010–37, page 440.

This procedure contains revisions to Publication 1239, *Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically* (revised 10–2010). Rev. Proc. 2009–46 superseded.

Rev. Proc. 2010–39, page 459.

Per diem allowances. This procedure provides optional rules for deeming substantiated the amount of certain business expenses of traveling away from home reimbursed to an employee or deductible by an employee or self-employed individual. Rev. Proc. 2009–47 superseded.

Announcement 2010–82, page 476.

This announcement contains corrections and clarifications to Publication 1220, *Specifications for Filing Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically* (revised 8–2010).

The IRS Mission

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

force the 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.

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

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules are provided under which a reimbursement or other expense allowance arrangement for the cost of lodging, meal, and incidental expenses, or of meal and incidental expenses only, incurred by an employee while traveling away from home, satisfies the requirements of section 62(c) of the Code for substantiation of the amount of the expenses. See Rev. Proc. 2010-39, page 459.

Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Rules are provided for substantiating the amount of a deduction for an expense for meal and incidental expenses, or for incidental expenses only, incurred while traveling away from home. See Rev. Proc. 2010-39, page 459.

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

Rules are provided for substantiating the amount of a deduction for an expense for meal and incidental expenses, or for incidental expenses only, incurred while traveling away from home. See Rev. Proc. 2010-39, page 459.

Part III. Administrative, Procedural, and Miscellaneous

Refundable Adoption Credit

Notice 2010-66

SECTION 1. PURPOSE

This notice provides interim guidance on the adoption credit. Section 10909 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (PPACA) amended § 23 of the Internal Revenue Code to make the adoption credit refundable, redesignated § 23 as § 36C, and made certain other changes, effective for taxable years beginning after December 31, 2009. Pending the publication of regulations, this notice provides rules for computing the adoption credit for a taxable year beginning in 2010 and for substantiating claims for the adoption credit. See Notice 97-9, 1997-1 C.B. 365, and Notice 97-70, 1997-2 C.B. 332, for general guidance on the adoption credit.

SECTION 2. BACKGROUND

Section 36C allows a refundable tax credit for qualified adoption expenses (QAE). QAE are the reasonable and necessary adoption fees, court costs, attorney fees, and other expenses directly related to, and for the principal purpose of, adopting an eligible child. For example, a taxpayer may claim traveling expenses (including amounts expended for meals and lodging while away from home) paid or incurred to adopt an eligible child. A taxpayer may claim QAE paid or incurred for an unsuccessful domestic adoption.

For both domestic and foreign adoptions, if a taxpayer pays or incurs QAE during or after the taxable year in which the adoption is final, the credit is allowable in the taxable year in which the taxpayer pays or incurs the QAE.

For domestic adoptions, the credit is allowable for QAE that a taxpayer pays or incurs in a taxable year before the adoption is final. However, a taxpayer may not claim the credit for those QAE until the next taxable year.

For foreign adoptions, the credit is allowable only in the taxable year in which the adoption is final or in a later year. QAE that a taxpayer pays or incurs in a taxable

year before the adoption is final are treated as paid or incurred in the taxable year in which the adoption is final. See Rev. Proc. 2010-31, 2010-40 I.R.B. 413, for determining the finality of foreign adoptions subject to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention) and the Intercountry Adoption Act of 2000, Pub. L. 106-279, 114 Stat. 825, 42 U.S.C. §§ 14901-14954. See Rev. Proc. 2005-31, 2005-1 C.B. 1374, for determining finality of foreign adoptions from countries not party to the Hague Convention.

For a taxable year beginning in 2010, the credit is limited to \$13,170 of the aggregate QAE that a taxpayer pays or incurs for all taxable years. For 2011 this dollar limitation will be adjusted as necessary for inflation. Expenses for an unsuccessful domestic adoption of an identified child are aggregated with the expenses of a successful adoption of another child in applying the dollar limitation. See Notice 97-9, section 1.G., Example 3.

Under §§ 36C(a)(3) and 36C(d)(3), a taxpayer may claim the credit up to the full amount of the dollar limitation for an adoption of a child with special needs, as determined by the state where the adoption occurs, in the year in which the adoption is final without regard to the amount of QAE the taxpayer pays or incurs.

The credit is subject to an income limitation based on the taxpayer's modified adjusted gross income (MAGI). The income limitation applies to QAE in the first taxable year the taxpayer claims the credit for that QAE. For taxable years beginning after December 31, 2009, the allowable credit begins to phase out for taxpayers with MAGI of \$182,520 and is completely eliminated for taxpayers with MAGI of \$222,520. The income limitation may be adjusted in future years for inflation.

Prior to amendment under PPACA, the credit was not refundable. Former § 23(c) allowed a taxpayer to carry forward the amount of the credit in excess of the taxpayer's tax liability to five subsequent taxable years. The income limitation did not apply to an amount carried forward to a later taxable year.

Section 36C(f)(2)(B) authorizes the Secretary of the Treasury to require taxpayers to provide information substantiating claims for the adoption credit.

SECTION 3. INTERIM GUIDANCE

1. Amounts Carried Over from Earlier Taxable Years to a Taxable Year Beginning in 2010

An amount of an adoption credit claimed in an earlier taxable year that a taxpayer carries forward to a taxable year beginning in 2010 is allowable as a refundable tax credit. An amount that a taxpayer carries forward to a taxable year beginning in 2010 is not subject to an income limitation in that taxable year.

The following examples illustrate these rules.

Example 1. (i) In 2008, Taxpayer pays \$2,000 of QAE to adopt an eligible child who is a citizen of the United States. In 2009, Taxpayer pays an additional \$8,000 of QAE and the adoption becomes final. The adoption credit for \$10,000 of QAE is allowable in 2009.

(ii) Taxpayer's tax liability for taxable year 2009 is \$6,000, and Taxpayer applies \$6,000 of the \$10,000 credit against Taxpayer's 2009 tax liability. Taxpayer carries forward \$4,000 of the credit to 2010.

(iii) In 2010, Taxpayer's tax liability is \$3,000. Taxpayer applies \$3,000 of the \$4,000 carried forward adoption credit against Taxpayer's 2010 tax liability. Taxpayer is entitled to a refund of the remaining credit.

Example 2. (i) The facts are the same as in *Example 1*, except that in 2010, Taxpayer pays an additional \$2,000 of QAE. Taxpayer's income exceeds the upper income limitation for 2010.

(ii) Because of the income limitation, the adoption credit is not allowable for the \$2,000 of QAE Taxpayer pays in 2010. However, Taxpayer may apply the \$4,000 adoption credit carried forward to reduce Taxpayer's tax liability for 2010 and may receive a refund of any carried forward credit that exceeds Taxpayer's tax liability.

2. Substantiation Requirements

A taxpayer must provide a copy (unless otherwise specified) of the applicable documents described in paragraph a. or b. below to substantiate the taxpayer's adoption or attempted adoption of an eligible child. A taxpayer also must comply with paragraph c. below for a special needs adoption. The taxpayer attaches the document(s) to the taxpayer's income tax return for the taxable year that the taxpayer

claims the credit, beginning after December 31, 2009.

a. Domestic and foreign adoptions that have been finalized

(1) For a domestic or foreign adoption finalized in the United States, an adoption order or decree.

(2) For a foreign adoption governed by the Hague Convention and finalized in another country:

A. A Hague Adoption Certificate (Immigrating Child),

B. An IH-3 visa, or

C. A foreign adoption decree, translated into English.

(3) For a foreign adoption from a country that is not party to the Hague Convention:

A. A foreign adoption decree, translated into English, or

B. An IR-2 or IR-3 visa.

b. Domestic adoptions that are not final

(1) An adoption taxpayer identification number, obtained by the taxpayer for the child, included on the taxpayer's income tax return (instead of attaching a document),

(2) A home study completed by an authorized placement agency,

(3) A placement agreement with an authorized placement agency,

(4) A document signed by a hospital official authorizing the release of a newborn child from the hospital to the taxpayer for legal adoption,

(5) A court document ordering or approving the placement of a child with the taxpayer for legal adoption, or

(6) An original affidavit or notarized statement signed under penalties of perjury from an adoption attorney, government official, or other person, stating that the signor:

A. Placed or is placing a child with the taxpayer for legal adoption, or

B. Is facilitating the adoption process for the taxpayer in an official capacity, summarizing the facilitation.

c. Adoptions of special needs children

In addition to the documentation required under paragraph 2.a. of this notice, a taxpayer claiming the adoption credit

for a child with special needs must attach a copy of the state determination of special needs to the taxpayer's income tax return for the taxable year that the taxpayer claims the adoption credit for a child with special needs.

d. Information to be included in documentation

An order or decree must include information that establishes that the taxpayer's adoption of the eligible child has been finalized and the date finalized, and a special needs determination must include information that establishes that the state has made a determination of special needs for the eligible child. A taxpayer may redact sensitive personal information from an adoption order or decree or a special needs determination. However, the Internal Revenue Service may require the taxpayer to provide an unredacted copy of the document if needed to substantiate the claim for the credit.

SECTION 4. EFFECTIVE DATE

This notice is effective for taxable years beginning after December 31, 2009.

DRAFTING INFORMATION

The principal author of this notice is Marilyn E. Brookens of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement, contact Ms. Brookens at (202) 622-4920 (not a toll-free call).

26 CFR 601.602. Tax forms and instructions. (Also Part I, §§ 23, 36C, 137.)

Rev. Proc. 2010-35

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes sections 3.03 and 3.14 of Rev. Proc. 2009-50, 2009-45 I.R.B. 617, to reflect the statutory amendments by the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (PPACA) to the adoption credit under § 36C (formerly § 23) and the exclusion for adoption assistance programs under § 137.

SECTION 2. BACKGROUND

For taxable years beginning in 2010, §10909(a)(1) of PPACA increased the maximum adoption credit and the maximum adoption assistance exclusion from \$12,170 to \$13,170.

SECTION 3. MODIFICATION OF REV. PROC. 2009-50

To reflect the statutory amendments by PPACA to §§ 36C and 137, sections 3.03 and 3.14 of Rev. Proc. 2009-50 are modified to read as follows:

.03 Adoption Credit. For taxable years beginning in 2010, under § 36C(a)(3) the credit allowed for an adoption of a child with special needs is \$13,170. For taxable years beginning in 2010, under § 36C(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to \$13,170. The available adoption credit begins to phase out under § 36C(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$182,520 and is completely phased out for taxpayers with modified adjusted gross income of \$222,520 or more. (See section 3.14 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.14 Adoption Assistance Programs. For taxable years beginning in 2010, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is \$13,170. For taxable years beginning in 2010, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is \$13,170. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of \$182,520 and is completely phased out for taxpayers with modified adjusted gross income of \$222,520 or more. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

SECTION 4. EFFECT ON OTHER DOCUMENTS

Sections 3.03 and 3.14 of Rev. Proc. 2009–50 are modified and superseded effective for taxable years beginning in 2010.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Marilyn E. Brookens of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Brookens at (202) 622–4920 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part I, §§ 165; 1.165–7(a)(2), 1.165–7(b).)

Rev. Proc. 2010–36

SECTION 1. PURPOSE

This revenue procedure provides guidance to individuals regarding the federal income tax treatment of amounts paid to repair damage to their personal residences resulting from corrosive drywall building materials.

SECTION 2. BACKGROUND

.01 Reported problems have occurred with certain imported drywall installed in homes between 2001 and 2008. Homeowners have reported blackening or corrosion of copper electrical wiring and copper components of household appliances, as well as the presence of sulfur gas odors. In November 2009, the Consumer Product Safety Commission (CPSC) reported that an indoor air study of a sample of 51 homes found a strong association between the problem drywall and levels of hydrogen sulfide in those homes and corrosion of metals in those homes. See the Commission's Drywall Information Center website, <http://www.cpsc.gov/info/drywall>. On January 28, 2010, the CPSC and the Department of Housing and Urban Development released interim guidance advising interested parties how to identify homes with problem drywall.

See <http://www.cpsc.gov/info/drywall/InterimIDGuidance012810.pdf>.

.02 The Internal Revenue Service has received numerous inquiries from taxpayers about whether a loss resulting from corrosive drywall constitutes a deductible casualty loss within the meaning of § 165 of the Internal Revenue Code, the taxable year any such loss would be deductible, and how the amount of the loss would be computed.

.03 Section 165(a) of the Internal Revenue Code generally allows taxpayers to deduct losses sustained during the taxable year that are not compensated by insurance or otherwise. For personal-use property (such as a taxpayer's personal residence and household appliances), § 165(c)(3) limits an individual's deduction to losses arising from fire, storm, shipwreck, or other casualty, or from theft. A casualty is damage, destruction, or loss of property that results from an identifiable event that is sudden, unexpected, and unusual. Rev. Rul. 72–592, 1972–2 C.B. 101. Damage or loss resulting from progressive deterioration of property through a steadily operating cause is not a casualty loss. See *Matheson v. Commissioner*, 54 F.2d 537 (2d Cir. 1931).

.04 A casualty loss is allowed as a deduction only for the taxable year in which the loss is sustained. However, if the taxpayer has a claim for reimbursement of the loss (from insurance or otherwise) for which there is a reasonable prospect of recovery, no portion of the loss is deductible until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. See § 1.165–1(c)(4) of the Income Tax Regulations.

.05 The amount of a taxpayer's casualty loss generally is the decrease in the fair market value of the property as a result of the casualty, limited to the taxpayer's adjusted basis in the property. See § 1.165–7(b). To simplify the computation of a casualty loss deduction, existing regulations permit taxpayers to use the cost to repair the damaged property as evidence of the decrease in value of the property. See § 1.165–7(a)(2)(ii).

.06 Section 165(h)(1)–(2) imposes two limitations on casualty loss deductions for personal use property. First, a casualty loss deduction is allowable only for the amount of the loss that exceeds \$100 per casualty (\$500 for taxable years beginning in 2009

only). Second, the net amount of all of a taxpayer's casualty losses (in excess of casualty gains, if any) is allowable only for the amount of the losses that exceed 10 percent of the taxpayer's adjusted gross income (AGI) for the year.

.07 In view of the unique circumstances surrounding damage resulting from corrosive drywall, the Service and Treasury Department conclude that it is appropriate to provide a safe harbor method that treats certain damage resulting from corrosive drywall as a casualty loss and provides a formula for determining the amount of the loss. Accordingly, for an individual within the scope of this revenue procedure, the Service will not challenge the individual's treatment of damage resulting from corrosive drywall as a casualty loss if the loss is determined and reported as provided in this revenue procedure.

SECTION 3. SCOPE

This revenue procedure applies to any individual who pays to repair damage to that individual's personal residence or household appliances that results from corrosive drywall.

SECTION 4. APPLICATION

.01 An individual who pays to repair damage to that individual's personal residence or household appliances that results from corrosive drywall may treat the amount paid as a casualty loss in the year of payment. For purposes of this revenue procedure, the term "corrosive drywall" means drywall that is identified as problem drywall under the two-step identification method published by the CPSC and the Department of Housing and Urban Development in their interim guidance dated January 28, 2010. As of the date of publication of this revenue procedure, the interim guidance can be found at <http://www.cpsc.gov/info/drywall/InterimIDGuidance012810.pdf>.

.02 The amount of a loss resulting from corrosive drywall may be limited depending on whether the taxpayer has a pending claim for reimbursement (or intends to pursue reimbursement) of the loss through property insurance, litigation, or otherwise. A taxpayer who does not have a pending claim for reimbursement (and does not intend to pursue reimbursement)

may claim as a loss all unreimbursed amounts paid during the taxable year to repair damage to the taxpayer's personal residence and household appliances that results from corrosive drywall. A taxpayer who has a pending claim for reimbursement (or intends to pursue reimbursement) may claim a loss for 75 percent of the unreimbursed amounts paid during the taxable year to repair damage to the taxpayer's personal residence and household appliances that resulted from corrosive drywall. A taxpayer who has been fully reimbursed before filing a return for the year the loss was sustained may not claim a loss. A taxpayer who has a pending claim for reimbursement (or intends to pursue reimbursement) may have income or an additional deduction in subsequent taxable years depending on the actual amount of reimbursement received. *See* § 1.165-1(d).

.03 Amounts paid for improvements or additions that increase the value of the taxpayer's personal residence above its pre-loss value are not allowed as a casualty loss. Only amounts paid to restore the taxpayer's personal residence to the condition

existing immediately prior to the damage qualify for loss treatment.

.04 Where a household appliance is replaced rather than repaired, the amount of the loss attributable to the appliance is the lesser of the current cost to replace the original appliance or the basis of the original appliance (generally its cost).

.05 A taxpayer claiming a casualty loss under this revenue procedure must report the amount of the loss on Form 4684 ("Casualties and Thefts") and must mark "Revenue Procedure 2010-36" at the top of that form. Taxpayers are subject to the \$100 (\$500 for taxable years beginning in 2009 only) limitation imposed by § 165(h)(1) and the 10-percent-of-AGI limitation imposed by § 165(h)(2).

.06 Taxpayers who choose not to apply the safe harbor treatment provided by this revenue procedure are subject to all of the generally applicable provisions governing the deductibility of losses under § 165. Accordingly, these taxpayers must establish that the damage, destruction, or loss of property resulted from an identifiable event that is sudden, unexpected, and unusual, and was not the result of progressive deterioration through a steadily operating

cause. *See* Rev. Rul. 72-592, 1972-2 C.B. 101; *Matheson v. Commissioner*, 54 F.2d 537 (2d Cir. 1931). These taxpayers also must prove that the loss is properly deductible in the taxable year claimed by the taxpayer and not in some other year. Further, these taxpayers must prove the amount of the claimed loss and must prove that no claim for reimbursement of any portion of the loss exists for which there is a reasonable prospect of recovery.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for federal income tax returns (including amended federal income tax returns) filed after September 29, 2010.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Alan S. Williams of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Alan S. Williams at 202-622-4950 (not a toll-free call).

IMPORTANT NOTES:

IRS/IRB offers an Internet connection at <http://fire.irs.gov> for electronic filing of Form 8027. The Filing Information Returns Electronically (FIRE) System will be down from 2 p.m. ET December 21, 2010 through January 3, 2011 for upgrading and will not be operational during this time for submissions. In addition, the FIRE System may be down every Wednesday from 3:00 a.m. to 5:00 a.m. ET for maintenance.

The Form 4419 is subject to review before the approval to transmit electronically is granted and may require additional documentation at the request of the IRS. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of the files.

26 CFR 601.206: Tax forms and instructions.

Rev. Proc. 2010-37

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Part A. General

Sec. 1. Purpose

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

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

.02 The Internal Revenue Service, Information Returns Branch (IRS/IRB), is responsible for processing Forms 8027 submitted electronically. The purpose of this revenue procedure is to provide the specifications for filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, electronically. This revenue procedure is updated when legislative changes occur or reporting procedures are modified.

.03 This revenue procedure supersedes: Rev. Proc. 2009–46 published in Internal Revenue Bulletin 2009–42, dated October 19, 2009, Specifications for Filing Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips, Electronically. This revenue procedure is effective for Forms 8027 due the last day of February, 2011 and any returns filed thereafter.

Sec. 2. Nature of Changes

.01 There are major changes to the extension process. A new Part D was added, detailing the process of filing extension requests electronically. Requests for more than 10 employers are required to submit the extension requests online via the fill-in form or in a file electronically (see Sec. 3, for the record layout). Review this Part of the Publication thoroughly if you wish to request an extension of time for Form 8027. In addition, read the publication carefully and in its entirety before attempting to prepare your electronic file for submission.

.02 Change in contact name from IRS/ECC-MTB to IRS/IRB (Information Returns Branch), Information Reporting Program to Information Returns Branch and added Mail Stop 4360 to mailing address.

Sec. 3. Where to File and How to Contact the IRS, Information Returns Branch (IRB)

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

*Internal Revenue Service
Information Returns Branch
230 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430*

.02 Paper forms and publications should be requested by calling the toll-free number **1-800-TAX-FORM (1-800-829-3676)**.

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

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

.05 Electronic Products and Services Support, Information Returns Branch, Customer Service Section (IRB/CSS) answers electronic, paper filing, and tax law questions from the payer community relating to the correct preparation and filing of business information returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, 8027, and W-2G). IRB/CSS also answers questions relating to the electronic filing of Forms 1042-S and 8955-SSA and to the tax law criteria and paper filing instructions for Forms W-2 and W-3. Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRB/CSS. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Time, by calling toll-free **1-866-455-7438** or via e-mail at mccirp@irs.gov. **SSNs or EINs must not be included in e-mails or attachments since this is not a secure line.** The Telecommunications Device for the Deaf (TDD) toll number is **304-579-4827**. Filers should call as soon as questions arise to avoid the busy filing season call volume at the end of January and February. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

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

Information Reporting Program Customer Service Section

TOLL-FREE 1-866-455-7438 or outside the U.S. 1-304-263-8700
e-mail at mccirp@irs.gov

304-579-4827 — TDD
(Telecommunication Device for the Deaf)

Fax Machine
Toll-free within the U.S. — **877-477-0572**
Outside the U.S. — **304-579-4105**

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

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

www.irs.gov — IRS website access to forms

Sec. 4. Filing Requirements and Due Dates

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

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

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

.04 FILERS MUST NOT SUBMIT THE SAME INFORMATION ON PAPER FORMS THAT ARE SUBMITTED ELECTRONICALLY, SINCE THIS WILL RESULT IN DUPLICATE FILING. This does not mean that corrected documents are not to be filed. If a return has been prepared and submitted improperly, a corrected return must be filed as soon as possible. Refer to Part A, Sec. 9, for requirements and instructions for filing corrected returns.

.05 When an allocation of tips is based on a good faith agreement, a copy of this agreement must be submitted within 3 business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Fax to 859-669-5372 or mail a copy of this agreement to Internal Revenue Service, Attn: ICO ERS Stop 36101, 201 West Rivercenter Blvd., Covington, KY 41011. In the fax transmittal or cover letter, the filer must include the words "Form 8027 attachment(s)" and the following information: name of establishment, EIN (Employer Identification Number), establishment number, TCC and the tax year of the Form 8027.

.06 Employers can request a lower rate (but not lower than 2%) for tip allocation purposes by submitting an application to the IRS. See Sec. 31.6053-3(h)(4) of Employment Tax Regulations. Detailed instruction for requesting a lower rate can be found in the Instructions for Form 8027. The IRS will issue a determination letter to notify the employer when and for how long a reduced rate is effective. If a lower rate is used on the Form 8027 based on the IRS determination letter, a copy of this letter must be submitted within 3 business days after receiving acknowledgement that IRS has accepted the electronically filed Form 8027. Filers must mail a copy of this agreement to Internal Revenue Service, Attn: ICO ERS Stop 36101, 201 West Rivercenter Blvd., Covington, KY 41011. In the transmittal (e.g., fax transmittal or cover letter), filers must include the words "Form 8027 attachment(s)" and the following information: name of establishment, establishment number, TCC and the tax year of the Form 8027.

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

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

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

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

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

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

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

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

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

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

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

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

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

*Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430*

.11 Form 8508 for Forms W-2 must be filed with IRS/IRB, not SSA.

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

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

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

Sec. 6. Form 4419, Application for Filing Information Returns Electronically (FIRE)

.01 For the purposes of this revenue procedure, the EMPLOYER is the organization supplying the information and the TRANSMITTER is the organization preparing the electronic file and/or sending the file to IRS/IRB. The employer and the transmitter may be the same entity. Employers or their transmitters are required to complete Form 4419, Application for Filing Information Returns Electronically (FIRE). The Form 4419 is subject to review before the approval to transmit electronically is granted and may require additional documentation at the request of the IRS. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the release of files.

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

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

.04 After approval to file electronically has been received, transmitters do not reapply each year; however, notify IRS in writing if:

- (a) You change your name or the name of the organization, so that the files may be updated to reflect the proper name;
- (b) You discontinue filing for two years (your TCC may have been reassigned).

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

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

Sec. 7. State Abbreviations

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

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

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

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

Sec. 8. Penalties

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

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

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

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

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

Sec. 9. Corrected Returns, Paper Forms, and Computer-Generated Forms

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

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

.03 When replacing a correction file that was bad, a replacement file must be submitted. When replacing a correction file, the correction indicator “G” in position 370 must be entered.

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

.05 Employers/establishments may send corrected paper Forms 8027 to IRS at the address shown in Part A, Sec. 9.06. Corrected paper returns are identified by marking the “AMENDED” check box on Form 8027.

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

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

IRS/IRB processes Forms 8027 submitted electronically only. Employers must not send paper Forms 8027 to IRS/IRB.

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

Sec. 10. Validation of Form 8027 at IRS/IRB

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

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

.03 All alpha characters must be in upper case.

.04 The following is clarification of monetary amount requirements:

- (a) Charged Receipts (positions 260–271) must exceed Charged Tips (positions 248–259).
- (b) Total Tips Reported (positions 308–319) must equal the combined amount of the Indirect Tips (positions 284–295) and Direct Tips (positions 296–307).
- (c) Gross Receipts (positions 320–331) must exceed all other monetary amounts with the exception of Charged Receipts. It is possible to equal Charged Receipts if all transactions were conducted on charge cards.
- (d) The Tip Percentage Rate Times Gross Receipts (positions 332–343) must equal the Gross Receipts times the Tip Rate. Normally, the Tip Rate is 8%. The Tip Rate must be entered as 0800 in (positions 343–347) unless you have been granted a lower rate by the IRS.
- (e) Generally, you would have allocated tips if the Total Tips Reported (positions 308–319) is less than the Tip Percentage Rate Times Gross Receipts (positions 332–343). The difference must be entered as Allocated Tips (positions 348–359).

Sec. 11. Definition of Terms

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

Part B. Electronic Filing Specifications

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

Sec. 1. General

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

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

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

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

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

Sec. 2. Electronic Filing Approval Procedure

.01 Filers must obtain a Transmitter Control Code (TCC) prior to submitting files electronically. Refer to Part A, Sec. 6, for information on how to obtain a TCC.

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

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

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

Sec. 3. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year 2010 (returns to be filed in 2011); it **must** be submitted to IRS/IRB **no earlier than** November 1, 2010, and **no later than** February 15, 2011.

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

.03 Within 5 days, the results of the electronic transmission will be e-mailed to the filer if he provided an accurate e-mail address on the "Verify Your Filing Information" screen. If filers are using e-mail filtering software, they must configure their software to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. If the file is bad, the filer must return to <http://fire.irs.gov> to determine what the errors are in the file by clicking on CHECK FILE STATUS. If you do not receive an e-mail in 5 business days, log back into the FIRE System and click on CHECK FILE STATUS to view the results of your file.

Sec. 4. Electronic Submissions

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

.02 **The FIRE System will be down from 2 p.m. ET December 21, 2010 through January 3, 2011.** This allows IRS/IRB to update its system to reflect current year changes. In addition, the FIRE System may be down every Wednesday from 3:00 a.m. to 5:00 a.m. EST for maintenance.

.03 If sending files larger than 10,000 records electronically, data compression is encouraged. The file size cannot exceed 2.5 million records. WinZip and PKZip are the only acceptable compression packages. IRS/IRB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon

the type of connection to the Internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.**

.04 Transmitters may create files using self assigned filename(s). Files submitted electronically will be assigned a new unique filename by the FIRE System. The filename assigned by the FIRE System will consist of submission type (ORIG [original], TEST [test], CORR [correction], and REPL [replacement]), the filer's TCC and a four-digit number sequence. The sequence number will be incremented for every file sent. For example, for the first original file for the calendar year for TCC 21000, the IRS assigned filename would be ORIG.21000.0001. **Record the filename.** This information will be needed by IRS/IRB to identify the file, if assistance is required.

.05 If a timely submitted file is bad, the filer will have up to 60 days from the day the file was transmitted to submit an acceptable replacement file. If an acceptable replacement file is not received within 60 days, then the employer could be subject to late filing penalties.

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

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

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

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

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

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

Sec. 5. PIN Requirements

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

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

Sec. 6. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 8027, 1097, 1098, 1099, 3921, 3922, 5498, 8935, 8955-SSA, W-2G, and 1042-S.

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

.03 Within 5 days, the results of the electronic transmission will be e-mailed to the transmitter if an accurate e-mail address on the "Verify Your Filing Information" screen was provided. If filers are using e-mail filtering software, configure the software to accept e-mail from fire@irs.gov and irs.e-helpmail@irs.gov. If the e-mail indicates the file is bad, filers must log into the FIRE System and go to the CHECK FILE STATUS area of the FIRE System to determine what the errors are in the file. If filers do not receive an e-mail in 5 business days, they must log back into the FIRE System and click on CHECK FILE STATUS to view the results of their file.

Sec. 7. Connecting to the FIRE System

.01 Before connecting, have the TCC and TIN available.

.02 Filers should turn off pop-up blocking software before transmitting their files.

.03 The browser must support the security standards listed below.

.04 The browser must be set to receive "cookies." Cookies are used to preserve the User ID status.

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

.06 FIRE Internet Security Technical Standards are:

HTTP 1.1 Specification (<http://www.w3.org/Protocols/rfc2616/rfc2616.txt>)

SSL 3.0 or TLS 1.0. SSL and TLS are implemented using SHA and RSA 1024 bits during the asymmetric handshake.

SSL 3.0 Specifications (<http://wp.netscape.com/eng/ssl3>)

TLS 1.0 Specifications (<http://www.ietf.org/rfc/rfc2246.txt>)

The filer can use one of the following encryption algorithms, listed in order of priority, using SSL or TLS:

AES 256-bit (FIPS-197)

AES 128-bit (FIPS-197)

TDES 168-bit (FIPS-46-3)

First time connection to the FIRE System (If the transmitter has logged on previously, they may skip to Subsequent Connections to the FIRE System.)

Click "**Create New Account**".

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

Create the **User ID**

Create and verify the **password** (the password is user created and must be 8 alpha/numerics, containing at least 1 uppercase, 1 lowercase and 1 numeric). FIRE will require the password to be changed periodically.

Click "**Create**".

If the message is received "**Account Created**", click "**OK**".

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

Click "**Submit**".

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

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

Subsequent connections to the FIRE System

Click "**Log On**".

Enter the **User ID**.

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

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

Uploading your file to the FIRE System

At Menu Options:

Click "**Send Information Returns**".

Enter the **TCC**:

Enter the **TIN**:

Click "**Submit**".

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

Note: Please ensure that the e-mail address is accurate so that the correct person receives the e-mail and it does not return to us undeliverable. If SPAM filtering software is being used, please configure it to allow an e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

Click one of the following:

Original File

Correction File

Test File (This option will only be available November 1 through February 15.)

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

Enter your 10-digit PIN (not prompted for this if a test is being sent).

Click "**Submit**."

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

Click "**Upload**."

- **Electronic Replacement** (file was originally transmitted on this system)
Click the file to be replaced.

When the upload is complete, the screen will display the total bytes received and the name of the file that just uploaded. Print this page and keep it for your records.

If you have more files to upload for that TCC:

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

Click "**Main Menu**".

If no e-mail is received in 5 business days or the e-mail indicates the file is bad, log back into the FIRE System and click on CHECK FILE STATUS to view the results of the file.

Checking the FILE STATUS

At the Main Menu:

Click "**Check File Status**".

Enter the **TCC**:

Enter the **TIN**:

Click "**Search**".

If "Results" indicate:

"Good, Not Released" — If the record count agrees with your records, the file is complete. The file will automatically be released after 10 calendar days unless IRB is contacted within this time frame.

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

"Bad" — Click on filename to view error message(s). Correct the errors and timely resubmit the file as a "replacement".

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

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

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

Click "**Log Out**"

Close the Web Browser.

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

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

NON-FORMAT ERRORS

1. SPAM filters are not set to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

To receive e-mails concerning files, processing results, reminders and notices, set the SPAM filter to receive e-mail from fire@irs.gov and irs.e-helpmail@irs.gov.

2. Incorrect e-mail address provided.

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

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

The results of file transfers are posted to the FIRE System within 5 business days. If the correct e-mail address was provided on the “Verify Your Filing Information” screen when the file was sent, an e-mail will be sent regarding the FILE STATUS. If the results in the e-mail indicate “Good, Not Released” and the “Record Count” agrees with your records, then the file is complete. If there are any other results, please follow the instructions in the Check File Status option. If the file contains errors, get an online listing of the errors. Date received and number of records is also displayed. If the file is good, but not processed you should contact IRS/IRB within 10 calendar days from the date of transmission of the file.

4. Replacement file is not submitted timely.

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

5. Transmitter compresses several files into one.

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

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

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

7. File is formatted as EBCDIC.

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

8. Transmitter has one TCC number, but is filing for multiple companies, which TIN should be used when sending the file?

When sending the file electronically, enter the TIN of the company assigned to the TCC. When a file is uploaded, it will contain the TINs for the other companies that are being filed. This is the information that will be passed forward.

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

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

Part C. Filing Specifications and Record Layout

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

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

Sec. 1. Record Format and Layout

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
1	Establishment Type	1	Required. This number identifies the kind of establishment. Enter the number which describes the type of establishment, as shown below: 1. for an establishment that serves evening meals only (with or without alcoholic beverages). 2. for an establishment that serves evening meals and other meals (with or without alcoholic beverages). 3. for an establishment that serves only meals other than evening meals (with or without alcoholic beverages). 4. for an establishment that serves food, if at all, only as an incidental part of the business of serving alcoholic beverages.
2-6	Establishment Serial Numbers	5	Required. These five-digit Serial Numbers are for identifying individual establishments of an employer reporting under the same EIN. The employer shall assign each establishment a unique number. Numeric characters only.
7-46	Establishment Name	40	Required. Enter the name of the establishment. Left-justify and fill unused positions with blanks. Allowable characters are alphas, numeric, and blanks.
47-86	Establishment Street Address	40	Required. Enter the mailing address of the establishment. Street address should include number, street, apartment or suite number (use P O Box only if mail is not delivered to street address). Left-justify and blank fill. Allowable characters are alphas, numeric, and blanks.
87-111	Establishment City	25	Required. Enter the city, town, or post office. Left-justify and blank fill. Allowable characters are alphas, numeric, and blanks.
112-113	Establishment State	2	Required. Enter the state code from the state abbreviations table in Part A, Sec. 7.
114-122	Establishment ZIP Code	9	Required. Enter the complete nine-digit ZIP Code of the establishment. If using a five-digit ZIP Code, left-justify the five-digit ZIP Code and fill the remaining four positions with blanks.
Note: Must be nine numeric characters or 5 numeric characters and four blanks. Do not enter the dash.			
123-131	Employer Identification Number	9	Required. Enter the nine-digit number assigned to the employer by IRS. Do not enter hyphens, alphas, all 9s or all zeros.
132-171	Employer Name	40	Required. Enter the name of the employer as it appears on tax forms (e.g., Form 941). Any extraneous information must be deleted. Left-justify and blank fill. Allowable characters are alphas, numeric, and blanks.
172-211	Employer Street Address	40	Required. Enter the mailing address of employer. The street address should include number, street, apartment or suite number (use P O Box only if mail is not delivered to street address). Left-justify and blank fill. Allowable characters are alphas, numeric, and blanks.
212-236	Employer City	25	Required. Enter the city, town, or post office. Left-justify and blank fill. Allowable characters are alphas, numeric, and blanks.
237-238	Employer State	2	Required. Enter the state code from the state abbreviations table in Part A, Sec. 7.
239-247	Employer ZIP Code	9	Required. Enter the complete nine-digit ZIP Code of the establishment. If using a five-digit ZIP Code, left-justify the five-digit ZIP Code and fill the remaining four positions with blanks.
Note: Must be nine numeric characters or 5 numeric characters and four blanks. Do not enter the dash.			

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
248–259	Charged Tips	12	Required. Enter the total amount of tips that are shown on charge receipts for the calendar year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
260–271	Charged Receipts	12	Required. Enter the total sales for the calendar year other than carry-out sales or sales with an added service charge of 10 percent or more, that are on charge receipts.
272–283	Service Charge Less Than 10 Percent	12	Required. Enter the total amount of service charges less than 10 percent added to customers' bills and were distributed to your employees for the calendar year. In general, service charges added to the bill are not tips since the customer does not have a choice. These service charges are treated as wages and are included on Form W 2. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
284–295	Indirect Tips Reported	12	Required. Enter the total amount of tips reported by indirectly tipped employees (<i>e.g.</i> , bussers, service bartenders, cooks) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
296–307	Direct Tips Reported	12	Required. Enter the total amount of tips reported by directly tipped employees (<i>e.g.</i> , servers, bartenders) for the calendar year. Do not include tips received by employees in December of the prior tax year but not reported until January. Include tips received by employees in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
308–319	Total Tips Reported	12	Required. Enter the total amount of tips reported by all employees (both indirectly tipped and directly tipped) for the calendar year. Do not include tips received in December of the prior tax year but not reported until January. Include tips received in December of the tax year being reported, but not reported until January of the subsequent year. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
320–331	Gross Receipts	12	Required. Enter the total gross receipts from the provision of food and/or beverages for this establishment for the calendar year. Do not include receipts for carry-out sales or sales with an added service charge of 10 percent or more. Do not include in gross receipts charged tips (field positions 248–259) shown on charge receipts unless you have reduced the cash sales amount because you have paid cash to tipped employees for tips they earned that were charged. Do not include state or local taxes in gross receipts. If you do not charge separately for food or beverages along with other services (such as a package deal for food and lodging), make a good faith estimate of the gross receipts attributable to the food or beverages. This estimate must reflect the cost of providing the food or beverages plus a reasonable profit factor. Include the retail value of complimentary food or beverages served to customers if tipping for them is customary and they are provided in connection with an activity engaged in for profit whose receipts would not be included as gross receipts from the provision of food or beverages (e.g., complimentary drinks served to customers at a gambling casino). Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
332–343	Tip Percentage Rate Times Gross Receipts	12	Required. Enter the amount determined by multiplying Gross Receipts for the year (field positions 320–331) by the Tip Percentage Rate (field positions 344–347). For example, if the value of Gross Receipts is “000045678900” and Tip Percentage Rate is “0800”, multiply \$456,789.00 by .0800 to get \$36,543.12 and enter “000003654312”. If tips are allocated using other than the calendar year, enter zeros; this may occur if you allocated tips based on the time period for which wages were paid or allocated on a quarterly basis. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
344–347	Tip Percentage Rate	4	Required. Enter 8 percent (0800) unless a lower rate has been granted by the IRS. The determination letter must follow the electronic submission. See Part A, Sec. 4 .06 for details. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
348–359	Allocated Tips	12	Required. If Tip Percentage Rate times Gross Receipts (field positions 332–343) is greater than Total Tips Reported (field positions 308–319), then the difference becomes Allocated Tips. Otherwise, enter all zeros. If tips are allocated using other than the calendar year, enter the amount of allocated tips from your records. Amount must be entered in U.S. dollars and cents. The right-most two positions represent cents. Right-justify and zero fill. If no entry, zero fill. Numeric characters only. Do not enter decimal points, dollar signs, or commas.
360	Allocation Method	1	Required. Enter the allocation method used if Allocated Tips (field positions 348–359) are greater than zero as follows: 0) if allocated tips are equal to zero. 1) for allocation based on hours worked. 2) for allocation based on gross receipts. 3) for allocation based on a good faith agreement. The good faith agreement must follow the electronic submission. See Part A, Sec. 4, .05 for details.

FORM 8027 RECORD FORMAT

Field Position	Field Title	Length	Description and Remarks
<p>Note: The method of allocation of tips based on the number of hours worked as described in Section 31.6053-3(f)(1)(iv) may be utilized only by an employer that employs less than the equivalent of 25 full-time employees at the establishment during the payroll period. Section 31.6053-3(j)(19) provides that an employer is considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period if the average number of employee hours worked per business day during the payroll period is less than 200 hours.</p>			
361-364	Number of Directly Tipped Employees	4	Required. Enter the total number (must be greater than zero) of directly tipped employees employed by the establishment for the calendar year. Right-justify and zero fill. Numeric characters only.
365-369	Transmitter Control Code (TCC)	5	Required. Enter the 5-digit Transmitter Control Code assigned by the IRS.
370	Corrected 8027 Indicator	1	Required. Enter blank for original return. Enter "G" for corrected return. A corrected return must be a complete new return replacing the original return.
371	Final Return Indicator	1	Required. Enter the appropriate code: F) if this is the last time you will file Form 8027 N) if this is not the last time you will file Form 8027 Do not enter a blank.
372	Charge Card Indicator	1	Required. Enter the appropriate code: 1) if your establishment accepts credit cards, debit cards or other charges. 2) if your establishment does not accept credit cards, debit cards or other charges.
373	ATIP Indicator	1	Required. Enter "T" if you are participating in the Attributed Tip Income Program; otherwise, enter a blank.
374	Liable/Not Liable Indicator	1	Required. Enter the appropriate code: N) if you are not liable to file Form 8027 Y) if you are liable to file Form 8027 Do not enter a blank.
375-378	Tax Year	4	Required. Enter the 4-digit tax year.
379	Prior Year Indicator	1	Required. Enter a "P" only if reporting prior year data; otherwise, enter a blank.
380	Test File Indicator	1	Required for test files only. Enter "T" if this is a test file; otherwise, enter a blank.
381-410	Reserved	30	Enter blanks.
411-418	Record Sequence Number	8	Required. Enter the number of the record as it appears within your file. The first record in your file will be "1" and each record, thereafter, must be incremented by one in ascending numerical sequence, <i>i.e.</i> 2, 3, 4, etc. Right-justify numbers with leading zeros in the field. For example, the first record in the file would appear as "00000001", followed by "00000002", "00000003" and so on until you reach the final record of the file.
419-420	Blank	2	Enter blanks or CR/LF characters.

FORM 8027 RECORD LAYOUT

Establishment Type	Establishment Serial Numbers	Establishment Name	Establishment Street Address	
1	2-6	7-46	47-86	
Establishment City	Establishment State	Establishment ZIP Code	Employer Identification Number	
87-111	112-113	114-122	123-131	
Employer Name	Employer Street Address	Employer City	Employer State	
132-171	172-211	212-236	237-238	
Employer Zip Code	Charged Tips	Charged Receipts	Service Charge Less Than 10 Percent	
239-247	248-259	260-271	272-283	
Indirect Tips Reported	Direct Tips Reported	Total Tips Reported	Gross Receipts	
284-295	296-307	308-319	320-331	
Tip Percentage Rate Times Gross Receipts	Tip Percentage Rate	Allocated Tips	Allocation Method	
332-343	344-347	348-359	360	
Number of Directly Tipped Employees	Transmitter Control Code (TCC)	Corrected 8027 Indicator	Final Return Indicator	
361-364	365-369	370	371	
Charge Card Indicator	ATIP Indicator	Liable/Not Liabile Indicator	Tax Year	Prior Year Indicator
372	373	374	375-378	379
Test File Indicator	Reserved	Record Sequence Number	Blank or CR/LF	
380	381-410	411-418	419-420	

Part D. Extensions of Time

Sec. 1. General

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

Note: *IRS encourages the employer/transmitter community to utilize the online fill-in form in lieu of the paper Form 8809. No TCC is required to use the online fill-in form.*

.02 The fill-in Form 8809 may be completed online via the FIRE System. (See Part B, Sec. 7, for instructions on connecting to the FIRE System.) At the Main Menu, click "Extension of Time Request" and then click "Fill-in Extension Form". This option is only used to request an automatic 30-day extension. Extension requests completed online via the FIRE System receive an instant response if completed properly and timely. If you are requesting an additional extension, you must submit a paper Form 8809. Requests for an additional extension of time to file information returns are not automatically granted. Requests for additional time are granted only in cases of extreme hardship or catastrophic event. The IRS will only send a letter of explanation approving or denying your additional extension request. (Refer to .12 of this Section.)

.03 A paper Form 8809, Application for Extension of Time to File Information Returns, may be submitted to IRS/IRB at the address listed in .09 of this section. This form may be used to request an extension of time to file information returns submitted on paper or electronically to the IRS. Use a separate Form 8809 for each method of filing information returns you intend to use, i.e., electronically or paper.

.04 To be considered, an extension request must be postmarked, transmitted or completed online by the due date of the returns; otherwise, the request will be denied. (See Part A, Sec. 4, for due dates.) If requesting an extension of time to file several types of forms, use one Form 8809; however, Form 8809 or file must be submitted no later than the earliest due date. For example, if requesting an extension of time to file both Forms 8027 and 5498, submit Form 8809 on or before the last day of February.

.05 As soon as it is apparent that a 30-day extension of time to file is needed, an extension request should be submitted. It may take up to 30 days for IRS/IRB to respond to an extension request. IRS/IRB does not begin processing extension requests until January. **Extensions completed online via the FIRE System receive instant results.**

.06 Under certain circumstances, a request for an extension of time may be denied. When a denial letter is received, any additional or necessary information may be resubmitted within 20 days.

.07 Requesting an extension of time for multiple employers (**10 or less**) may be done by completing the online fill-in form via the FIRE System. A separate Form 8809 must be completed online for each employer. Filers may also request an extension for 10 or less by mailing Form 8809 and attaching a list of the employer names and associated TINs. Form 8809 may be computer-generated or photocopied. Be sure to use the most recently updated version and include all the pertinent information.

.08 Employers/transmitters requesting an extension of time to file for **more than 10** employers are **required** to submit the extension requests online via the fill-in form or in a file electronically (see Sec. 3, for the record layout). For extension requests filed via an electronic file, the transmitter must fax Form 8809 the same day as the transmission. If you are requesting an additional extension, you must fax a signed Form 8809 the same day as the transmission. Be sure to include the reason an additional extension is needed.

.09 All requests for an extension of time filed on Form 8809 must be sent using the following address:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

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

.10 Requests for extensions of time to file postmarked by the United States Postal Service on or before the due date of the returns, and delivered by United States mail to IRS/IRB after the due date, are treated as timely under the “timely mailing as timely filing” rule. A similar rule applies to designated private delivery services (PDSs). Notice 97-26, 1997-1 C.B. 6, provides rules for determining the date that is treated as the postmark date. For items delivered by a non-designated Private Delivery Service (PDS), the actual date of receipt by IRS/IRB will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004-83, 2004-2 C.B. 1030 the actual date of receipt by IRS/IRB will be used as the filing date. The timely mailing rule also applies to furnishing statements to recipients and participants.

.11 Transmitters requesting an extension of time via an electronic file will receive an approval or denial letter, accompanied by a list of employers covered under that approval/denial.

.12 If an additional extension of time is needed, a second Form 8809 or file must be filed by the initial extended due date. Check line 7 on the form to indicate that an additional extension is being requested. A second 30-day extension will be approved only in cases of extreme hardship or catastrophic event. **If requesting a second 30-day extension of time, submit the information return files as soon as prepared. Do not wait for IRS/IRB’s response to your second extension request.**

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

.14 Request an extension for only the current tax year.

.15 A signature is not required when requesting an automatic 30-day extension. If a second 30-day extension is requested, the Form 8809 **MUST** be signed. Failure to properly complete and sign Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions for Form 8809.

.16 Form 8809 may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. The form is also available at **www.irs.gov**. A copy of Form 8809 is also provided in the back of Publication 1239.

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

Sec. 2. Specifications for Filing Extensions of Time Electronically

.01 The specifications in Sec. 3 include the required 200-byte record layout for extensions of time to file requests submitted electronically. Also included are the instructions for the information that is to be entered in the record. **Filers are advised to read this section in its entirety to ensure proper filing.**

.02 If a filer does not have an IRS/IRB assigned Transmitter Control Code (TCC), Form 4419, Application for Filing Information Returns Electronically (FIRE) **must** be submitted to obtain a TCC. This number **must** be used to submit an extension request electronically. (See Part A, Sec. 6.)

.03 For extension requests filed via an electronic file, the transmitter must fax Form 8809 the same day as the transmission. If you are requesting an additional extension, you must fax a signed Form 8809 the same day as the transmission. Be sure to include the reason an additional extension is needed.

.04 Transmitters submitting an extension of time via an electronic file should not submit a list of payer names and TINs with Form 8809 since this information is included in the electronic file. However, Line 6 of Form 8809 must be completed. The fill-in Form 8809 **cannot** be used in lieu of the paper Form 8809 for electronic files.

.05 Do not submit tax year 2010 extension requests filed electronically before January 4, 2011.

Sec. 3. Record Layout — Extension of Time

.01 Positions 6 through 188 of the following record should contain information about the employer for whom the extension of time to file is being requested. Do not enter transmitter information in these fields. **Only one TCC may be present in a file.**

Record Layout for Extension of Time			
Field Position	Field Title	Length	Description and Remarks
1–5	Transmitter Control Code	5	Required. Enter the five-character alpha/numeric Transmitter Control Code (TCC) issued by IRS. Only one TCC per file is acceptable.
6–14	Employer TIN	9	Required. Must be the valid nine-digit EIN assigned to the employer. Do not enter blanks, hyphens or alpha characters. All zeros, ones, twos, etc., will have the effect of an incorrect TIN. For foreign entities that are not required to have a TIN, this field may be blank; however, the Foreign Entity Indicator, position 187, must be set to “X.”
15–54	Employer Name	40	Required. Enter the name of the employer whose TIN appears in positions 6–14. Left-justify information and fill unused positions with blanks.
55–94	Second Employer Name	40	If additional space is needed, this field may be used to continue name line information (e.g., c/o First National Bank); otherwise, enter blanks.
95–134	Employer Address	40	Required. Enter the employer’s address. Street address should include number, street, apartment or suite number (or PO Box if mail is not delivered to a street address).
135–174	Employer City	40	Required. Enter the employer’s city, town, or post office.
175–176	Employer State	2	Required. Enter the employer’s valid U.S. Postal Service state abbreviation. (Refer to Part A, Sec. 7.)
177–185	Employer ZIP Code	9	Required. Enter the employer’s ZIP Code. If using a five-digit ZIP Code, left-justify information and fill unused positions with blanks.
186	Document Indicator	1	Required. Enter the appropriate document code that indicates the form for which you are requesting an extension of time.
187	Foreign Entity Indicator	1	Enter “X” if the employer is a foreign entity.
188–198	Blank	11	Enter blanks.
199–200	Blank	2	Enter blanks or carriage return/line feed (CR/LF) characters.

Extension of Time Record Layout

Transmitter Control Code	Employer TIN	Employer Name	Second Employer Name	Employer Address	Employer City	Employer State
1-5	6-14	15-54	55-94	95-134	135-174	175-176

Employer ZIP Code	Document Indicator	Foreign Entity Indicator	Blanks	Blank or CR/LF
177-185	186	187	188-198	199-200

Sec. 4. Extension of Time for Recipient Copies of Information Returns

.01 Request an extension of time to furnish the statements to recipients of Forms W-2 by submitting a letter to IRS/IRB at the address listed in Part D, Sec. 1.09. The letter should contain the following information:

- (a) Payer name
- (b) TIN
- (c) Address
- (d) Type of return
- (e) Specify that the extension request is to provide statements to recipients
- (f) Reason for delay
- (g) Signature of payer or duly authorized person

.02 Requests for an extension of time to furnish statements to recipients of Forms W-2 are not automatically approved; however, if approved, generally an extension will allow a **MAXIMUM** of 30 additional days from the due date. The request must be postmarked by the date on which the statements are due to the recipients.

.03 Generally, only the payer may sign the letter requesting the extension for recipient copies. A transmitter must have a contractual agreement with the filers to submit extension requests on their behalf. This should be stated in your letter of request for recipient copy extensions.

.04 Requests for a recipient extension of time to file for more than 10 payers are required to be submitted electronically. (See Sec. 3, for the record layout.)

.05 The fill-in Form 8809 extension option cannot be used to request an extension to furnish statements to recipients.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 62, 162, 267, 274; 1.62-2, 1.162-17, 1.267(a)-1, 1.274-5.)

Rev. Proc. 2010-39

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2009-47, 2009-42 I.R.B. 524, and provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274-5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers are not required to use a method described in this revenue procedure. A taxpayer may substantiate actual allowable expenses if the taxpayer main-

tains adequate records or other sufficient evidence.

This revenue procedure provides rules for using a *per diem* rate to substantiate the amount of an employee's expenses for lodging, meal, and incidental expenses, or for meal and incidental expenses only, that a payor (an employer, its agent, or a third party) reimburses. Employees and self-employed individuals that deduct unreimbursed expenses for travel away from home may use a *per diem* rate for meals and incidental expenses, or incidental expenses only, under this revenue procedure. This revenue procedure does not provide rules for using a *per diem* rate to substantiate the amount of lodging expenses only.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 162(a) allows a deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including expenses for travel away from home. However, under § 262, a taxpayer may not deduct personal travel or living expenses.

.02 Section 274(n) generally limits the amount allowable as a deduction under § 162 for any expense for food, beverages, or entertainment to 50 percent of the otherwise allowable amount. For an individual during, or incident to, a period of duty subject to the hours of service limitations of the Department of Transportation, § 274(n)(3) provides that, for taxable years beginning in 2008 or thereafter, the deductible percentage for these expenses is 80 percent.

.03 To deduct expenses for travel away from home, a taxpayer must substantiate the expenses under § 274(d), which also authorizes the Secretary to prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed a particular amount.

.04 Section 1.274-5(g) authorizes the Commissioner to prescribe rules under which reimbursement arrangements or *per diem* allowances are regarded (1) as equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of travel expenses for purposes of § 1.274-5(c), and (2) as satisfying the requirements of an adequate accounting to the employer of the amount of travel expenses for purposes of § 1.274-5(f).

.05 For purposes of determining adjusted gross income, § 62(a)(2)(A) allows an employee to deduct business expenses the employee pays or incurs in performing services under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement is not treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) Does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) Allows the employee to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides, however, that substantiation is not required for the expense to the extent provided in regulations under § 274(d).

.07 Under § 1.62-2(c), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses. In that case, all amounts paid under the arrangement are treated as paid under an accountable plan and are excluded from income and wages. If an arrangement does not meet these requirements, all amounts paid under the arrangement are treated as paid under a nonaccountable plan and are included in an employee's gross income, must be reported as wages or compensation on the employee's Form W-2, and are subject to the withholding and payment of employment taxes.

.08 Section 1.62-2(e)(2) provides that substantiation of the amount of a business expense in accordance with rules prescribed under the authority of § 1.274-5(g) is treated as substantiating the amount for purposes of § 1.62-2.

.09 Under § 1.62-2(f)(2), the Commissioner may prescribe rules for treating an arrangement providing *per diem* allowances as satisfying the requirement of returning amounts in excess of expenses if the arrangement requires the employee to return amounts that relate to unsubstantiated travel days, even though the arrangement does not require the employee to return the portion of the allowance that relates to substantiated travel days but that exceeds the deemed substantiated amount for those days. The allowance must be reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee must be required to return within a reasonable period of time any portion of the allowance that relates to unsubstantiated travel days. Under § 1.62-2(h)(2)(i)(B), the portion of the allowance that relates to substantiated travel days but exceeds the substantiated amount for those days, and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the Employment Tax Regulations.

.10 Under § 1.62-2(h)(2)(i)(B)(4), the Commissioner may prescribe special rules for the timing of withholding and paying employment taxes on *per diem* allowances.

.11 Section 1.274-5(j)(1) authorizes the Commissioner to establish a method allowing a taxpayer to treat a specific amount as paid or incurred for meals while traveling away from home instead of substantiating the actual cost.

.12 Section 1.274-5(j)(3) authorizes the Commissioner to establish a method allowing a taxpayer to treat a specific amount as paid or incurred for incidental expenses while traveling away from home in lieu of substantiating the actual cost.

.13 This revenue procedure includes modifications to Rev. Proc. 2009-47 as follows:

(1) Sections 3.02(1)(a), 4.04(6), and 5.06 provide transition rules for the last 3 months of calendar year 2010.

(2) Section 5.03 contains the list of high-cost localities and section 5.04 describes changes to the list of high-cost localities for purposes of section 5.

.14 The Internal Revenue Service is evaluating the continuing need for the high-low method provided in section 5 of this revenue procedure, and requests public comments on this issue. Comments should be submitted by December 31, 2010, to: Internal Revenue Service, CC:PA:LPD:PR (Rev. Proc. 2010-39), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. 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 (Rev. Proc. 2010-39), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, D.C. Comments also may be transmitted electronically to Notice.Comments@irs.counsel.treas.gov, indicating Rev. Proc. 2010-39 in the subject line. All comments will be available for public inspection and copying.

SECTION 3. DEFINITIONS

.01 *Per diem allowance*. The term "*per diem allowance*" means a payment under a reimbursement or other expense allowance arrangement that is—

(1) Paid for ordinary and necessary business expenses incurred, or that the payor reasonably anticipates will be incurred, by an employee for lodging, meal, and incidental expenses, or for meal and incidental expenses, for travel away from home performing services as an employee of the employer,

(2) Reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) Paid at or below the applicable federal *per diem* rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.02 *Federal per diem rate and federal M&IE rate*.

(1) *In general*. The federal *per diem* rate is equal to the sum of the applicable federal lodging expense rate and the applicable federal meal and incidental expense (M&IE) rate for the day and locality of travel.

(a) *CONUS rates.* The rates for localities in the continental United States (CONUS) are provided in Appendix A to 41 C.F.R. ch. 301. However, in applying section 4.01, 4.02, or 4.03 of this revenue procedure, taxpayers may continue to use the CONUS rates in effect for the first 9 months of 2010 for expenses of all CONUS travel away from home that are paid or incurred during calendar year 2010 instead of the updated GSA rates. A taxpayer must consistently use either these rates or the updated rates for the period October 1, 2010, through December 31, 2010.

(b) *OCONUS rates.* The rates for localities outside the continental United States (OCONUS) are established by the Secretary of Defense (rates for non-foreign localities, including Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, and the possessions of the United States) and by the Secretary of State (rates for foreign localities), and are published in the *Per Diem* Supplement to the Standardized Regulations (Government Civilians, Foreign Areas) (updated on a monthly basis).

(c) *Internet access to the rates.* The CONUS and OCONUS rates may be found on the internet at www.gsa.gov.

(2) *Locality of travel.* The term “locality of travel” means the locality where an employee traveling away from home stops for sleep or rest.

(3) *Incidental expenses.* The term “incidental expenses” has the same meaning as in the Federal Travel Regulations, 41 C.F.R. 300–3.1 (2010). The Federal Travel Regulations currently include as incidental expenses fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries; transportation between places of lodging or business and places where meals are taken, if suitable meals can be obtained at the temporary duty site; and the mailing cost associated with filing travel vouchers and payment of employer-sponsored charge card billings.

.03 Flat rate or stated schedule.

(1) *In general.* Except as provided in section 3.03(2) of this revenue procedure, an allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis for the expenses described in section 3.01 of this revenue procedure. The allowance may be paid for the number

of days away from home performing services as an employee or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, an hourly payment to cover meal and incidental expenses paid to a pilot or flight attendant who is traveling away from home performing services as an employee is an allowance paid at a flat rate or stated schedule. Likewise, a payment based on the number of miles traveled (such as cents per mile) to cover meal and incidental expenses paid to an over-the-road truck driver who is traveling away from home performing services as an employee is an allowance paid at a flat rate or stated schedule.

(2) *Limitation.* An allowance that is computed on a basis similar to that used in computing an employee’s wages or other compensation (such as the number of hours worked, miles traveled, or pieces produced) does not meet the business connection requirement of § 1.62–2(d), is not a *per diem* allowance, and is not paid at a flat rate or stated schedule, unless, as of December 12, 1989, (a) the allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the allowance, or (b) an allowance computed on that basis was commonly used in the industry in which the employee performed services. See § 1.62–2(d)(3)(ii).

SECTION 4. PER DIEM SUBSTANTIATION METHOD

.01 Per diem allowance. If a payor pays a *per diem* allowance in lieu of reimbursing actual lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for that day or the amount computed at the federal *per diem* rate (see section 3.02 of this revenue procedure) for the locality of travel for that day (or partial day, see section 6.04 of this revenue procedure).

.02 Meal and incidental expenses only per diem allowance. If a payor pays a *per diem* allowance only for meal and incidental expenses in lieu of reimbursing actual meal and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the

expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for that day or the amount computed at the federal M&IE rate for the locality of travel for that day or partial day. A *per diem* allowance is treated as paid for meal and incidental expenses only if (1) the payor pays the employee for actual expenses for lodging based on receipts submitted to the payor, (2) the payor provides the lodging in kind, (3) the payor pays the actual expenses for lodging directly to the provider of the lodging, (4) the payor does not have a reasonable belief that the employee will or did incur lodging expenses, or (5) the allowance is computed on a basis similar to that used in computing an employee’s wages or other compensation (such as the number of hours worked, miles traveled, or pieces produced).

.03 Optional method for meal and incidental expenses only deduction. Instead of the actual expense amount, employees and self-employed individuals may substantiate the amount of deductible meal expenses by using an amount computed at the federal M&IE rate for the locality of travel for each calendar day or partial day the employee or self-employed individual is traveling away from home. This amount is deemed substantiated for purposes of § 1.274–5T(b)(2)(i) and (c), provided the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel for that day or partial day in accordance with those regulations. See section 6.05(1) of this revenue procedure for rules related to the application of the § 274(n) limitation to amounts determined under this section 4.03. See section 4.05 of this revenue procedure for a method for substantiating incidental expenses that employees or self-employed individuals who do not pay or incur meal expenses may use.

.04 Special rules for transportation industry.

(1) *In general.* This section 4.04 applies to (a) a payor that pays a *per diem* allowance only for meal and incidental expenses for travel away from home to an employee in the transportation industry and computes the amount under section 4.02 of this revenue procedure, or (b) an employee or self-employed individual in the transportation industry who computes the deductible amount for meal and incidental expenses for travel away from home

under section 4.03 of this revenue procedure.

(2) *Transportation industry defined.* For purposes of this section 4.04, an employee or self-employed individual is in the transportation industry only if the employee's or self-employed individual's work (a) is of the type that directly involves moving people or goods by airplane, barge, bus, ship, train, or truck, and (b) regularly requires travel away from home which, during any single trip away from home, usually involves travel to localities with differing federal M&IE rates. For purposes of the preceding sentence, a payor must determine that an employee or a group of employees is in the transportation industry by using a method that is consistently applied and in accordance with reasonable business practice.

(3) *Rates.* A taxpayer described in section 4.04(1) of this revenue procedure may treat \$59 as the federal M&IE rate for any CONUS locality of travel and \$65 as the federal M&IE rate for any OCONUS locality of travel. A payor that uses either or both of these special rates for an employee must use the special rate(s) for all amounts deemed substantiated under section 4.02 of this revenue procedure paid to that employee for travel away from home within CONUS and/or OCONUS during the calendar year. Similarly, an employee or self-employed individual who uses either or both of these special rates must use the special rate(s) for all amounts deemed substantiated under section 4.03 of this revenue procedure for travel away from home within CONUS and/or OCONUS during the calendar year. See section 4.04(6) of this revenue procedure for transition rules.

(4) *Periodic rule.* A payor described in section 4.04(1) of this revenue procedure may compute the amount of the employee's expenses that is deemed substantiated under section 4.02 of this revenue procedure periodically (not less frequently than monthly) rather than daily by comparing the total *per diem* allowance paid for the period to the sum of the amounts computed either at the federal M&IE rate(s) for the localities of travel, or at the special rate described in section 4.04(3), for the days or partial days the employee is away from home during the period.

(5) *Examples.*

(a) *Example 1.* Taxpayer, an employee in the transportation industry, travels away from home on

business within CONUS for 16 days (including partial days) during a calendar month. A payor pays Taxpayer a *per diem* allowance for meal and incidental expenses only that the payor computes using section 4.04(3) of this revenue procedure and the method of proration described in section 6.04(2) of this revenue procedure. The amount deemed substantiated under section 4.02 of this revenue procedure is equal to the lesser of the total *per diem* allowance paid for the month or \$944 (16 days at \$59 per day).

(b) *Example 2.* Taxpayer, a truck driver employee in the transportation industry, is paid a "cents-per-mile" allowance that qualifies as an allowance paid under a flat rate or stated schedule as defined in section 3.03 of this revenue procedure. Taxpayer travels away from home on business for 10 days. Based on the number of miles Taxpayer drives, Taxpayer's employer pays an allowance of \$500 for the 10 days of business travel. Taxpayer actually drives for 8 days, and does not drive for the other 2 days Taxpayer is away from home. Taxpayer is paid under the periodic rule used for transportation industry employers and employees in accordance with section 4.04(4) of this revenue procedure. The amount deemed substantiated is the full \$500 because that amount does not exceed \$590 (ten days away from home at \$59 per day).

(6) *Transition rules.* Under the calendar-year convention provided in section 4.04(3), a taxpayer who used the federal M&IE rates during the first 9 months of calendar year 2010 to substantiate the amount of an individual's travel expenses under sections 4.02 or 4.03 of Rev. Proc. 2009-47 may not use, for that individual, the special transportation industry rates provided in this section 4.04 until January 1, 2011. Similarly, a taxpayer who used the special transportation industry rates during the first 9 months of calendar year 2010 to substantiate the amount of an individual's travel expenses may not use, for that individual, the federal M&IE rates until January 1, 2011.

.05 *Optional method for incidental expenses only deduction.* Instead of using actual expenses in computing the amount allowable as a deduction for ordinary and necessary incidental expenses paid or incurred for travel away from home, employees and self-employed individuals who pay or incur incidental expenses but do not pay or incur meal expenses for a calendar day or partial day of travel away from home may use, for each calendar day or partial day the employee or self-employed individual is away from home, an amount computed at the rate of \$5 per day for any CONUS or OCONUS locality of travel. This amount is deemed substantiated for purposes of § 1.274-5T(b)(2)(i) and (c), provided the employee or self-em-

ployed individual substantiates the elements of time, place, and business purpose of the travel for that day or partial day in accordance with those regulations. See section 4.03 of this revenue procedure for a method that may be used by employees or self-employed individuals who pay or incur meal expenses. The method authorized by this section 4.05 may not be used by payors that use section 4.01, 4.02, or 5.01 of this revenue procedure, or by employees or self-employed individuals who use the method described in section 4.03 of this revenue procedure. See section 6.05(5) of this revenue procedure for rules related to the application of the § 274(n) limitation to amounts determined under this section 4.05.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

.01 *In general.* If a payor pays a *per diem* allowance in lieu of reimbursing actual lodging, meal, and incidental expenses an employee incurs or will incur for travel away from home and the payor uses the high-low substantiation method described in this section 5 for travel within CONUS, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for that day or the amount computed at the rate provided in section 5.02 of this revenue procedure for the locality of travel for that day or partial day (see section 6.04 of this revenue procedure). Except as provided in section 5.06 of this revenue procedure, this high-low substantiation method may be used in lieu of the *per diem* substantiation method provided in section 4.01 of this revenue procedure, but may not be used instead of the meal and incidental expenses only *per diem* substantiation method provided in section 4.02 of this revenue procedure.

.02 *Specific high-low rates.* Except as provided in section 5.06 of this revenue procedure, the *per diem* rate set forth in this section 5.02 is \$233 for travel to any "high-cost locality" specified in section 5.03 of this revenue procedure, and \$160 for travel to any other locality within CONUS. The high or low rate, as appropriate, applies as if it were the federal *per diem* rate for the locality of travel. For purposes of applying the high-low substantiation method and the § 274(n) limitation on meal ex-

penses (see section 6.05(3) of this revenue procedure), the amount of the high and low rates that is treated as paid for meals is \$65 for a high-cost locality and \$52 for any other locality within CONUS. .03 *High-cost localities*. The following localities have a federal *per diem* rate of \$196 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parentheses under the key city name:

<i>Key City</i>	<i>County or other defined location</i>
Arizona	
Phoenix/Scottsdale (January 1-May 31)	Maricopa
Sedona (March 1-April 30)	City limits of Sedona
California	
Monterey	Monterey
Napa (October 1-November 30 and April 1-September 30)	Napa
San Diego	San Diego
San Francisco	San Francisco
Santa Barbara	Santa Barbara
Santa Monica	City limits of Santa Monica
South Lake Tahoe	El Dorado
Yosemite National Park	Mariposa
Colorado	
Aspen (December 1-March 31 and June 1-August 31)	Pitkin
Denver/Aurora	Denver, Adams, Arapahoe, and Jefferson
Silverthorne/Breckenridge (December 1-March 31)	Summit
Steamboat Springs (December 1-March 31)	Routt
Telluride (December 1-March 31)	San Miguel
Vail (December 1-August 31))	Eagle
District of Columbia	
Washington D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia)	
Florida	
Fort Lauderdale (January 1-May 31)	Broward
Fort Walton Beach/De Funiak Springs (June 1-July 31)	Okaloosa and Walton
Key West	Monroe
Miami (December 1-March 31)	Miami-Dade
Naples (January 1-April 30)	Collier
Illinois	
Chicago	Cook and Lake

<i>Key City</i>	<i>County or other defined location</i>
Louisiana	
New Orleans (October 1-June 30)	Orleans, St. Bernard, Jefferson and Plaquemine Parishes
Maine	
Bar Harbor (July 1-August 31)	Hancock
Maryland	
Baltimore City (October 1-November 30 and March 1-September 30)	Baltimore City
Cambridge/St. Michaels (June 1-August 31)	Dorchester and Talbot
Ocean City (June 1-August 31)	Worcester
Washington, DC Metro Area	Montgomery and Prince George's
Massachusetts	
Boston/Cambridge	Suffolk, City of Cambridge
Falmouth (July 1-August 31)	City limits of Falmouth
Martha's Vineyard (July 1-August 31)	Dukes
Nantucket (June 1-September 30)	Nantucket
New Hampshire	
Conway (July 1-August 31)	Carroll
New York	
Floral Park/Garden City/Great Neck	Nassau
Glens Falls (July 1-August 31)	Warren
Lake Placid (July 1-August 31)	Essex
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond
Riverhead/Ronkonkoma/Melville (June 1-August 31)	Suffolk
Saratoga Springs/Schenectady (July 1-August 31)	Saratoga and Schenectady
Tarrytown/White Plains/New Rochelle	Westchester
North Carolina	
Kill Devil (June 1-August 31)	Dare
Pennsylvania	
Philadelphia	Philadelphia
Rhode Island	
Jamestown/Middletown/Newport (October 1-October 31 and May 1-September 30)	Newport

<i>Key City</i>	<i>County or other defined location</i>
Utah Park City (January 1-March 31)	Summit
Vermont Stowe (October 1-March 31 and June 1-September 30)	Lamoille
Virginia Washington, DC Metro Area	Cities of Alexandria, Fairfax, and Falls Church; counties of Arlington and Fairfax
Virginia Beach (June 1-August 31)	City of Virginia Beach
Washington Seattle	King
Wyoming Jackson/Pinedale (July 1-August 31)	Teton and Sublette

.04 *Changes in high-cost localities.* The list of high-cost localities in section 5.03 of this revenue procedure differs from the list of high-cost localities in section 5.03 of Rev. Proc. 2009-47 (changes listed by key cities).

(1) The following localities have been added to the list of high-cost localities: Yosemite National Park, California; Silverthorne/Breckenridge, Colorado; New Orleans, Louisiana; Falmouth, Massachusetts; Riverhead/Ronkonkoma/Melville, New York; Kill Devil, North Carolina; Stowe, Vermont; and Virginia Beach, Virginia.

(2) The portion of the year for which the following are high-cost localities has been changed: South Lake Tahoe, California; Aspen, Colorado; Telluride, Colorado; Vail, Colorado; Fort Lauderdale, Florida; Miami, Florida; and Martha's Vineyard, Massachusetts.

(3) The following locality has been removed from the list of high-cost localities: Hershey, Pennsylvania.

.05 *Specific limitation.*

(1) Except as provided in section 5.05(2) of this revenue procedure, a payor that uses the high-low substantiation method for an employee must use that method for all amounts paid to that employee for travel away from home within CONUS during the calendar year. See

section 5.06 of this revenue procedure for transition rules.

(2) For an employee described in section 5.05(1) of this revenue procedure, the payor may reimburse actual expenses, use the meal and incidental expenses only *per diem* substantiation method described in section 4.02 of this revenue procedure, or use the *per diem* substantiation method described in section 4.01 of this revenue procedure for any OCONUS travel away from home.

.06 *Transition rules.* A payor who used the substantiation method of section 4.01 of Rev. Proc. 2009-47 for an employee during the first 9 months of calendar year 2010 may not use the high-low substantiation method in section 5 of this revenue procedure for that employee until January 1, 2011. A payor who used the high-low substantiation method of section 5 of Rev. Proc. 2009-47 for an employee during the first 9 months of calendar year 2010 must continue to use the high-low substantiation method for the remainder of calendar year 2010 for that employee. A payor described in the previous sentence may use the rates and high-cost localities published in section 5 of Rev. Proc. 2009-47, instead of the updated rates and high-cost localities provided in section 5 of this revenue procedure, for travel on or after October 1, 2010, and

before January 1, 2011, if those rates and localities are used consistently during this period for all employees reimbursed under this method.

SECTION 6. LIMITATIONS AND SPECIAL RULES

.01 *In general.* The federal *per diem* rate and the federal M&IE rate described in section 3.02 of this revenue procedure for the locality of travel apply in the same manner as they apply under the Federal Travel Regulations, 41 C.F.R. Part 301-11 (2010), except as provided in sections 6.02 through 6.04 of this revenue procedure.

.02 *Federal per diem rate.* A receipt for lodging expenses is not required in determining the amount of expenses deemed substantiated under section 4.01 or 5.01 of this revenue procedure. See section 7.01 of this revenue procedure for the requirement that the employee substantiate the time, place, and business purpose of the expense.

.03 *Federal per diem or M&IE rate.* A payor is not required to reduce the federal *per diem* rate or the federal M&IE rate for the locality of travel for meals provided in kind, provided the payor has a reasonable belief that the employee incurred or will incur meal and incidental expenses during each day of travel.

.04 *Proration of the federal per diem or M&IE rate.* Under the Federal Travel Regulations, in determining the federal *per diem* rate or the federal M&IE rate for the locality of travel, the full applicable federal M&IE rate is available for a full day of travel from 12:01 a.m. to 12:00 midnight. A taxpayer must use the method described in section 6.04(1) of this revenue procedure for purposes of determining the amount deemed substantiated under section 4.03 or 4.05 of this revenue procedure for partial days of travel away from home. For purposes of determining the amount deemed substantiated under section 4.01, 4.02, or 5 of this revenue procedure for partial days of travel away from home, a payor may use either of the following methods to prorate the federal M&IE rate to determine the federal *per diem* rate or the federal M&IE rate for the partial days of travel:

(1) The rate may be prorated using the method prescribed by the Federal Travel Regulations. Currently the Federal Travel Regulations allow three-fourths of the applicable federal M&IE rate for each partial day during which an employee or self-employed individual is traveling away from home performing services as an employee or self-employed individual. A payor may apply the same ratio to prorate the allowance for incidental expenses described in section 4.05 of this revenue procedure; or

(2) The rate may be prorated using any method that is consistently applied and is consistent with reasonable business practice. For example, if an employee travels away from home from 9 a.m. one day to 5 p.m. the next day, a method of proration that results in an amount equal to two times the federal M&IE rate is consistent with reasonable business practice (even though the Federal Travel Regulations allow only one and a half times the federal M&IE rate).

.05 *Application of the appropriate § 274(n) limitation on meal expenses.* Except as provided in section 6.05(5), all or part of the amount of an expense deemed substantiated under this revenue procedure is subject to the appropriate limitation under § 274(n) (see section 2.02 of this revenue procedure) on the deductibility of food and beverage expenses.

(1) A taxpayer must treat the entire amount computed for meal and incidental

expenses under section 4.03 of this revenue procedure as an expense for food and beverages.

(2) If a *per diem* allowance is paid for meal and incidental expenses only, a payor must treat an amount equal to the lesser of the allowance or the federal M&IE rate for the locality of travel for each day or partial day (see section 6.04 of this revenue procedure) as an expense for food and beverages.

(3) If a *per diem* allowance is paid for lodging, meal, and incidental expenses for each calendar day or partial day an employee is away from home at a rate equal to or in excess of the federal *per diem* rate for the locality of travel, a payor must treat an amount equal to the federal M&IE rate for the locality of travel for each calendar day or partial day as an expense for food or beverages.

(4) If a *per diem* allowance is paid for lodging, meal, and incidental expenses for each calendar day or partial day an employee is away from home at a rate less than the federal *per diem* rate for the locality of travel, a payor must:

(a) Treat an amount equal to the federal M&IE rate for the locality of travel for each calendar day or partial day or, if less, the amount of the allowance, as an expense for food or beverages; or

(b) Treat an amount equal to 40 percent of the allowance as an expense for food or beverages.

(5) None of an amount for incidental expenses computed under section 4.05 of this revenue procedure is subject to limitation under § 274(n).

.06 *No double reimbursement or deduction.* If a payor pays a *per diem* allowance in lieu of reimbursing actual lodging, meal, and incidental expenses, or meal and incidental expenses, under section 4 or 5 of this revenue procedure, and the amount is treated as paid under an accountable plan, any additional payment for those expenses is treated as paid under a nonaccountable plan, is included in an employee's gross income, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. Similarly, if an employee or self-employed individual computes the amount allowable as a deduction for meal and incidental expenses for travel away from home under section 4.03 or 4.04 of

this revenue procedure, no other deduction is allowed to the employee or self-employed individual for those expenses. For example, an employee receives a *per diem* allowance from a payor for lodging, meal, and incidental expenses, or for meal and incidental expenses, incurred while traveling away from home and the amount is treated as paid under an accountable plan. During that trip, the employee pays for dinner for the employee and two business associates. The payor reimburses as a business entertainment meal expense the meal expense for the employee and the two business associates. Because the payor also pays a *per diem* allowance to cover the cost of the employee's meals, the amount paid for the employee's portion of the business entertainment meal expense is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes.

.07 *Related parties.* Sections 4.01 and 5 of this revenue procedure do not apply if a payor and an employee are related within the meaning of § 267(b), but for this purpose the percentage of ownership interest referred to in § 267(b)(2) is 10 percent.

SECTION 7. APPLICATION

.01 An employee satisfies the adequate accounting and substantiation requirements of § 1.274-5(c) and (f)(4) and § 1.274-5T(c) if—

(1) The employee uses this revenue procedure to substantiate to a payor the amount of the employee's travel expenses, and

(2) Within a reasonable period of time, the employee also substantiates to the payor the elements of time, place, and business purpose of the travel in accordance with § 1.274-5T(b)(2) and (c) and § 1.274-5(c) (other than § 1.274-5(c)(2)(ii)(A)).

.02 An arrangement providing *per diem* allowances is treated as satisfying the requirement of § 1.62-2(f)(2) of returning amounts in excess of expenses if an employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of the allowance that relates to unsubstantiated travel days, even though the arrangement does not require the employee to return the portion of

the allowance that relates to substantiated travel days and that exceeds the amount of the employee's expenses deemed substantiated. For example, a payor provides an employee an advance *per diem* allowance for meal and incidental expenses of \$250, based on an anticipated 5 days of business travel at \$50 per day to a locality for which the federal M&IE rate is \$46, and the employee substantiates 3 full days of business travel. The requirement to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) the portion of the allowance that is attributable to the 2 unsubstantiated days of travel (\$100), even though the employee is not required to return the portion of the allowance (\$12) that exceeds the amount of the employee's expenses deemed substantiated under section 4.02 of this revenue procedure (\$138) for the 3 substantiated days of travel. However, the \$12 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 7.04 of this revenue procedure.

.03 An employee is not required to include in gross income the portion of a *per diem* allowance received from a payor that is less than or equal to the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. See § 1.274-5T(f)(2)(i). If the remaining requirements for an accountable plan provided in § 1.62-2 are satisfied, that portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from the withholding and payment of employment taxes. See § 1.62-2(c)(2) and (c)(4).

.04 An employee is required to include in gross income only the portion of the *per diem* allowance received from a payor that exceeds the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. See § 1.274-5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonac-

countable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. See § 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.05 If the amount of the expenses that is deemed substantiated under the rules provided in section 4.01, 4.02, or 5 of this revenue procedure is less than the amount of an employee's business expenses for travel away from home, an employee may claim an itemized deduction for the amount by which the business travel expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business travel expenses (not just the excess over the federal *per diem* rate), includes on Form 2106, "Employee Business Expenses," the deemed substantiated portion of the *per diem* allowance received from the payor, and includes in gross income the portion (if any) of the *per diem* allowance received from the payor that exceeds the amount deemed substantiated. See § 1.274-5T(f)(2)(iii). However, for purposes of claiming this itemized deduction for meal and incidental expenses, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the amount computed under section 4.03 of this revenue procedure minus the amount deemed substantiated under sections 4.02 and 7.01 of this revenue procedure. The itemized deduction is subject to the appropriate limitation (see section 2.02 of this revenue procedure) on meal and entertainment expenses in § 274(n) and the 2-percent floor on miscellaneous itemized deductions in § 67.

.06 An employee who pays or incurs meal expenses and does not receive a *per diem* allowance for meal and incidental expenses may deduct an amount computed under section 4.03 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the appropriate limitation on meal and entertainment expenses in § 274(n) and the 2-percent floor on miscellaneous itemized deductions in § 67.

.07 An employee who does not pay or incur amounts for meal expenses and does not receive a *per diem* allowance for incidental expenses may deduct an amount computed under section 4.05 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to

the 2-percent floor on miscellaneous itemized deductions in § 67.

.08 A self-employed individual who pays or incurs meal expenses for a calendar day or partial day of travel away from home may deduct an amount computed under section 4.03 of this revenue procedure in determining adjusted gross income under § 62(a)(1), subject to the appropriate limitation on meal and entertainment expenses in § 274(n).

.09 A self-employed individual who does not pay or incur meal expenses for a calendar day or partial day of travel away from home may deduct an amount computed under section 4.05 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a *per diem* allowance, if any, that relates to the days of business travel substantiated and that exceeds the amount deemed substantiated for those days under section 4.01, 4.02, or 5 of this revenue procedure is treated as paid under a nonaccountable plan and is subject to withholding and payment of employment taxes. See § 1.62-2(h)(2)(i)(B).

.02 In the case of a *per diem* allowance paid as a reimbursement, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which a payor reimburses the expenses for the days of travel substantiated. See § 1.62-2(h)(2)(i)(B)(2).

.03 In the case of a *per diem* allowance paid as an advance, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the days of travel for which the advance was paid are substantiated. See § 1.62-2(h)(2)(i)(B)(3). If an employee does not substantiate some or all of the days of travel for which the advance was paid within a reasonable period of time or does not return the portion of the allowance that relates to those days within a reasonable period of time, the portion of the allowance that relates to those days is subject to withholding and payment of employment taxes no later than the first pay-

roll period following the end of the reasonable period. See § 1.62-2(h)(2)(i)(A).

.04 In the case of a *per diem* allowance only for meal and incidental expenses for travel away from home paid to an employee in the transportation industry by a payor that uses the rule in section 4.04(4) of this revenue procedure, the excess of the *per diem* allowance paid for the period over the amount deemed substantiated for the period under section 4.02 of this revenue procedure (after applying section 4.04(4) of this revenue procedure), is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62-2(h)(2)(i)(B)(4).

.05 For example, an employer pays an employee a *per diem* allowance under an arrangement that otherwise meets the requirements of an accountable plan to cover business expenses for meals and lodging for travel away from home at a rate of 120 percent of the federal *per diem* rate for the localities to which the employee travels. The employer does not require the employee to return the 20 percent by which the reimbursement for those expenses exceeds the federal *per diem* rate. The employee substantiates 6 days of travel away from home: 2 days in a locality where the federal *per diem* rate is \$150 and 4 days

in a locality where the federal *per diem* rate is \$130. The employer reimburses the employee \$984 for the 6 days of travel away from home (2 x (120% x \$150) + 4 x (120% x \$130)), and does not require the employee to return the excess payment of \$164 (2 days x \$30 (\$180-\$150) + 4 days x \$26 (\$156-\$130)). For the payroll period in which the employer reimburses the expenses, the employer must withhold and pay employment taxes on \$164. See section 8.02 of this revenue procedure.

.06 All payments to an employee under a *per diem* allowance arrangement are treated as paid under a nonaccountable plan if the reimbursement arrangement evidences a pattern of abuse. An arrangement evidences a pattern of abuse if, for example, it has no process to determine when an allowance exceeds the amount that may be deemed substantiated and the arrangement routinely pays allowances in excess of the amount that may be deemed substantiated without requiring actual substantiation or repayment of the excess amount or treating the excess allowances as wages for employment tax purposes. See § 62(c), § 1.62-2(k), and Rev. Rul. 2006-56, 2006-2 C.B. 874. Thus, these payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding

and payment of employment taxes. See §§ 1.62-2(c)(3), (c)(5), and (h)(2).

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only that are paid to an employee on or after October 1, 2010, for travel away from home on or after October 1, 2010. For purposes of computing the amount allowable as a deduction for travel away from home, this revenue procedure is effective for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2010.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009-47 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Karla M. Meola of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Meola at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Electronic Funds Transfer of Depository Taxes

REG-153340-09

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). The proposed regulations affect all taxpayers that currently use FTD coupons. In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the proposed regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 22, 2010. Outlines of topics to be discussed at the public hearing scheduled for September 27, 2010, must be received by September 20, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-153340-09), Room 5203, 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-153340-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-153340-09). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Employment Tax and Collection of Income Tax at the Source Regulations (26 CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), and the Procedure and Administration Regulations (26 CFR part 301), to require that all FTDs be made by EFT.

These proposed regulations are expected to be finalized by the end of 2010. The final regulations are expected to apply to remittances made after the date that final regulations are published in the **Federal Register**, but in no event earlier than January 1, 2011.

Explanation of Provisions

1. Requirement to make deposits by electronic funds transfer

Section 6302(h) of the Internal Revenue Code (Code) authorizes the Secretary to prescribe regulations as may be necessary for the development and implementation of an EFT system that is required to be used for the collection of depository taxes. On July 14, 1997, final regulations under section 6302(h) relating to the collection of Federal tax deposits (FTDs) by EFT (T.D. 8723, 1997-2 C.B. 258 [62 FR 37490]) were issued. These final regulations phased in depositors to the EFT system through 1999. In the final stages of the phase-in under those regulations, depositors with more than \$50,000 in employment tax deposits during calendar year 1995, 1996, or 1997, and depositors that, in any of those years, had no employment tax deposits but made deposits of other FTDs exceeding \$50,000, were required to begin to deposit by EFT.

On July 13, 1999, final regulations amending T.D. 8723 (T.D. 8828, 1999-2 C.B. 120 [64 FR 37675]) were issued. Under those regulations, which are currently in effect, depositors whose aggregate annual FTDs exceed \$200,000 generally must use EFT. Depositors that exceed the \$200,000 threshold have an initial one-year grace period after which they must use EFT in all later years even if their FTDs fall below the threshold.

The Electronic Federal Tax Payment System (EFTPS) is the EFT system currently used by the Treasury Department to collect FTDs. More than 97.5 percent of all FTDs are currently deposited electronically through EFTPS. Depositors not currently required to use EFTPS for deposits may instead use the paper-based FTD coupon system to make a deposit by presenting a check and an FTD coupon to a bank teller at one of approximately 8,000 financial institutions authorized as a government depository or to a financial agent, a process that dates back to World War I.

These proposed regulations are being issued to effectuate system changes made by the Financial Management Service (FMS), a Bureau of the Treasury Department. Beginning in 2011, FMS is eliminating the system that enables the processing of FTD coupons. Accordingly, these proposed regulations require the use of EFT for all FTDs, effective January 1, 2011. The proposed regulations remove references to "banking" days and provide that, if the day an FTD would otherwise be due is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. The proposed regulations do not change existing rules for determining a depositor's status as either a monthly or semi-weekly depositor for employment taxes. The proposed regulations also do not change existing rules on whether a taxpayer can remit taxes with a return in lieu of making an FTD.

For example, under the proposed regulations, employers must deposit income taxes withheld from wages and taxes under the Federal Insurance Contributions

Act (FICA) (collectively, “employment taxes”) by EFT unless the existing *de minimis* rule under §31.6302-1T(f)(4) applies. Generally, the *de minimis* rule for employment taxes allows employers with a deposit liability of less than \$2,500 for a return period to remit employment taxes with their quarterly or annual return. Employers below the \$2,500 threshold may remit the employment taxes with their tax return, may voluntarily make deposits by EFT, or may use other methods of payment as provided by the instructions relating to the return.

2. Taxes required to be deposited by EFT

Because the FTD coupon system will be eliminated by FMS, the proposed regulations require all FTDs of the following taxes to be made by EFT:

1. Corporate income and corporate estimated taxes pursuant to §1.6302-1;
2. Unrelated business income taxes of tax-exempt organizations under section 511 pursuant to §1.6302-1;
3. Private foundation excise taxes under section 4940 pursuant to §1.6302-1;
4. Taxes withheld on nonresident aliens and foreign corporations pursuant to §1.6302-2;
5. Estimated taxes on certain trusts pursuant to §1.6302-3;
6. FICA taxes and withheld income taxes pursuant to §31.6302-1;
7. Railroad retirement taxes pursuant to §31.6302-2;
8. Nonpayroll taxes, including backup withholding pursuant to §31.6302-4;
9. Federal Unemployment Tax Act (FUTA) taxes pursuant to §31.6302(c)-3; and
10. Excise taxes reported on Form 720, *Quarterly Federal Excise Tax Return*, pursuant to §40.6302(c)-1.

3. Benefits of EFTPS

The benefits to taxpayers using EFTPS are substantial. According to IRS data, depositors using EFTPS are 31 times less likely to make an error resulting in a penalty than depositors using an FTD coupon. Depositors can schedule an EFTPS transaction 120 days in advance of the desired payment date at their convenience, 24 hours a day, 365 days a year. EFTPS also provides a confirmation

number, called an “EFT Number,” which guarantees depositors that the tax deposit has been scheduled and allows the transaction to be traced if necessary. EFTPS processes over 100 million transactions per year, totaling nearly \$2 trillion dollars, with an error rate of 0.18 percent. In addition, many financial institutions are no longer accepting FTD coupons through their branch infrastructure. Eliminating FTD coupons will also result in projected cost savings for the Federal Government of at least \$65 million over the first five years, with an estimated savings of \$13 million each year thereafter.

These proposed regulations also align with the Treasury Department’s broad initiative to significantly increase the number of electronic transactions between taxpayers and the Federal Government. In addition to greatly reducing costs, enhancing customer service, and minimizing Treasury’s environmental impact, the move from paper to electronic transactions will increase reliability, safety, and security for taxpayers.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on the clarity of the proposed regulations and how they can be made more understandable.

Comments are also requested on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 27, 2010, at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 22, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 2010. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 40, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for

Section 1.1461-1 and 1.6302-1 through 1.6302-4 to read in part as follows:

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

Section 1.1461-1, 1.6302-1, 1.6302-2, 1.6302-3 and 1.6302-4 also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.1461-1 is amended by revising paragraph (a)(1), first sentence, to read as follows:

§1.1461-1 Payment and returns of tax withheld.

(a) *Payment of withheld tax*—(1) *Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax as provided in §1.6302-2(a). * * *

* * * * *

Par. 3. Section 1.6302-1 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Removing paragraph (b)(1) and redesignating paragraph (b)(2) as paragraph (b).
4. Removing paragraph (c).
5. Redesignating paragraph (d) as paragraph (c).
6. Adding paragraph (d).

The revisions and additions read as follows:

§1.6302-1 Deposit rules for corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) *Requirement.* A corporation, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940 shall deposit all payments of tax imposed by chapter 1 of the Internal Revenue Code (or treated as so imposed by section 6154(h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph (a) does not apply to a foreign corporation or entity that has no office or place of business in the United States.

(b) *Deposits by electronic funds transfer.* * * *

* * * * *

(d) *Effective/applicability date.* This section applies to deposits and payments made after the date that final regulations

are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 4. Section 1.6302-2 is amended by:

1. Revising the heading.
2. Revising paragraphs (a)(1)(i), (ii), and (iv).
3. Revising the heading for paragraph (b).
4. Revising paragraph (b)(1).
5. Removing paragraph (b)(6).
6. Adding a sentence to the end of paragraph (g).

The revisions and additions read as follows:

§1.6302-2 Deposit rules for tax withheld on nonresident aliens and foreign corporations.

(a) *Time for making deposits*—(1) *Deposits*—(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent that, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month an aggregate amount of undeposited taxes of \$200 or more shall deposit such aggregate amount within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section to a quarter monthly period that occurred during such month. With respect to section 1446, this section applies only to a publicly traded partnership described in §1.1446-4.

(ii) *Quarter-monthly deposits.* If at the close of any quarter-monthly period within a calendar month, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is \$2,000 or more, the withholding agent shall deposit such aggregate amount within 3 business days after the close of such quarter-monthly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a quarter-monthly period is a legal holiday under section 7503, the withholding agent has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a quarter-monthly period is New Year's Day, a

legal holiday, the required deposit for the quarter-monthly period is not due until the following Thursday rather than the following Wednesday.

* * * * *

(iv) *Annual deposits.* If at the close of December of each calendar year, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is less than \$200, the withholding agent may deposit such aggregate amount by March 15 of the following calendar year. If such aggregate amount is not so deposited, it shall be remitted in accordance with paragraph (a)(1) of §1.1461-1.

* * * * *

(b) *Manner of payment*—(1) *Payments not required by electronic funds transfer.* A payment that is not required to be deposited by this section shall be made separately from a payment required by any other section. The payment may be submitted with the filed return. The timeliness of the payment will be determined by the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions, or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a). Each withholding agent making payments under this section shall report on the return, for the period to which such payments are made, information regarding such payments according to the instructions that apply to such return.

* * * * *

(g) * * * Paragraph (b)(1) of this section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 5. Section 1.6302-3 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Revising paragraph (c).
4. Adding paragraph (d).

The revisions and additions read as follows:

§1.6302-3 Deposit rules for estimated taxes of certain trusts.

(a) *Requirement.* A bank or other financial institution described in paragraph (b) of this section shall deposit all payments

of estimated tax under section 6654(l) with respect to trusts for which such institution acts as a fiduciary by the date otherwise prescribed for paying such tax in the manner set forth in published guidance, forms and instructions.

* * * * *

(c) *Cross-references.* For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see §31.6302-1(h) of this chapter.

(d) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 6. Section 1.6302-4 is revised to read as follows:

§1.6302-4 Voluntary payments by electronic funds transfer.

(a) *Electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

(b) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 7. The authority citation for part 31 is amended by removing the entries for sections 31.6302-1 through 31.6302-3, 31.6302-4, and 31.6302(c)-2A and adding entries in numerical order to read in part as follows:

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

Section 31.6302-1 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302-1T also issued under 26 U.S.C. 6302(a).

Section 31.6302-2, 31.6302-3, and 31.6302-4 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302(c)-2A also issued under 26 U.S.C. 6157(d) and 6302(a) and (h).

Section 31.6302(c)-3 also issued under 26 U.S.C. 6302(a) and (h). * * *

§31.6302-0 [Amended]

Par. 8. Section 31.6302-0 is amended by removing the entries for §31.6302-1T.

Par. 9. Section 31.6302-1 is amended by:

1. Revising the heading.
2. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4).
3. Revising paragraph (d) *Example 1, Example 2, Example 3, Example 4, and Example 5.*

4. Revising paragraph (h)(2)(ii).
5. Redesignating paragraph (h)(2)(iii) as paragraph (h)(2)(iv) and revising newly-designated paragraph (h)(2)(iv).

6. Adding new paragraph (h)(2)(iii).
7. Revising paragraph (i)(1) and (i)(3).
8. Removing paragraphs (i)(4), (i)(5) and (i)(6).

9. Adding paragraph (o).
The revisions and additions read as follows:

§31.6302-1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

* * * * *

(c) *Deposit rules—(1) Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday under section 7503.

(2) *Semi-Weekly rule—(i) In general.* An employer that is a semi-weekly depositor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) *Special rule for computing days.* Semi-weekly depositors have at least three

business days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday under section 7503, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is not due un-

til the following Thursday rather than the following Wednesday.

(3) *Exception—One-Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated \$100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

For purposes of determining whether the \$100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on business days.* No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are required only on business days. Business days include every calendar day other than Saturday, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503.

* * * * *

(d) * * *

Example 1. Monthly depositor. (i) *Determination of status.* For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of \$42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed \$50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) *Monthly rule.* During December 2011, A (a monthly depositor) accumulates \$3,500 in employment taxes. A has a \$3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012, is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

Example 2. Semi-weekly depositor. (i) *Determination of status.* For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, B reported aggregate employment tax liabilities of \$88,000 on its quarterly Forms 941. Because that amount exceeds \$50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) *Semi-weekly rule.* On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. B has a \$4,000 deposit obligation that must be satisfied on or before the following Wednesday, January 12, 2011.

(iii) *Deposit made within three business days.* On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required

deposit. B has a \$4,200 deposit obligation that must be satisfied on or before the following Thursday, January 20, 2011.

Example 3. One-Day rule. On Monday, January 10, 2011, Employer C accumulates \$110,000 in employment taxes with respect to wages paid on that date. C has a deposit obligation of \$110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

Example 4. One-Day rule in combination with subsequent deposit obligation. Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates \$115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional \$30,000 in employment taxes. Although D has a \$115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of \$30,000 on Tuesday that must be satisfied by the following Friday.

Example 5. [Reserved].

* * * * *

(h) * * *

(2) * * *

(ii) *Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.* Unless exempted under paragraph (h)(5) of this section, for deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than \$200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the \$200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Deposits made after December 31, 2010.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) *Voluntary deposits.* A taxpayer that is authorized to make payment of taxes

with a return under regulations may voluntarily make a deposit by electronic funds transfer.

* * * * *

(i) *Time and manner of remittance with a return—(1) General rules.* A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

* * * * *

(3) *Time deemed paid.* In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

* * * * *

(o) *Effective/applicability date.* Paragraphs (c), (d) Examples 1 through 5, (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), (i)(1) and (i)(3) of this section apply to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 10. Section 31.6302-1T is amended by:

1. Revising paragraph (g)(1).
2. Revising paragraph (n)(1).

The revisions read as follows:

§31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(g) *Agricultural employers—Special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (*Employer's Annual Tax Return for Agricultural Employees*) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944 ("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of §31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See §31.6302-1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

(n) *Effective/applicability dates*—(1) *In general.* Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§31.6301-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to

taxable years beginning before December 30, 2008, are contained in §31.6302-1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302-1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302-1 in effect prior to January 1, 2006. The rules of paragraph (g) eliminating use of Federal tax deposit coupons apply to deposits and payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 11. Section 31.6302-2 is amended by:

1. Revising the heading.
2. Revising paragraph (d).

The revisions read as follows.

§31.6302-2 *Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).*

(d) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 12. Section 31.6302-4 is amended by:

1. Revising the heading.
2. Revising paragraph (d).
3. Adding paragraph (e).

The revisions and additions read as follows:

§31.6302-4 *Deposit rules for withheld income taxes attributable to nonpayroll payments.*

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, "Annual Return of Withheld Federal Income Tax," separately from taxes reportable on Form 941, "Employer's QUARTERLY Federal Tax Return" (or any other return, for example, Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees").

Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of §31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, taxes reported on Form 945 and taxes reported on Form 941 must be deposited separately. (See paragraph (b) of §31.6302-1 for rules for determining an employer's deposit status for taxes reported on Form 941.) Taxes reported on Form 945 for one calendar year must be deposited separately from taxes reported on Form 945 for another calendar year.

(e) *Effective/applicability date.* Section 31.6302-4(d) applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§31.6302(c)-2A [REMOVED]

Par. 13. Section 31.6302(c)-2A is removed.

Par. 14. Section 31.6302(c)-3 is amended by:

1. Revising the heading.
2. Revising paragraph (a)(1), introductory text.
3. Revising paragraph (a)(1)(i).
4. Revising paragraph (a)(1)(ii), introductory text.
5. Removing paragraph (a)(3).
6. Revising paragraph (b).
7. Revising paragraph (c).
8. Removing paragraph (d).

The revisions read as follows:

§31.6302(c)-3 *Deposit rules for taxes under the Federal Unemployment Tax Act.*

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, every person that, by reason of the provisions of section 6157, computes the tax imposed by section 3301 on a quarterly or other time period basis shall—

(i) If the person is described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of each of the first three calendar quarters in the calendar year; or

(ii) If the person is other than a person described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of—

* * * * *

(b) *Manner of deposit*—(1) *In general.* A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see §31.6302-1(h).

(2) *Time deemed paid.* For the time an amount deposited by electronic funds transfer is deemed paid, see §31.6302-1(h)(9). For the time an amount remitted with a return is deemed paid, see §31.6302-1(i)(3).

(c) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 40—EXCISE TAX
PROCEDURAL REGULATIONS

Par. 15. The authority citation for part 40 continues to read in part as follows:

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

Par. 16. Section 40.6302(c)-1 is amended by:

1. Revising the heading.
2. In paragraph (b)(2)(v), removing the language “that failure may be reported to the appropriate IRS office and”.
3. Revising paragraphs (d) and (f).
The revisions read as follows:

§40.6302(c)-1 *Deposits.*

* * * * *

(d) *Deposits required by electronic funds transfer.* All deposits required by this part must be made by *electronic funds transfer*, as that term is defined in §31.6302-1(h)(4) of this chapter.

* * * * *

(f) *Effective/applicability date.* This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

* * * * *

§40.6302(c)-2 [Amended]

Par. 17. Section 40.6302(c)-2, paragraph (c), is amended by removing the language “2001” and adding “2001, except that paragraph (b) of this section does not apply on and after the date described in §40.6302(c)-1(f)” in its place.

Par. 18. Section 40.6302(c)-3 is amended as follows:

1. The heading is revised to read as set forth below.
2. In paragraph (c), the language “banking” is removed in both places it appears and “business” is added in its place.
3. In paragraph (g), the language “2004” is removed and “2004, except that paragraph (f)(5) of this section does not apply on and after the date described in §40.6302(c)-1(f)” is added in its place.

§40.6302(c)-3 **Special rules for deposits under chapter 33.**

* * * * *

PART 301—PROCEDURE AND
ADMINISTRATION

Par. 19. The authority citation for part 301 is amended to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 20. Section 301.6302-1 is revised to read as follows:

§301.6302-1 *Manner or time of collection of taxes.*

(a) *Employment and excise taxes.* For provisions relating to the manner or time of collection of certain employment and excise taxes and deposits in connection with the payment thereof, see the regulations relating to the particular tax.

(b) *Income taxes.* (1) For provisions relating to the deposits of income and estimated income taxes of certain corporations, see §1.6302-1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the deposits of tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see §1.6302-2 of this chapter.

(c) *Effective/applicability date.* This section applies to payments made after the date that final regulations are published in

the **Federal Register**, but no earlier than January 1, 2011.

Par. 21. Section 301.6656-1 is amended by:

1. Revising paragraph (b).
2. Revising paragraph (c).

The revisions read as follows:

§301.6656-1 *Abatement of penalty.*

* * * * *

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§301.7502-2 [REMOVED]

Par. 22. Section 301.7502-2 is removed.

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

Filed by the Office of the Federal Register on August 19, 2010, 4:15p.m., and published in the issue of the Federal Register for August 23, 2010, 75 F.R. 51707)

**Deletions From Cumulative
List of Organizations
Contributions to Which
are Deductible Under Section
170 of the Code**

Announcement 2010-79

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not

precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 18, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Coach Ken Carter Foundation
Richmond, CA

First Step, Inc.
Manahawkin, NJ

Updates to Publication 1220, Specifications for Filing Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, 8935 and W-2G, Electronically, revised August 2010.

Announcement 2010-82

This announcement updates and clarifies changes to Publication 1220 (Rev. Proc. 2010-26), *Specifications for Filing Forms 1097-BTC, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically*. The following are changes or clarifications to Publication 1220 effective for tax year 2010:

- Publication 1220 went to print before Public Law 111-240, Small Business Jobs Act of 2010 (H.R. 5297), was signed by the President. P.L. 111-240 increases penalties for failure to timely file information returns to the IRS. The first-tier penalty is increased from \$15 to \$30, and the calendar year maximum is increased from \$75,000 to \$250,000. The second-tier penalty is increased from \$30 to \$60, and the calendar year maximum is increased from \$150,000 to \$500,000. The third-tier penalty is increased from \$50 to \$100, and the calendar year maximum is increased from \$250,000 to \$1.5 million. For small filers, the calendar year maximum is increased from \$25,000 to \$75,000 for the first-tier penalty, from \$50,000 to \$200,000 for the sec-

ond-tier penalty, and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard is increased from \$100 to \$250. The penalty amounts are to be adjusted every five years for inflation. Penalties for failure to file information returns to payees are similarly increased. The changes apply to information returns required to be filed on or after January 1, 2011. (2010 information returns).

- For Form 1099-INT, additional instructions for Payee B record field positions 587-599 (CUSIP number). For single bonds or accounts containing a single bond, enter the CUSIP number in field positions 587-599. If the tax-exempt interest is reported in the aggregate for multiple bonds or accounts, enter: VARIOUS in field positions 587-599.
- For Form 1099-R, change to the instructions for Payee B record field positions 545-546 Distribution Code. Distribution Codes 3, 5, 9, E, F, N, Q, R, S and T cannot be used with any other codes. Code 6 can be used with Code W as stated in the FORM 1099-R DISTRIBUTION CODE CHART 2010 which appears on page 81 of the 2010 Publication 1220.

If you have any questions, contact the Internal Revenue Service, Information Reporting Program, toll-free 866-455-7438.

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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