

## 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

#### **T.D. 9507, page 305.**

Final and temporary 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.

#### **Notice 2011-5, page 314.**

This notice modifies in part Notice 2010-59, 2010-39 I.R.B. 396, to allow the use of health FSA and HRA debit cards to purchase over-the-counter drugs that are prescribed. Notice 2010-59 modified.

### EXEMPT ORGANIZATIONS

#### **T.D. 9507, page 305.**

Final and temporary 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. 2011-15, page 322.**

This procedure provides that exempt organizations (other than private foundations or section 509(a)(3) supporting organizations) that normally have annual gross receipts of not more than \$50,000 are not required to file an annual information return on Form 990 for taxable years beginning on or after January 1, 2010. Those organizations must file an annual electronic notice under section 6033(i). Rev. Procs. 83-23, 94-17, and 2003-21 modified and superseded.

#### **Announcement 2011-2, page 324.**

The IRS has revoked its determination that the Northwest Conservation Stewardship Fund of Seattle, WA, qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Code.

#### **Announcement 2011-3, page 324.**

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

### EMPLOYMENT TAX

#### **T.D. 9507, page 305.**

Final and temporary 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

#### **T.D. 9507, page 305.**

Final and temporary 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.

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Finding Lists begin on page ii.



## **EXCISE TAX**

### **T.D. 9507, page 305.**

Final and temporary 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.

## **ADMINISTRATIVE**

### **Notice 2011-6, page 315.**

This notice provides guidance regarding the requirement to obtain a preparer tax identification number (PTIN) and interim rules applicable during the implementation of new regulations governing tax return preparers.

### **Rev. Proc. 2011-13, page 318.**

This procedure updates Rev. Proc. 2010-15 and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or a position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Code and for the purpose of avoiding the tax return preparer penalty under section 6694(a) with respect to income tax returns. Rev. Proc. 2010-15 updated.

# 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.

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

## Section 6302.—Mode or Time of Collection

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

### T.D. 9507

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 40, and 301

### Electronic Funds Transfer of Depository Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

**SUMMARY:** This document contains temporary and final regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the temporary and final regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. The temporary and final regulations affect all taxpayers that are required to make FTDs, in particular those taxpayers that currently use FTD coupons.

**DATES:** *Effective Date:* These regulations are effective on January 1, 2011.

*Applicability Date:* For dates of applicability, see §§1.6302-1(d), 1.6302-2(g), 1.6302-3(d), 1.6302-4(b), 31.6071(a)-1(g), 31.6302-1(o), 31.6302-1T(n), 31.6302-2(d), 31.6302-4(e), 31.6302(c)-3(c), 40.6302(c)-1(f), 40.6302(c)-2(c), 40.6302(c)-3(g), 301.6302-1(c), and 301.6656-1(c).

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622-4910 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301), and temporary and final regulations amending the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40), to require the use of EFT for all FTDs and to eliminate the rules regarding FTD coupons.

On August 23, 2010, the Treasury Department and IRS published in the **Federal Register** (75 FR 51707) proposed amendments to the regulations (REG-153340-09, 2010-42 I.R.B. 469) to require EFT for all FTDs and to eliminate the rules regarding FTD coupons. Written public comments responding to the proposed regulations were received. No public hearing was held because the IRS did not receive any requests to speak at the public hearing.

After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

#### Explanation of Provisions and Summary of Comments

##### 1. *Burden on Small Businesses*

Many commentators expressed the concern that eliminating FTD coupons would burden small businesses. To help alleviate this perceived burden on small business, the regulations do not change the existing *de minimis* deposit rules allowing taxpayers with tax liabilities under certain thresholds to make a payment with a return. For example, under the *de minimis* deposit rules for employment taxes, that is, social security taxes, Medicare taxes, and withheld income taxes, an employer with a deposit liability of less than \$2,500 for a return period may (1) remit employment taxes with their quarterly or annual tax return, (2) voluntarily make deposits by EFT, or (3) use other methods of payment as

provided by the instructions relating to the return.

Several commentators asserted that many small businesses will have difficulty using EFT because they lack computers or internet access. Businesses without a computer may use the ACH debit option, which requires only a telephone call, to schedule a payment through the Electronic Federal Tax Payment System (EFTPS), an authorized method of EFT pursuant to §31.6302-1(h)(4). To assist taxpayers new to EFTPS, United States-based live operator customer support is available toll-free 24 hours a day, year-round.

A commentator stated that requiring EFTPS will likely result in an increase in user errors based on taxpayers' computer illiteracy. Another commentator stated that requiring EFTPS will produce excessive costs in payment delays and requests for penalty abatement. According to IRS research, however, employers who pay electronically are 31 times less likely to make an error that results in interest or penalties than employers who use FTD coupons.

Several commentators expressed a reluctance to move away from the FTD coupon system based on taxpayers' familiarity with the current system and the relationships they have developed with their local banks. In deciding to discontinue the FTD coupon system, the Financial Management Service (FMS) considered current market conditions. In the last 18 months, more than 100 financial institutions, large and small, have stopped accepting FTD coupons. In many states, few financial institutions still process FTD coupons. Additionally, many states now require employers to file or pay their state business taxes electronically.

##### 2. *Alternative Payment Methods*

Several commentators requested continued use of FTD coupons or the availability of alternative payment methods. These final regulations conform to the decision by FMS to eliminate the system that enables the processing of FTD coupons. As discussed above, many financial institutions no longer accept FTD

coupons. If businesses are unwilling or unable to use EFTPS, they can arrange for a tax professional, financial institution, payroll service, or other trusted third party to make a deposit on their behalf using a master account. Businesses also can arrange for their financial institution to initiate a same-day tax wire payment on their behalf.

One commentator requested that the IRS continue to allow taxpayers to make payments by sending a check or money order to an IRS address when a new entity has applied for, but has not received, an employer identification number (EIN). The time it takes to receive an EIN, however, should no longer be an impediment to using EFTPS. Businesses within the United States or U.S. territories can apply for an EIN online using the IRS website. Once the application is completed, the information is validated during the online session, and an EIN is issued immediately. United States and international applicants may also obtain an EIN instantly using the telephone.

### 3. Raising the *De Minimis* Amounts

Several commentators requested raising the *de minimis* amounts above \$2,500 for payments that may be made with a return. The *de minimis* deposit rules, however vary according to the type of tax involved. For example, the *de minimis* threshold is less than \$2,500 per quarter for Form 720, *Quarterly Federal Excise Tax Return*, under §40.6302(c)-1(e)(3), but less than \$200 per calendar year for Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, under §1.6302-2(a)(1)(iv). Changing the existing *de minimis* deposit rules would create additional complexity and confusion for taxpayers, would upset the current established regulatory scheme, and unduly complicate enforcement of EFTPS.

### 4. Security and Distrust of Electronic Payment Systems

Several commentators expressed a distrust of electronic payment systems and their security. EFTPS is a safe and secure tax payment system. Online payments require three unique types of information for authentication: a Taxpayer Identification Number, a Personal Identification Number (PIN), and an Internet password. EFTPS

provides an instant, printable confirmation number for every payment scheduled. Payments scheduled by phone require a taxpayer identification number and a PIN. Taxpayers who schedule an FTD by phone will receive an eight digit acknowledgment number for future reference.

Moreover, IRS will only receive confirmation that the payment was made. The IRS will not have access to any taxpayer's financial account. Businesses that do not wish to use EFTPS can arrange for their tax professional, financial institution, payroll service, or other trusted third party to make an FTD on their behalf using a master account. Businesses also may arrange for their financial institution to initiate a same-day tax wire payment for them.

### 5. EFTPS Registration

Several commentators asserted that EFTPS registration is time-consuming, should be easier to use, and should make EFTPS available immediately. All taxpayers now using FTD coupons will be pre-enrolled in Treasury's free EFTPS. When they receive notification of pre-enrollment, they can use the phone or Internet to activate their PIN, enter their financial account information, and begin scheduling payments on the same day.

One commentator asked the IRS to change the EFTPS enrollment process to include a variable to identify fiscal tax year taxpayers because EFTPS sometimes rejects payments by entities that operate on a fiscal tax year due to tax year-end mismatches. This suggestion was not adopted because the IRS already autocorrects payments for fiscal year taxpayers. When a taxpayer schedules an FTD through EFTPS, the system will ask the taxpayer to select the year and quarter to which the payment should be applied. This process should ensure that EFTPS payments are applied correctly.

### 6. Foreign Taxpayers

One commentator stated that U.S. banks are reluctant to open U.S. bank accounts for foreign corporations. Another commentator asserted that it is difficult for a U.S. citizen residing abroad to open or maintain a U.S. bank account. This commentator suggested that the IRS adapt the registration form and EFTPS software to allow for payments to the IRS from

foreign bank accounts, and that the Treasury Department and IRS issue regulations requiring U.S. banks to open U.S. bank accounts for U.S. citizens residing abroad with a foreign address. These suggestions were not adopted. Foreign taxpayers may arrange for their financial institution to initiate a same-day wire payment on their behalf. Foreign taxpayers may also arrange for their qualified intermediary, tax professional, payroll service, or other trusted third party to make a deposit on their behalf using a master account.

### 7. One-Day Rule

A commentator requested clarification of the One-Day Rule in §31.6302-1(c) and *Example 4* in §31.6302-1(d). The commentator argued that the One-Day Rule should be applied only when an employer has accumulated \$100,000 or more in undeposited employment taxes within the deposit period applicable to its status as a monthly or semi-weekly depositor and that *Example 4* should be modified consistent with this result. These suggestions were not adopted. The commentator misinterprets the existing rules, which use accumulated taxes rather than undeposited taxes to determine the application of the One-Day rule. The proposed rules merely updated the existing rules and examples to be consistent with the elimination of the FTD coupon system and did not modify this aspect of the existing rules.

*Example 4* in the proposed regulations correctly illustrates how the One-Day Rule applies in combination with a subsequent deposit obligation. *Example 4* involves Employer D, a depositor subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates \$115,000 in employment taxes. Because D has accumulated \$100,000 or more in employment taxes, the One-Day Rule applies, and D therefore must deposit the \$115,000 in employment taxes by the next business day, which is Tuesday, January 11, 2011. On Tuesday, January 11, 2011, D accumulates an additional \$30,000 in employment taxes. Because the \$115,000 in employment taxes accumulated on Monday is already subject to the One-Day Rule, there are no other accumulated taxes to be taken into account in determining D's deposit obligation for the additional \$30,000 in employment taxes

accumulated on Tuesday. Therefore, D has an additional and separate deposit obligation of \$30,000 on Tuesday that must be satisfied by the following Friday. This example is adopted in the final regulations without change.

#### 8. *Delay the January 1, 2011 Effective Date*

Several commentators requested a delay in the effective date of these temporary and final regulations. These regulations implement the decision of FMS to eliminate the system that enables the processing of FTD coupons as of January 2011. In order to facilitate the transition from FTD coupons, all taxpayers now using coupons will be pre-enrolled in EFTPS. The IRS has begun notifying taxpayers of the upcoming changes and, upon publication of these regulations, will increase efforts to notify affected taxpayers of the EFT requirement. Since April 2010, the Department of Treasury and IRS have been reaching out to critical external stakeholders, including the Small Business Administration and financial institutions and their associations, about the pending FTD changes, and will continue to offer informational sessions and free marketing materials to assist external stakeholders in informing and educating taxpayers about the new requirements.

#### 9. *Business Days and Legal Holidays*

Prior to the advent of EFTPS, taxpayers made FTDs using an FTD coupon at a government depository bank. Because FTDs could only be made on days the banks were open, the timeliness of deposits under section 6302 was determined by reference to banking days. Furthermore, because many banks are closed on statewide legal holidays, the IRS treated statewide legal holidays as legal holidays in determining the timeliness of deposits.

Since a taxpayer will no longer be able to use a government depository bank to make an FTD using an FTD coupon, these regulations remove references to “banking days” and instead determine the timeliness of deposits by reference to “business days,” meaning every calendar day that is not a Saturday, Sunday, or legal holiday under section 7503. Additionally, because EFTPS is available 24 hours a day,

seven days a week, the final regulations provide that, consistent with section 7503, the term “legal holiday” for FTD purposes includes only those legal holidays in the District of Columbia. Thus, a statewide legal holiday will no longer be considered a legal holiday unless the holiday coincides with a legal holiday in the District of Columbia. The following days are currently legal holidays in the District of Columbia: New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, District of Columbia Emancipation Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s Day, Thanksgiving Day, Christmas Day, and the day of the inauguration of the President, in every fourth year. The final regulations include several minor changes from the proposed regulations to reflect this application of the legal holiday rule and provide an additional example to illustrate it. See §31.6302–1(d) *Example 5*.

A separate notice is being issued with these final regulations to provide transitional relief. Notice 2010–87 states that the IRS will not assert penalties for FTDs made in 2011 that would be considered timely if statewide legal holidays were taken into account.

#### 10. *Other Differences from the Proposed Regulations*

In addition to the changes described earlier in this preamble, the final regulations include four minor revisions that vary from the text of the proposed regulations. Sections 31.6071(a)–1(a) and (c) are revised, consistent with the intent of the proposed regulations, to eliminate the rules for FTD coupons. The table of contents in §31.6302–0 was updated to reflect the changes to the regulation headings. The heading to §40.6302(c)–1T has been revised to remove the reference to government depositories. Additionally, §40.6302(c)–3 is further revised to illustrate the computation of the three business day rule for excise taxes when an intervening day is a holiday consistent with the rules in §31.6302–1(c)(2)(iii) for employment taxes.

#### **Special Analyses**

It has been determined that this final rule 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 these regulations do 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, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Drafting Information**

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

\* \* \* \* \*

#### **Amendments to the Regulations**

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

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by revising the entries for sections 1.6302–1 through 1.6302–4 to read in part as follows:

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

Sections 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), redesignating paragraph (b)(2) as paragraph (b), and revising the heading for 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 December 31, 2010.

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 by the 15<sup>th</sup> day of the following 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. If the 15<sup>th</sup> day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. 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 in the District of Columbia 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), 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. 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 deposits and payments made after December 31, 2010.

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, publications, forms and instructions.

\* \* \* \* \*

(c) *Cross-references.* For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see §1.6302-1(h) of this chapter.

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.



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 the manner set forth in published guidance, publications, forms and instructions.

(b) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

**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 31.6071-1, 31.6302-1 through 6302-3, 31.6302-3, 31.6302-4, 31.6302(c)-2A and 31.6302(c)-3 and adding entries in numerical order to read in part as follows:

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

Section 31.6071(a)-1 also issued under 26 U.S.C.6071.

\* \* \* \* \*

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) and (h).

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). \* \* \*

Par. 8. Section 31.6071(a)-1 is amended by

- 1. Revising paragraphs (a)(1) and (c).
- 2. Adding paragraph (g).

The revisions and the addition read as follows:

*§1.6071(a)-1 Time for filing returns and other documents.*

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments—(1) Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section,

each return required to be made under §§31.6011(a)-1 and 31.6011(a)-1T, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101-3128), or required to be made under §§31.6011(a)-4 and 31.6011(a)-4T, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10<sup>th</sup> day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

\* \* \* \* \*

(c) *Federal Unemployment Tax Act.* Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under §31.6011(a)-3 shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10<sup>th</sup> day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period.

\* \* \* \* \*

(g) *Effective/applicability date.* The elimination of the rules of paragraph (a) and (c) of this section regarding the timeliness of deposits apply to deposits and payments made after December 31, 2010.

**§31.6302-0 [Amended]**

Par. 9. Section 31.6302-0 is amended by revising the entries for §31.6302-1(c), (c)(2), (c)(2)(iii), (c)(4), (h), (h)(2), (h)(2)(ii), (h)(2)(iii), (i), (i)(3), (j), (n), and §31.6302-2 (c) and (d), and by adding entries for §31.6302-1 (h)(2)(iv) and (o) and §31.6302-4 to read as follows:

*§31.6302-0 Table of Contents.*

\* \* \* \* \*

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

\* \* \* \* \*

(c) Deposit rules.

\* \* \* \* \*

(2) Semi-Weekly rule.

\* \* \* \* \*

(iii) Special rule for computing days.

\* \* \* \* \*

(4) Deposits required only on business days.

\* \* \* \* \*

(h) Time and manner of deposit—deposits required to be made by electronic funds transfer.

\* \* \* \* \*

(2) Applicability of requirement.

\* \* \* \* \*

(ii) Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.

(iii) Deposits made after December 31, 2010.

(iv) Voluntary deposits.

\* \* \* \* \*

(i) Time and manner of deposit.

\* \* \* \* \*

(3) Time deemed paid.

(j) Voluntary payments by electronic funds transfer.

\* \* \* \* \*

(n) [Reserved]. For further guidance, see §31.6302-0T, the entry for §31.6302-1T(n).

(o) Effective/Applicability date.

§31.6302-2 Deposit rules for taxes under the Railroad Retirement Tax Act (R.R.T.A.).

\* \* \* \* \*

(c) Modification of Monthly rule determination.

\* \* \* \* \*

(d) Effective/Applicability date.

\* \* \* \* \*

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

Par. 10. 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 paragraphs (h)(2)(iii) and (iv).

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 15<sup>th</sup> day of the following month. If the 15<sup>th</sup> day of the

following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(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 employment 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 in the District of Columbia under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday, 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 until 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 in the District of Columbia 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 Saturdays, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503. Pursuant to section 7503, the term legal holiday means a legal holiday in the District of Columbia. For purposes of this paragraph (c), the term “legal holiday” does not include other Statewide legal holidays.

\* \* \* \* \*

(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 by 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 by 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. Legal Holidays.* Employer E conducts business in State X. Wednesday, August 31, 2011, is a statewide legal holiday in State X which is not a legal holiday in the District of Columbia. On Friday, August 26, 2011, E (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. E has a \$4,000 deposit obligation that must be satisfied on or before the following Wednesday, August 31, 2011, notwithstanding that the day is a statewide legal holiday in State X.

\* \* \* \* \*

(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 deposits and payments made after December 31, 2010.

Par. 11. Section 31.6302-1T is amended by revising paragraphs (g)(1) and (n)(1) to 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 before 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 before 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) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

\*\*\*\*\*

Par. 12. 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 (RTA).*

\*\*\*\*\*

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

Par. 13. 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 deposits and payments made after December 31, 2010.

#### **§31.6302(c)-2A [REMOVED]**

Par. 14. Section 31.6302(c)-2A is removed.

Par. 15. 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 deposits and payments made after December 31, 2010.

#### **PART 40—EXCISE TAX PROCEDURAL REGULATIONS**

Par. 16. The authority citation for part 40 continues to read in part as follows:

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

Par. 17. 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 and payments made after December 31, 2010.

\*\*\*\*\*

Par. 18. Section 40.6302(c)-1T is amended by revising the section heading to read as follows:

*§40.6302(c)-1T Deposits (temporary).*

\*\*\*\*\*

#### **§40.6302(c)-2 [Amended]**

Par. 19. 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 after December 31, 2010” in its place.

Par. 20. Section 40.6302(c)–3 is amended as follows:

1. The heading is revised.

2. Paragraph (c) is revised.

3. In paragraph (g), the language “2004” is removed and “2004, and except that paragraph (f)(5) of this section does not apply after December 31, 2010” is added in its place.

The revisions read as follows:

*§40.6302(c)–3 Deposits under chapter 33.*

\* \* \* \* \*

(c) *Time to deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be made by the third business day after the seventh day of that semimonthly period. For purposes of this paragraph (c), a “business day” is any calendar day other than a Saturday, Sunday, or legal holiday. The term “legal holiday” means a legal holiday in the District of Columbia as defined in section 7503. Thus, for example, the deposit for the semimonthly period beginning on January 1, 2011 (relating to amounts billed between December 1st and December 15, 2010) is due by January 12, 2011, three business days after January 7, the seventh day of the semimonthly period. The deposit for the semimonthly period beginning on October 1, 2011 (relating to amounts billed between September 1st and September 15, 2011), is due by October 13,

2011, due to the October 10, 2011, Columbus Day holiday.

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 20. The authority citation for part 301 is amended to read in part as follows:

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

Par. 21. 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 deposits and payments made after December 31, 2010.

Par. 22. 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 taxpayer 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 and payments made after December 31, 2010.

#### **§301.7502–2 [REMOVED]**

Par. 23. Section 301.7502–2 is removed.

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

Approved November 30, 2010.

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

(Filed by the Office of the Federal Register on December 2, 2010, 11:15 a.m., and published in the issue of the Federal Register for December 7, 2010, 75 F.R. 75897)

# Part III. Administrative, Procedural, and Miscellaneous

## Section 105 — Amounts Received Under Accident and Health Plans, Section 106 — Contributions by Employers to Accident and Health Plans, Section 125 — Cafeteria Plans

### Notice 2011–5

#### I. PURPOSE AND BACKGROUND

.01 This notice modifies Notice 2010–59, 2010–39 I.R.B. 396. Notice 2010–59 provides guidance on § 9003 of the Patient Protection and Affordable Care Act, Pub. L. No. 111–148, which added section 106(f) to the Internal Revenue Code. Section 106(f) revises the definition of medical expenses for employer-provided accident and health plans, (including health flexible spending arrangements (health FSAs) and health reimbursement arrangements (HRAs)) and for Health Savings Accounts (HSAs) and Archer Medical Savings Accounts (Archer MSAs). The notice explains that, after December 31, 2010, expenses incurred for a medicine or a drug shall be treated as a reimbursement for a medical expense only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin. Notice 2010–59 also provides that, except with respect to “90 percent pharmacies,” health FSA and HRA debit cards may not be used to purchase over-the-counter medicines or drugs after January 15, 2011.

.02 Additional rules for the use of health FSA or HRA debit cards are set forth in Prop. Treas. Reg. § 1.125–6 and in Rev. Rul. 2003–43, 2003–1 C.B. 935; Notice 2006–69, 2006–2 C.B. 107; Notice 2007–2, 2007–1 C.B. 254; and Notice 2008–104, 2008–2 C.B. 1298.

#### II. MODIFICATIONS TO NOTICE 2010–59

After January 15, 2011, health FSA and HRA debit cards may continue to be used to purchase over-the-counter medicines or drugs at drug stores and pharmacies, at non-health care merchants that have pharmacies and at mail order and web-based vendors that sell prescription drugs, if: (1) prior to purchase, (i) the prescription (as defined in Notice 2010–59) for the over-the-counter medicine or drug is presented (in any format) to the pharmacist; (ii) the over-the-counter medicine or drug is dispensed by the pharmacist in accordance with applicable law and regulations pertaining to the practice of pharmacy; and (iii) an Rx number is assigned; (2) the pharmacy or other vendor retains a record of the Rx number, the name of the purchaser (or the name of the person for whom the prescription applies), and the date and amount of the purchase in a manner that meets IRS recordkeeping requirements<sup>1</sup>; (3) all of these records are available to the employer or its agent upon request; (4) the debit card system will not accept a charge for an over-the-counter medicine or drug unless an Rx number has been assigned; and (5) the requirements of the guidance referred to in paragraph I.02 of this notice are satisfied. If these requirements are met, the debit card transaction will be considered fully substantiated at the time and point-of-sale.

After January 15, 2011, health FSA and HRA debit cards may also continue to be used to purchase over-the-counter medicines or drugs from vendors (other than drug stores and pharmacies, non-health care merchants that have pharmacies, and mail order and web-based vendors that sell prescription drugs) having health care related Merchant Codes, as described in Rev. Rul. 2003–43, 2003–1 C.B. 935, if all requirements in the preceding paragraph are satisfied, other than

the requirements in clause (1) and clause (4) of the preceding paragraph and the requirement in clause (2) of the preceding paragraph that a record of the Rx number be retained. If these requirements are satisfied, these debit card transactions will be considered fully substantiated at the time and point-of-sale.

Health FSA and HRA debit cards may be used to purchase over-the-counter medicines and drugs at “90 percent pharmacies” but only as provided in Notice 2010–59.

For all other providers and merchants, other than those described in this notice, health FSA and HRA debit cards may not be used to purchase over-the-counter medicines or drugs after January 15, 2011.

#### III. EFFECTIVE DATE

This notice is effective for health FSA and HRA debit card purchases of over-the-counter medicines or drugs made after January 15, 2011.

#### IV. EFFECT ON OTHER DOCUMENTS

This notice modifies Notice 2010–59, 2010–39 I.R.B. 396 (September 27, 2010) as it applies to the use of health FSA and HRA debit cards to reimburse expenses for over-the-counter medicines or drugs. IRS and Treasury intend to amend the regulations at § 1.125–6 to reflect the provisions of this notice. Taxpayers may rely on this notice pending the issuance of the amended regulations.

#### DRAFTING INFORMATION

The principal author of this notice is Robin Ehrenberg of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Ehrenberg at (202) 622–6080 (not a toll-free call).

<sup>1</sup> Section 6001 requires taxpayers to maintain records and to substantiate all positions and amounts reflected on returns. Rev. Proc. 98–25, 1998–1 C.B. 689, contains detailed rules for taxpayers with automated systems (e.g., requiring IRS access to all electronic records used to prepare returns, and that records must be in format readable by IRS). Also, Prop. Treas. Reg. § 1.125–6 describes the requirements for substantiating, paying and reimbursing expenses for § 213(d) medical care when payment is made with a debit card and incorporates previously issued guidance on the requirements.

# Implementation of Rules Governing Tax Return Preparers

## Notice 2011-6

### Purpose

This notice provides guidance regarding the implementation of new Treasury regulations governing tax return preparers. Section 1 of this notice provides guidance regarding the requirement to obtain a preparer tax identification number (PTIN) under section 1.6109-2 and identifies the forms that qualify as tax returns or claims for refund for purposes of those regulations. Section 2 of this notice provides interim rules applicable to certain PTIN holders during the implementation phase of the new regulations governing tax return preparers.

### Background

The IRS made findings and recommendations in Publication 4832, “Return Preparer Review,” which was published on January 4, 2010, concerning the results of an in-depth review of the tax return preparer industry. The IRS recommended increased oversight of tax return preparers through the issuance of regulations governing tax return preparers. The IRS published: (1) final regulations (75 FR 60309) addressing tax return preparer PTIN requirements on September 30, 2010; (2) final regulations (75 FR 60316) regarding the user fee to apply for or renew a PTIN on September 30, 2010; and (3) proposed regulations (REG-138637-07) addressing competency testing requirements, continuing education requirements, and extension of the ethics rules under 31 CFR Part 10 (reprinted in Treasury Department Circular 230 (Circular 230)) for tax return preparers on August 23, 2010.

### Section 1. Guidance under section 1.6109-2

#### .01 PTINs Obtained After September 28, 2010

Section 1.6109-2 provides that beginning after December 31, 2010, all tax return preparers must have a PTIN that was applied for and received at the time and in the manner as prescribed by the IRS.

This notice confirms that tax return preparers who obtain a PTIN or a provisional PTIN and pay any applicable user fee after September 28, 2010, have applied for and received a PTIN in the manner prescribed by the IRS for purposes of the section 6109 regulations.

#### .02 Individuals Who May Obtain a PTIN

Section 1.6109-2(d) provides that for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual’s PTIN or other number prescribed by the IRS. Additionally, after December 31, 2010, all individuals who are compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax must have a PTIN.

Section 1.6109-2(d) also provides that, except as provided in paragraph (h), beginning after December 31, 2010, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a PTIN. Section 1.6109-2(h) provides that the IRS may prescribe exceptions to the PTIN rules in appropriate guidance, including the requirement that an individual be an attorney, certified public accountant, enrolled agent, or registered tax return preparer before receiving a PTIN.

The IRS has decided to allow certain individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN and prepare, or assist in the preparation of, all or substantially all of a tax return in certain discrete circumstances.

#### a. Tax Return Preparers Supervised by Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Retirement Plan Agents, and Enrolled Actuaries

Until further guidance is issued, the IRS, in accordance with the authority to provide exceptions to the PTIN rules under section 1.6109-2(h), will permit any individual eighteen years or older to pay the applicable user fee and obtain a PTIN permitting the individual to prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund for compensation if:

(i) the individual is supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230 §10.3(a) through (e);

(ii) the supervising attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary signs the tax returns or claims for refund prepared by the individual;

(iii) the individual is employed at the law firm, certified public accounting firm, or other recognized firm of the tax return preparer who signs the tax return or claim for refund; and

(iv) the individual passes the requisite tax compliance check and suitability check (when available).

For purposes of this provision, a *law firm* is a law partnership, professional corporation, sole proprietorship, or any other association authorized to practice law in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia. A *certified public accounting firm* is a partnership, professional corporation, sole proprietorship, or any other association that is registered, permitted, or licensed to practice as a certified public accounting firm in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia. A *recognized firm* is a partnership, professional corporation, sole proprietorship, or any other association, other than a law firm or certified public accounting firm, that has one or more employees lawfully engaged in practice before the IRS and that is 80 percent or a greater percent owned by one or more attorneys, certified public accountants, enrolled agents, enrolled actuaries, or enrolled retirement plan agents authorized to practice before the IRS under sections 10.3(a) through (e) of Circular 230, respectively.

Individuals applying for a PTIN under this provision will be required to certify on the PTIN application that they are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the tax return or claim for refund prepared by the individual and provide a supervising individual’s PTIN or other number if prescribed by the IRS. If at any point the individual is no longer su-

ervised by the signing attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary, the individual must notify the IRS as prescribed in forms, instructions, or other appropriate guidance and will not be permitted to prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation under this provision.

Individuals who obtain a PTIN under this provision and prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation will not be subject to a competency examination or continuing education requirements. These individuals, however, may *not* sign any tax return they prepare or assist in preparing for compensation, represent taxpayers before the IRS in any capacity, or represent to the IRS, their clients, or the general public that they are a registered tax return preparer or a Circular 230 practitioner.

Although individuals who obtain a PTIN under this provision are not practitioners under Circular 230, they are, by preparing, or assisting in the preparation of, a tax return for compensation, acknowledging that they are subject to the duties and restrictions relating to practice in subpart B of Circular 230. The IRS may, by written notification, revoke a PTIN obtained under this provision if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct. The tax return preparer may, within 30 days after receipt of the notice of revocation of the PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

#### **b. Individuals Who Prepare Tax Returns Not Covered by the Registered Tax Return Preparer Competency Examination(s)**

The Treasury Department and the IRS have proposed rules that will require an individual to pass a registered tax return preparer minimum competency examination (competency examination). The IRS anticipates, however, that the tax returns and claims for refund covered by the competency examination(s) initially offered will

be limited to individual income tax returns (Form 1040 series tax returns and accompanying schedules). Although the IRS anticipates the types of returns and claims for refunds covered by the competency examination(s) may expand in the future, the IRS recognizes that certain compensated tax return preparers do not prepare Form 1040 series tax returns or related claims for refunds and that the tax returns and claims for refunds prepared by some of these individuals may not be covered by the competency examinations for a significant period of time. The IRS has determined that individuals should not be required, as a condition to obtaining a PTIN, to pass a competency examination covering tax returns and claims for refunds not prepared by the individual. Therefore, until further guidance, this notice, in accordance with the authority under section 1.6109-2(h), provides that any individual eighteen years or older may pay the applicable user fee and obtain a PTIN if:

(i) the individual certifies that the individual does not prepare, or assist in the preparation of, all or substantially all of any tax return or claim for refund covered by the competency examination(s) for registered tax return preparers administered under IRS oversight (1040 series until further notice); and

(ii) the individual passes the requisite tax compliance check and suitability check (when available).

Individuals who obtain a PTIN under this provision and prepare, or assist in preparing, all or substantially all of a tax return or claim for refund for compensation will not yet be subject to a competency examination. These individuals are not currently required to satisfy the same continuing education requirements that a registered tax return preparer must complete to renew their PTIN. In the future, the IRS may require through forms, instructions, or other appropriate guidance that these individuals complete continuing education to renew their PTIN.

Individuals who obtain or renew a PTIN under this provision may sign the tax returns or claims for refunds that they prepare for compensation as the paid preparer. These individuals may also represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the

Taxpayer Advocate Service) during an examination if the individual signed the tax return or claim for refund for the taxable year under examination. They may not, however, represent to the IRS, their clients, or the general public that they are a registered tax return preparer or a Circular 230 practitioner. Enrolled retirement plan agents and enrolled actuaries who obtain a PTIN under this provision may continue to practice and represent as provided in Circular 230.

Although individuals who obtain a PTIN under this provision are not practitioners under Circular 230, they are, by preparing, or assisting in the preparation of, a tax return for compensation, acknowledging that they are subject to the duties and restrictions relating to practice in subpart B of Circular 230. The IRS may, by written notification, revoke a PTIN obtained under this provision if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct. The tax return preparer may, within 30 days after receipt of the notice of revocation of the PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

#### **.03 Forms Requiring a PTIN**

Section 1.6109-2(h) provides that the IRS may specify in appropriate guidance the returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of the PTIN regulations. Consistent with that authority, the IRS hereby specifies that all tax returns, claims for refund, or other tax forms submitted to the IRS are considered tax returns or claims for refund for purposes of section 1.6109-2 unless otherwise provided by the IRS. For purposes of this provision, the term tax forms is interpreted broadly. An individual must obtain a PTIN to prepare for compensation all or substantially all of any form except those specifically identified by the IRS as not subject to the requirements of §1.6109-2. At this time, the IRS identifies the following forms as not subject to the requirements of §1.6109-2:

Form SS-4, *Application for Employer Identification Number*;



Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*;

Form SS-16, *Certificate of Election of Coverage under the FICA*;

Form W-2 series of returns;

Form W-7, *Application for IRS Individual Taxpayer Identification Number*;

Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*;

Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*;

Form 872, *Consent to Extend the Time to Assess Tax*;

Form 906, *Closing Agreement on Final Determination Covering Specific Matters*;

Form 1098 series;

Form 1099 series;

Form 2848, *Power of Attorney and Declaration of Representative*;

Form 3115, *Application for Change in Accounting Method*;

Form 4029, *Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*;

Form 4361, *Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*;

Form 4419, *Application for Filing Information Returns Electronically (FIRE)*;

Form 5300, *Application for Determination for Employee Benefit Plan*;

Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*;

Form 5310, *Application for Determination for Terminating Plan*;

Form 5500 series;

Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*;

Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*;

Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*;

Form 8508, *Request for Waiver From Filing Information Returns Electronically*;

Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*;

Form 8809, *Application for Extension of Time To File Information Return*;

Form 8821, *Tax Information Authorization*;

Form 8942, *Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program*

The IRS may in future guidance modify the list of documents that do not qualify as tax returns or claims for refund for purposes of section 1.6109-2(h).

## **Section 2. Interim Rules**

### **.01 Provisional PTINs**

As discussed in section 1 of this notice, an individual may be designated as a registered tax return preparer if the individual successfully completes a competency examination or otherwise meets requisite standards prescribed by the IRS. The IRS, however, does not expect to offer the competency examination before mid 2011. Therefore, to allow tax return preparers to obtain a PTIN and continue to prepare tax returns or claims for refund until the competency examination is available, the IRS, as an interim rule, will allow individuals who are not attorneys, certified public accountants, or enrolled agents to obtain a provisional PTIN before the date that the competency examination is first offered ("initial test offering date"). Individuals may obtain a provisional PTIN through the IRS' new online PTIN application system or by submitting to the IRS a paper Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*. The individual must annually renew the provisional PTIN and pay the applicable user fee.

The IRS generally will not issue provisional PTINs in accordance with this provision after the initial test offering date. After the initial test offering date, only attorneys, certified public accountants, enrolled agents, and registered tax return preparers, or individuals defined in section 1.02(a) or (b) of this notice will be eligible to obtain a PTIN in accordance with section 1.6109-2, subject to any future IRS guidance identifying additional individuals who may obtain a PTIN.

Until December 31, 2013, a provisional PTIN may be renewed upon proper application and payment of the applicable user fee, even if the individual holding the provisional PTIN is not an attor-

ney, certified public accountant, enrolled agent, or registered tax return preparer. After December 31, 2013, provisional PTINs generally will not be renewed, and the holder of a provisional PTIN obtained in accordance with this provision may keep the PTIN only if the holder of the provisional PTIN is eligible to obtain a PTIN in accordance with section 1.6109-2, section 1.02(a) or (b) of this notice, or future guidance.

### **.02 Return Preparation by Provisional PTIN Holders**

Tax return preparers who properly obtain a provisional PTIN before the initial test offering date will be permitted, subject to the requisite federal tax compliance check and suitability check (when available), to prepare for compensation all or substantially all of any tax return or claim for refund until December 31, 2013. During the transition period from the initial test offering date through December 31, 2013, tax return preparers who hold a provisional PTIN may, subject to the payment of the applicable user fee, take the competency examination as often as the examination is offered.

These interim rules apply to those tax return preparers who obtain a provisional PTIN prior to the initial test offering date. An individual who is subject to the competency testing requirement for becoming a registered tax return preparer who does not obtain a PTIN before the initial test offering date must pass the competency examination and be designated as a registered tax return preparer to be permitted to prepare for compensation all or substantially all of a tax return or claim for refund.

The holder of a provisional PTIN may represent that the holder is authorized to practice before the IRS by preparing and filing tax returns or claims for refund, but the holder of a provisional PTIN may not represent that the holder is a registered tax return preparer or has passed the competency examination necessary to become a registered tax return preparer.

### **.03 Practice Based on Return Preparation**

The proposed Circular 230 regulations include registered tax return preparers in the definition of individuals described as

practitioners and authorize these individuals to practice before the IRS. Practice as a registered tax return preparer generally is limited to preparing tax returns, claims for refund, or other documents for submission to the IRS and to limited representation as described below. A registered tax return preparer may prepare all or substantially all of a tax return or claim for refund. The IRS will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

Registered tax return preparers may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS during an examination if the registered tax return preparer prepared and signed (or prepared and was not required to sign) the tax return or claim for refund for the taxable period under examination.

Prior to January 1, 2011, any individual generally may prepare a tax return or claim for refund for compensation. An individual who prepares and signs a taxpayer's return or claim for refund as the preparer generally may represent that taxpayer during an examination of the taxable period covered by that return or claim for refund. The proposed Circular 230 regulations generally do not extend this right of representation to individuals who are not practitioners after December 31, 2010. To ensure that tax return preparers have sufficient time to become registered tax return preparers, these interim rules provide that an individual may represent a taxpayer during an examination provided the individual prepared and signed the taxpayer's return or claim for refund as the preparer for the taxable period under examination and the individual was permitted under the regulations or other published guidance to prepare the taxpayer's return or claim for refund for compensation. This right to represent the taxpayer does not, however, permit an individual who is not an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary to represent the taxpayer before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS or the Department of Treasury.

#### **.04 Continuing Education**

The proposed Circular 230 regulations require registered tax return preparers to complete fifteen hours of continuing education each registration year. As an interim rule, there is no continuing education requirement for registered tax return preparers or tax return preparers who obtain a provisional PTIN during the first year of registration, which commenced on September 30, 2010.

#### **.05 Ethics and Conduct**

The proposed Circular 230 regulations include registered tax return preparers in the definition of individuals described as practitioners and authorize these individuals to practice before the IRS. Practice as a registered tax return preparer, therefore, will be subject to applicable duties and restrictions relating to practice before the IRS under Circular 230. Accordingly, as an interim rule, practice before the IRS by a tax return preparer who obtains a provisional PTIN or any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the IRS also is subject to applicable duties and restrictions relating to practice before the IRS under Circular 230. Tax return preparers holding a provisional PTIN and other individuals who for compensation prepare, or assist in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the IRS must not engage in disreputable conduct under section 10.51 of Circular 230. The IRS may, by written notification, revoke a provisional PTIN if the tax return preparer willfully violates applicable duties and restrictions prescribed in Circular 230 or engages in disreputable conduct under section 10.51 of Circular 230. The tax return preparer may, within 30 days after receipt of the notice of revocation of the provisional PTIN, file a written protest of the notice of revocation as prescribed in the revocation notice. A protest is not a proceeding under subpart D of Circular 230.

The interim rules described in this notice and any final regulations apply to all tax return preparers who prepare all or substantially all of a tax return or claim for

refund for compensation. As discussed in section 1 of this notice, all tax returns, claims for refund, or other documents submitted to the IRS unless otherwise provided for in section 1 of this notice or other guidance are tax returns for purposes of the PTIN regulations.

#### **Contact Information**

The principal author of this notice is Matthew D. Lucey of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Matthew D. Lucey at (202) 622-4940 (not a toll-free call).

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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.*  
(Also: Part 1, §§ 6662, 6694, 1.6662-4, 1.6694-2.)

## **Rev. Proc. 2011-13**

### **SECTION 1. PURPOSE**

This revenue procedure updates Rev. Proc. 2010-15, 2010-7 I.R.B. 404, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or a position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including the disregard provisions of the section 6662(b)(1) accuracy-related penalty, the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions, and the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements).

**This revenue procedure applies to any income tax return filed on 2010 tax forms for a taxable year beginning in 2010, and to any income tax return filed on 2010 tax forms in 2011 for short taxable years beginning in 2011.**

## SECTION 2. CHANGES FROM REV. PROC. 2010-15

.01 This revenue procedure has been updated to include reference to: (i) the section 6662(i) increased accuracy-related penalty in the case of nondisclosed noneconomic substance transactions; (ii) the section 6662(j) increased accuracy-related penalty in the case of undisclosed foreign financial asset understatements; and (iii) the Schedule UTP, *Uncertain Tax Position Statement*, a new schedule required of certain corporations.

## SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment to which the section applies is added to the tax (the penalty rate is 40 percent in the case of gross valuation misstatements under section 6662(h), nondisclosed noneconomic substance transactions under section 6662(i), or undisclosed foreign financial asset understatements under section 6662(j)). Section 6662(b)(2) applies to the portion of an underpayment of tax that is attributable to a substantial understatement of income tax.

.02 Section 6662(d)(1) provides that there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the amount of tax required to be shown on the return for the taxable year or \$5,000. Section 6662(d)(1)(B) provides special rules for corporations. A corporation (other than an S corporation or personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, \$10,000) or \$10,000,000. Section 6662(d)(2) defines an understatement as the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate (within the meaning of section 6211(b)(2)).

.03 In the case of an item not attributable to a tax shelter, section 6662(d)(2)(B)(ii) provides that the amount of the understatement is reduced by the portion of the understatement attributable

to the item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item by the taxpayer.

.04 Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting an understatement of liability due to an "unreasonable position" if the tax return preparer knew (or reasonably should have known) of the position. A position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) is generally treated as unreasonable unless (i) there is or was substantial authority for the position, or (ii) the position was properly disclosed in accordance with section 6662(d)(2)(B)(i)(I) and had a reasonable basis. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. See Notice 2009-5, 2009-3 I.R.B. 309 (January 21, 2009), for interim penalty compliance rules for tax shelter transactions.

.05 In general, this revenue procedure provides guidance for determining when disclosure by return is adequate for purposes of section 6662(d)(2)(B)(ii) and section 6694(a)(2)(B). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable.

.06 Fiscal and short tax year returns. (a) In general. This revenue procedure may apply to a return for a fiscal tax year that begins in 2010 and ends in 2011. This revenue procedure may also apply to a short year return for a period beginning in 2011 if the return is to be filed before the 2011 forms are available. (Note that individuals are generally not put in this position as a decedent's final return for a fractional part of a year is due the fifteenth day of the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year. See Treas. Reg. § 1.6072-1(b).) In the case of fiscal year and short year returns,

the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2010, even though these changes are not reflected on the form.

(b) Tax law changes effective after December 31, 2010. This document does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2010. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, until the Service prescribes criteria for complying with the requirement.

.07 A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP, *Uncertain Tax Position Statement*, will be treated as if the corporation filed a Form 8275 or Form 8275-R regarding the tax position. The filing of a Form 8275 or Form 8275-R, however, will not be treated as if the corporation filed a Schedule UTP.

## SECTION 4. PROCEDURE

### .01 General

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M-1 and M-3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between related parties. If an entry may present a legal issue or controversy because of a related-party transac-

tion, then that transaction and the relationship must be disclosed on a Form 8275 or Form 8275-R.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that item (such as on an unnamed line under an "Other Expense" category) the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words "bad debt" must be written or typed on the line of Schedule C that shows the amount of the bad debt. Also, for Schedule M-3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 35, Other expense/deduction items with differences, the entry must provide descriptive language; for example, "Cost of non-compete agreement deductible not capitalizable." If space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return: (1) Does not have a reasonable basis as defined in Treas. Reg. § 1.6662-3(b)(3); (2) Is attributable to a tax shelter item as defined in section 6662(d)(2); or (3) Is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position.

(6) Disclosure also will have no effect for purposes of the section 6694(a) penalty as applicable to tax return preparers if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies.

#### 4.02 Items

(1) Form 1040, Schedule A, *Itemized Deductions*:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 10 through 15, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under

section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is completed, or (ii) amounts disallowed under section 265.

(d) Contributions: Complete lines 16 through 19, supplying all required information. Enter the amount of the contribution reduced by the value of any substantial benefit (goods or services) provided by the donee organization in consideration, in whole or in part. Entering the value of the contribution unreduced by the value of the benefit received will not constitute adequate disclosure. If a contribution of \$250 or more is made, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(8), is obtained from the donee organization. If a contribution of cash of less than \$250 is made, this section will not apply unless a bank record or written communication from the donee, as required by section 170(f)(17), is obtained from the donee organization. If a contribution of property other than cash is made and the amount claimed as a deduction exceeds \$500, attach a properly completed Form 8283, *Noncash Charitable Contributions*, to the return. In addition to the Form 8283, if a contribution of a qualified motor vehicle, boat, or airplane has a value of more than \$500, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(12), is obtained from the donee organization and attached to the return. An acknowledgment under section 170(f)(8) is not required if an acknowledgment under section 170(f)(12) is required.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including

amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1120, Schedule E, *Compensation of Officers*, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to "part" or "as needed." This section does not apply to "golden parachute" payments, as defined under section 280G. This section will not apply to the extent that remuneration paid or incurred exceeds the employee-remuneration deduction limitations under section 162(m), if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any repair expenses properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting.

For Schedule M-1 and all Schedules M-3, including those listed in (a)-(f) below, the information provided must reasonably apprise the Service of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275-R must be used to adequately disclose the item (see Part II of the instructions for those forms).

Note: An item reported on a line with a pre-printed description, shown on an attached schedule or "itemized" on Schedule M-1, may represent the aggregate amount of several transactions producing that item (*i.e.*, a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, a potentially controversial item may involve a portion of the aggregate amount disclosed on the schedule. The Service will not be reasonably apprised of a potential controversy by the aggregate amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275-R regarding that portion of the item.

Combining unlike items, whether on Schedule M-1 or Schedule M-3 (or on an attachment when directed by the instruc-

tions), will not constitute an adequate disclosure.

Additionally, for taxpayers that file the Schedule M-3 (Form 1120), the new Schedule B, *Additional Information for Schedule M-3 Filers*, must also be completed. For taxpayers that file the Schedule M-3 (Form 1065), the new Schedule C, *Additional Information for Schedule M-3 Filers*, must also be completed. When required, these new Schedules are necessary to constitute adequate disclosure.

(a) Form 1065. Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(b) Form 1120. (i) Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*.

(ii) Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations with Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items) and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items); and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(c) Form 1120-L. Schedule M-3 (Form 1120-L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a),

*Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(d) Form 1120-PC. Schedule M-3 (Form 1120-PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(e) Form 1120S. Schedule M-3 (Form 1120S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More*: Column (a), *Income (Loss) per Income Statement*, of Part II (reconciliation of income (loss) items) and Column (a), *Expense per Income Statement*, of Part III (reconciliation of expense/deduction items); Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items); and Column (d), *Income (Loss) per Tax Return*, of Part II (reconciliation of income (loss) items) and Column (d), *Deduction per Tax Return*, of Part III (reconciliation of expense/deduction items).

(f) Form 1120-F. Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Total Assets of \$10 Million or More*: Column (b), *Temporary Difference*, Column (c), *Permanent Difference*, and Column (d), *Other Permanent Differences for Allocations to Non-ECI and ECI*, of Part II

(reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*; Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, must be completed when required by its instructions.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*, and attach to the return. This section does not apply to club dues, or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

## SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2010 tax form for a taxable year beginning in 2010, and to any income tax return filed on a 2010 tax form in 2011 for a short taxable year beginning in 2011.

## SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Francis M. McCormick of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and

Administration at (202) 622-4940 (not a toll free call).

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26 CFR 1.6033-2. Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

## Rev. Proc. 2011-15

### SECTION 1. PURPOSE AND SCOPE

This revenue procedure modifies and supersedes Rev. Proc. 83-23, 1983-1 C.B. 687, Rev. Proc. 94-17, 1994-1 C.B. 579, and Rev. Proc. 2003-21, 2003-1 C.B. 448, for taxable years beginning on or after January 1, 2010 to relieve from the requirement to file an annual return on Form 990, *Return of Organization Exempt from Income Tax*, organizations (other than private foundations and § 509(a)(3) supporting organizations) exempt from federal income tax because they are described in § 501(c) of the Internal Revenue Code (“exempt organizations”) whose annual gross receipts are normally not more than \$50,000. This is an increase from the previous filing threshold of annual gross receipts that are normally not more than \$25,000. References in this revenue procedure to Form 990 include Form 990-EZ. This revenue procedure does not apply to organizations exempt from income tax under § 527.

### SECTION 2. BACKGROUND

.01 Section 6033(a)(1) generally requires the filing of an annual return by exempt organizations.

.02 Section 6033(a)(3)(A) provides certain mandatory exceptions to the annual filing requirement for exempt organizations.

.03 Section 6033(a)(3)(B) provides that the Secretary may relieve exempt organizations from the annual filing requirement if the Secretary determines that such filings are not necessary to the efficient administration of the internal revenue laws. Treas. Reg. § 1.6033-2(g)(6) delegates such discretionary authority to the Commissioner. See Treas. Reg. § 1.6033-2(g)(1) for a partial list of organizations that are not required to file annual

returns either because they are excepted by statute or because the Commissioner has exercised this authority.

.04 The Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA), amended § 6033(a)(3)(B) to remove the Secretary’s authority to relieve organizations described in § 509(a)(3) (supporting organizations) from filing an annual information return.

.05 Under the authority of § 6033(a)(3)(B), Rev. Proc. 83-23, 1983-1 C.B. 687, relieves from the Form 990 filing requirement organizations described in § 501(c) (other than private foundations) whose annual gross receipts are normally not more than \$25,000.

.06 For purposes of this revenue procedure, the term “private foundation” includes any domestic or foreign organization described in § 501(c)(3) that is not described in § 509(a)(1) through (4).

.07 Under the authority of § 6033(a)(3)(B), Rev. Proc. 94-17, 1994-1 C.B. 579, relieves from the Form 990 filing requirement foreign organizations (other than private foundations) whose annual gross receipts are normally not more than \$25,000 from sources within the United States and that have no significant activity in the United States.

.08 Under the authority of § 6033(a)(3)(B), Rev. Proc. 2003-21, 2003-1 C.B. 448, relieves from the Form 990 filing requirement U.S. possession organizations (other than private foundations) whose annual gross receipts are normally not more than \$25,000 from sources within the United States and that have no significant activity in the United States.

.09 Treas. Reg. § 53.4948-1(b) provides that gifts, grants, contributions or membership fees received directly or indirectly by a foreign organization from a United States person, as defined in § 7701(a)(30), are from sources within the United States. For purposes of this revenue procedure, the source of an organization’s gross receipts from gifts, grants, contributions or membership fees is determined by applying Treas. Reg. § 53.4948-1(b).

.10 For purposes of applying the rules in this revenue procedure regarding possession organizations, a United States person does not include individuals who are

*bona fide* residents of a United States possession.

.11 For purposes of this revenue procedure, the source of an organization’s gross receipts other than gifts, grants, contributions, and membership fees is determined by applying the rules in §§ 861 through 865 and the regulations thereunder.

.12 For purposes of this revenue procedure, a foreign organization is any organization not described in § 170(c)(2)(A).

.13 Section 7701(a)(9) defines “United States” when used in a geographical sense as only the States and the District of Columbia.

.14 Section 7701(a)(30) defines “United States person” as a citizen or resident of the United States, a domestic partnership, a domestic corporation, any estate that is not a foreign estate (within the meaning of § 7701(a)(31)), or any trust if “(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.”

.15 For purposes of this revenue procedure, a “United States possession organization” is any organization created or organized in a possession of the United States.

.16 In connection with the redesign of the Form 990, the IRS announced in a press release, IR-2007-204 (December 20, 2007), that for tax years ending on or after December 31, 2010, exempt organizations whose annual gross receipts are normally not more than \$50,000 would not be required to file Form 990.

.17 Section 6033(i), enacted as part of the PPA, provides that any organization relieved from filing an annual return pursuant to § 6033(a)(3)(A)(ii) or § 6033(a)(3)(B) must furnish annually, in electronic form, a notice containing the information described in § 6033(i)(1). The annual notice requirement is satisfied by submitting a Form 990-N e-Postcard. See Treas. Reg. § 1.6033-6.

.18 From time to time, the Commissioner may relieve additional organizations from filing annual returns on Form 990 by publishing an announcement in the Internal Revenue Bulletin, revising the instructions accompanying Form 990, amending the regulations, or issuing other appropriate publications.

### SECTION 3. INCREASE IN THE FILING THRESHOLD TO \$50,000

.01 An organization exempt from federal income tax under § 501(a) because it is described in § 501(c) (other than a private foundation or a § 509(a)(3) supporting organization) that normally has annual gross receipts (as defined by Treas. Reg. § 1.6033-2(g)(4)) of not more than \$50,000 (as described in section 4 of this revenue procedure) is not required to file an annual return under § 6033(a).

.02 A foreign organization or a United States possession organization exempt from federal income tax under § 501(a) because it is described in § 501(c) (other than a private foundation or a § 509(a)(3) supporting organization) is not required to file an annual return under § 6033(a) if—

(1) it normally does not receive more than \$50,000 (as described in section 4 of this revenue procedure) in annual gross receipts (as defined by Treas. Reg. § 1.6033-2(g)(4)) from sources within the United States; and

(2) it has no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

.03 An organization that is not required to file an annual return by virtue of section 3.01 or 3.02 of this revenue procedure must submit a Form 990-N e-Postcard annually in electronic format as described in § 6033(i)(1). By submitting an e-Postcard, an organization acknowledges that it is not required to file a return under § 6033(a) because its annual gross receipts are normally not more than \$50,000. Treas. Reg. § 1.6033-6(c)(3).

.04 If at any time an organization ceases to meet any condition set forth in section 3.01 or 3.02 of this revenue procedure, the organization is required to file an annual return on Form 990 for the year in which it first ceased to qualify for relief under this procedure and for all subsequent years in which the organization does not qualify.

### SECTION 4. NORMALLY NOT MORE THAN \$50,000

For purposes of section 3 of this revenue procedure, the annual gross receipts of an organization are normally not more than \$50,000 if—

(1) in the case of an organization that has been in existence for one year or less, the organization's gross receipts, including amounts pledged by donors, are \$75,000 or less during its first taxable year;

(2) in the case of an organization that has been in existence for more than one year, but less than three years, the organization's average annual gross receipts for its first two taxable years is \$60,000 or less; and,

(3) in the case of an organization that has been in existence for three years or more, the organization's average annual gross receipts for the immediately preceding three taxable years, including the taxable year for which the return is filed, is \$50,000 or less.

### SECTION 5. OTHER FILING OBLIGATIONS

This revenue procedure does not affect an organization's obligation under the internal revenue laws to file any tax or information return other than Form 990. For example, if an organization earns sufficient gross unrelated business income to require the filing of Form 990-T, *Exempt Organization Business Income Tax Return*, it must do so, whether or not it is required to file Form 990. See Treas. Reg. § 1.6033-2(g)(2).

### SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 83-23, 1983-1 C.B. 687, Rev. Proc. 94-17, 1994-1 C.B. 579, and Rev. Proc. 2003-21, 2003-1 C.B. 448, are hereby modified and superseded by this revenue procedure.

### SECTION 7. EFFECTIVE DATE

This revenue procedure is effective immediately upon publication in the Internal Revenue Bulletin and is applicable to an-

nual returns filed for tax years beginning on or after January 1, 2010.

### SECTION 8. REQUEST FOR COMMENTS

Comments are requested on whether guidance is needed regarding the filing of annual returns on Form 990 by § 509(a)(3) supporting organizations. See Rev. Proc. 95-48, 1995-2 C.B. 418, and Rev. Proc. 96-10, 1996-1 C.B. 577.

Comments should refer to Rev. Proc. 2011-15 and be submitted to:

Internal Revenue Service  
CC:PA:LPD:PR (Rev. Proc. 2011-15)  
Room 5203  
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:

Courier's Desk  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Rev. Proc. 2011-15)

Alternatively, taxpayers may submit comments electronically to [notice.comments@irs.counsel.treas.gov](mailto:notice.comments@irs.counsel.treas.gov). Please include "Rev. Proc. 2011-15" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

### SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Goff of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information about this revenue procedure, please contact Ms. Goff at (202) 283-8977 (not a toll-free call) or the Exempt Organizations and Employee Plans Customer Assistance Center at 877-829-5500 (a toll-free call).

## Part IV. Items of General Interest

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

#### Announcement 2011-2

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 January 17, 2011 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.

Northwest Conservation Stewardship Fund  
Seattle, WA

### Foundations Status of Certain Organizations

#### Announcement 2011-3

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

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

19-A Certified Examiners Transportation Safety Training and Vocational Institute, Inc., Kiamesha Lake, NY  
ABU Enterprises, Inc., Altadena, CA  
Agape Youth and Development Center, Schaumburg, IL  
American Middle East Christian Congress, Oak Park, MI  
Bar None Renewal Center, Inc., Menifee, CA  
Believe and Achieve, Inc., Dallas, TX  
Bright Day Foundation, Chattanooga, TN  
Calvary Community Development Corporation of Morristown, Morristown, NJ  
Children Athletes and Artists Involved in Recreational Events, Inc., Ocoee, FL  
City of Refuge, Chicago, IL  
Clark County Literacy Council, Inc., Arkadelphia, AR  
Coalition to Preserve Bonelli Park, San Dimas, CA  
Community Action Network, Heber, AZ  
Community Restoration Center, Bexley, OH  
Creative Minds Family and Community Care Services, Inc., San Diego, CA  
Dance-A-Vision Entertainment, Oakland, CA

Donerlson and Donerlson, Inc., East Point, GA  
Drawbridgez, Inc., New Haven, CT  
Edusphere Solutions, Inc., Kailua Kona, HI  
Federation of Families for Children's Mental Health of Central Ohio, Columbus, OH  
Golf 2 Kids Foundation, Fort Worth, TX  
Greater Peoples Development Corporation, Dallas, TX  
Growth Objective Distribution, Shreveport, LA  
Hands Outreached Community Center, Inc., Tuskegee Inst., AL  
Helens Haven, Baytown, TX  
Host and Hostess Service for Seniors, Inc., Atlanta, GA  
Intermodal Infrastructure Partnership, Long Beach, CA  
Kelly Family Foundation, Aurora, CO  
Lafayette Homeless and Community Services, Inc., Sacramento, CA  
Map Home II, Inc., Los Angeles, CA  
Ms. Wheelchair Wisconsin, Menomonie, WI  
Musician's Aid Society of New York, Inc., New York, NY  
New Building Stones, Los Angeles, CA  
New Horizon Christian Community Outreach Center, Inc., Desoto, TX  
New Life Ministries CDC, Inc., Buffalo, NY  
New Mount Zion Foundation, Orangeburg, SC  
Paradise Ponies, Inc., Kurtistown, HI  
Porterville Community Center, Inc., Clarkton, NC  
Prabhupada Institute of Culture, Inc., Miami, FL  
Professional Association of Teachers Foundation, Virginia Beach, VA  
R E A L I T Y, Inc., Memphis, TN  
Silent Voices, Inc., Richmond Hill, NY  
Spirit of Life for All People Ministries, Inc., Brooksville, FL  
Springs of Life Community Outreach, Inc., Atlanta, GA  
Stingers Development Corporation, Pittsburgh, PA  
Taylor's Housing Services, Inc., Prairie, MS  
Temple Life Ministries, Memphis, TN  
Texas Mental Health Peer Advocates, Georgetown, TX



TLC Respite Care, Inc.,  
Pocomoke City, MD  
Tybee Island Land Trust, Inc.,  
Tybee Island, GA  
Upright, Inc., Albuquerque, NM  
Wings of Freedom, Inc., Little Rock, AR  
Youth Challenged Rehabilitation Center,  
Inc., Gibsonton, FL

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon

such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

## **Numerical Finding List<sup>1</sup>**

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

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#### **85-88**

Obsoleted by

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#### **2009-62**

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#### **2010-79**

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#### **76-34**

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#### **83-23**

Modified and superseded by

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#### **94-17**

Modified and superseded by

Rev. Proc. 2011-15, 2011-3 I.R.B. 322

#### **2003-21**

Modified and superseded by

Rev. Proc. 2011-15, 2011-3 I.R.B. 322

#### **2008-52**

Modified by

Notice 2011-4, 2011-2 I.R.B. 282

#### **2010-1**

Superseded by

Rev. Proc. 2011-1, 2011-1 I.R.B. 1

#### **2010-2**

Superseded by

Rev. Proc. 2011-2, 2011-1 I.R.B. 283

#### **2010-3**

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Rev. Proc. 2011-3, 2011-1 I.R.B. 111

#### **2010-4**

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Rev. Proc. 2011-4, 2011-1 I.R.B. 123

### **Revenue Procedures— Continued:**

#### **2010-5**

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#### **2010-6**

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#### **2010-15**

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### **Revenue Rulings:**

#### **81-100**

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#### **2004-67**

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#### **2008-40**

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.







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