

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 96-15, page 9.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth for March 1996.

Rev. Rul. 96-16, page 4.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through March 1996. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through March 1996.

T.D. 8643, page 4.

Final regulations under section 305(c) of the Code relate to constructive distributions on preferred stock.

T.D. 8652, page 11.

Final regulations under section 60501(g) of the Code provide information reporting requirements of Federal and state court clerks who receive more than \$10,000 in cash as bail for any individual charged with a specified criminal offense.

T.D. 8654, page 14.

Final regulations under section 6050P of the Code relate to the information reporting requirements of

applicable financial entities for discharges of indebtedness.

EE-148-81, page 29.

Proposed regulations under section 1.409-1(b)(2)(i) of the Code relating to retirement bonds as part of the President's Regulatory Reinvention Initiative are withdrawn.

ADMINISTRATIVE

Rev. Proc. 96-27, page 27.

Low-income housing tax credit. Resident populations of the various states for determining the 1996 calendar year (1) state housing credit ceiling under section 42(h) of the Code, and (2) private activity bond volume cap under section 146 are reproduced.

T.D. 8651, page 27.

IA-41-93, page 29.

Temporary and proposed regulations provide new simpler procedures for an individual to obtain an automatic extension of time to file an individual income tax return.

Announcement 96-12, page 30.

The United States recently exchanged instruments of ratification for new income tax treaties with Canada, France, Mexico, Portugal, and Sweden. This announcement provides supplemental tables of income rates and exempt personal service income under these treaties.

Finding Lists begin on page 34.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

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 of a permanent nature are consolidated 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 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.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The Bulletin Index-Digest System, a research and reference service supplementing the Bulletin, may be obtained from the Superintendent of Documents on a subscription basis. It consists of four Services: Service No. 1, Income Tax; Service No. 2, Estate and Gift Taxes; Service No. 3, Employment Taxes; Service No. 4, Excise Taxes. Each Service consists of a basic volume and a cumulative supplement that provides (1) finding lists of items published in the Bulletin, (2) digests of revenue rulings, revenue procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

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

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

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

Section 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; “bond factor” amounts for the period January through March 1996. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through March 1996.

Rev. Rul. 96-16

In Rev. Rul. 90-60, 1990-2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would

publish in the Internal Revenue Bulletin a table of “bond factor” amounts for dispositions occurring during each calendar month.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) for dispositions of qualified low-income buildings or interests therein during the period January through March 1996.

Table 1 Rev. Rul. 96-16										
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits										
Month of Disposition	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year									
	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Jan '96	82.72	85.18	87.85	91.00	94.73	99.06	103.57	107.87	111.88	112.52
Feb '96	82.47	84.92	87.58	90.71	94.42	98.71	103.18	107.41	111.30	112.52
Mar '96	82.22	84.66	87.31	90.43	94.11	98.38	102.80	106.98	110.81	112.52

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see the following revenue rulings: Rev. Rul. 90-60, 1990-2 C.B. 3, for dispositions occurring during calendar years 1987, 1988, and 1989; Rev. Rul. 90-88, 1990-2 C.B. 7, for dispositions occurring during calendar year 1990; Rev. Rul. 91-67, 1991-2 C.B. 13, for dispositions occurring during calendar year 1991; Rev. Rul. 92-101, 1992-2 C.B. 9, for dispositions occurring during calendar year 1992; Rev. Rul. 93-83, 1993-2 C.B. 6, for dispositions occurring during calendar year 1993; Rev. Rul. 94-71, 1994-2 C.B. 4, for dispositions occurring during calendar year 1994; and Rev. Rul. 95-83, 1995-52 I.R.B. 5, for dispositions occurring during calendar year 1995.

information regarding this revenue ruling, contact Mr. Malgeri at (202) 622-3040 (not a toll-free call).

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, page 9.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, page 9.

Section 305.—Distributions of Stock and Stock Rights

26 CFR 1.305-5: Distributions on preferred stock.

T.D. 8643

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Distributions of Stock and Stock Rights

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock. The final regulations concern the treatment of stock redeemable at a premium by the issuer. The regulations generally treat a call premium as giving rise to a constructive distribution only if redemption pursuant to the call provision is more likely than not to occur. The final regulations also reflect 1990 amendments to section 305(c).

DATES: These regulations are effective December 20, 1995.

For dates of applicability of these regulations, see *Effective dates* under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Kirsten L. Simpson, (202) 622-7790 (not a toll-free number).

DRAFTING INFORMATION

The principal author of this revenue ruling is Jack Malgeri of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1438. Responses to this collection of information are required to comply with the consistency requirements of the regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On June 22, 1994, a notice of proposed rulemaking (CO-8-91 [1994-2 C.B. 844]), amending regulations under section 305(c) of the Internal Revenue Code relating to constructive distributions on preferred stock, was published in the Federal Register (59 FR 32160). No public hearing was requested and none was held.

Written comments responding to the notice were received. After consideration of all the comments, the regulations proposed by CO-8-91 are adopted as revised by this Treasury decision. The principal revisions are discussed below.

The primary focus of the final regulations is on preferred stock callable at a premium at the option of the issuer. The final regulations retain the approach of the proposed regulations and require constructive distribution treatment with respect to an issuer call only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to the call right is more likely than not to occur.

Safe harbor rule. The proposed regulations provided a safe harbor, under which constructive distribution treatment does not result from an issuer call if the issuer and holder are unrelated, there are no arrangements that effectively require the issuer to redeem the stock, and exercise of the option to redeem would not reduce the yield of the stock. In response to comments, the final regulations make certain modifications to the safe harbor to clarify its scope.

Commentators suggested that the exclusion from the safe harbor where there are “arrangements that effectively require the issuer to redeem” is too narrow and will permit taxpayers who issue stock with “understandings” concerning redemption, whether or not legally enforceable, to qualify for the safe harbor. Commentators recommended safeguarding against abuse by changing the effectively requires redemption test to one that requires a lesser degree of probability. The IRS and Treasury intend that the safe harbor not be available where an issuer and a holder have an underlying understanding. Although the IRS and Treasury believe that the word “arrangement” is broad enough to include such understandings, in response to these comments, this prong of the safe harbor has been clarified.

To retain greater certainty for non-abusive transactions, however, the effectively requires redemption test has not been substantially modified. Instead, the final regulations safeguard against abuse by lowering the threshold for determining whether an issuer and a holder are related. The proposed regulations adopted a 50-percent threshold for determining whether an issuer and a holder are related. The final regulations lower this threshold to 20 percent. This threshold relates only to eligibility for the safe harbor, and not to the application of the general “more likely than

not” test. When a holder’s ownership interest exceeds this threshold, the IRS and Treasury believe it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

Commentators also suggested that the IRS and Treasury except preferred stock within the meaning of section 1504(a)(4) in determining whether the issuer and holder are related. The regulations do not adopt this suggestion. As noted above, the determination of whether the issuer and holder are related only governs eligibility for the safe harbor. The IRS and Treasury believe that when a holder’s ownership interest in an issuer exceeds the threshold, even if all that the holder owns is preferred stock within the meaning of section 1504(a)(4), it is appropriate to determine whether redemption is more likely than not to occur based on all of the facts and circumstances.

In response to comments, the final regulations clarify that the “arrangements” that effectively require or are intended to compel the issuer to redeem the stock relate to the issuer call right, and not to a later mandatory redemption feature.

In testing whether a call right meets the yield prong of the safe harbor, the final regulations clarify that principles similar to the principles of section 1272(a) and the original issue discount regulations apply to determine whether exercise of the right to redeem would reduce the yield of the stock.

Miscellaneous. The final regulations expand the definition of issuer in certain circumstances. In particular, the regulations provide that if preferred stock may be acquired by a person other than the issuer (a third person), the term issuer includes such third person if the regulations would apply to the stock if the third person were the issuer, and acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise). In addition, if the issuer and the third person are members of the same affiliated group, the term issuer includes the third person if a principal purpose of the arrangement is to avoid the application of section 305 and the final regulations. Furthermore, an agreement or other arrangement for a person other than the issuer of the stock to acquire the stock may create a conversion transaction within the meaning of section 1258.

The final regulations provide rules for the treatment of mandatory redemption obligations and put options that are subject to contingencies. Generally, premiums on such stock are not subject to constructive distribution treatment if the contingency renders remote the likelihood of redemption. For example, where an issuer issues stock that is mandatorily redeemable in the event of an initial public offering, the regulations require evaluation of the likelihood of the occurrence of the initial public offering. The regulations provide, however, that a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law due to insufficient capital.

The preamble to the proposed regulations requested comments on the appropriate treatment of unpaid cumulative dividends. Because of the complexity of this issue, the final regulations do not provide rules for those dividends. The IRS and Treasury will continue to consider the issue, as well as other issues involving the implementation of the amendments to section 305(c) made by the Revenue Reconciliation Act of 1990. The IRS and Treasury continue to invite public comments on these issues.

Effective dates. The regulations apply to stock issued on or after December 20, 1995. Although the regulations do not apply to stock issued before December 20, 1995, the rules of sections 305(c)(1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.). Moreover, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of §1.305-5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Special Analyses

It has been determined that this Treasury decision is not a significant

regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Kirsten L. Simpson of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel of the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
 Section 1.305-3 also issued under 26 U.S.C. 305.
 Section 1.305-5 also issued under 26 U.S.C. 305.
 Section 1.305-7 also issued under 26 U.S.C. 305. * * *

Par. 2. Section 1.305-3 is amended as follows:

1. In paragraph (e), remove the parentheses from the numbers in the headings for *Examples (1) through (15)*.

2. In paragraph (e), *Example 15* is revised to read as follows:

§1.305-3 Disproportionate distributions.

* * * * *

(e) * * *

Example 15. (i) *Facts.* Corporation V is organized with two classes of stock, class A

common and class B convertible preferred. The class B stock is issued for \$100 per share and is convertible at the holder's option into class A at a fixed ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. The class B stock pays no dividends but it is mandatorily redeemable in 10 years for \$200. Under sections 305(c) and 305(b)(4), the entire redemption premium (*i.e.*, the excess of the redemption price over the issue price) is deemed to be a distribution of preferred stock on preferred stock which is taxable as a distribution of property under section 301. This amount is considered to be distributed over the 10-year period under principles similar to the principles of section 1272(a). During the year, the corporation declares a dividend on the class A stock payable in additional shares of class A stock.

(ii) *Analysis.* The distribution on the class A stock is a distribution to which sections 305(b)(2) and 301 apply since it increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and the class B shareholders have received property (*i.e.*, the constructive distribution described above). If, however, the conversion ratio of the class B stock were subject to full adjustment to reflect the distribution of stock to class A shareholders, the distribution of stock dividends on the class A stock would not increase the proportionate interest of the class A shareholders in the assets and earnings and profits of the corporation and such distribution would not be a distribution to which section 301 applies.

(iii) *Effective date.* This *Example 15* applies to stock issued on or after December 20, 1995. For previously issued stock, see §1.305-3(e) *Example (15)* (as contained in the 26 CFR part 1 edition revised April 1, 1995).

Par. 3. Section 1.305-5 is amended as follows:

1. Paragraph (b) is revised.

2. In paragraph (d), remove the parentheses from the numbers in the headings for *Examples (1) through (9)*, redesignate *Examples 8 and 9* as *Examples 9 and 10*, respectively.

3. In paragraph (d), *Examples 4, 5, and 7* are revised, and *Example 8* is added.

4. Paragraph (e) is added.

The revisions read as follows:

§1.305-5 Distributions on preferred stock.

* * * * *

(b) *Redemption premium*—(1) *In general.* If a corporation issues preferred stock that may be redeemed under the circumstances described in this paragraph (b) at a price higher than the issue price, the difference (the redemption premium) is treated under section 305(c) as a constructive distribution (or series of constructive distributions) of additional stock on

preferred stock that is taken into account under principles similar to the principles of section 1272(a). However, constructive distribution treatment does not result under this paragraph (b) if the redemption premium does not exceed a de minimis amount, as determined under the principles of section 1273(a)(3). For purposes of this paragraph (b), preferred stock that may be acquired by a person other than the issuer (the third person) is deemed to be redeemable under the circumstances described in this paragraph (b), and references to the issuer include the third person, if—

(i) this paragraph (b) would apply to the stock if the third person were the issuer; and

(ii) either—

(A) the acquisition of the stock by the third person would be treated as a redemption for federal income tax purposes (under section 304 or otherwise); or

(B) the third person and the issuer are members of the same affiliated group (having the meaning for this purpose given the term by section 1504(a), except that section 1504(b) shall not apply) and a principal purpose of the arrangement for the third person to acquire the stock is to avoid the application of section 305 and paragraph (b)(1) of this section.

(2) *Mandatory redemption or holder put.* Paragraph (b)(1) of this section applies to stock if the issuer is required to redeem the stock at a specified time or the holder has the option (whether or not currently exercisable) to require the issuer to redeem the stock. However, paragraph (b)(1) of this section will not apply if the issuer's obligation to redeem or the holder's ability to require the issuer to redeem is subject to a contingency that is beyond the legal or practical control of either the holder or the holders as a group (or through a related party within the meaning of section 267(b) or 707(b)), and that, based on all of the facts and circumstances as of the issue date, renders remote the likelihood of redemption. For purposes of this paragraph, a contingency does not include the possibility of default, insolvency, or similar circumstances, or that a redemption may be precluded by applicable law which requires that the issuer have a particular level of capital, surplus, or similar items. A contingency also does not include an

issuer's option to require earlier redemption of the stock. For rules applicable if stock may be redeemed at more than one time, see paragraph (b)(4) of this section.

(3) *Issuer call—(i) In general.* Paragraph (b)(1) of this section applies to stock by reason of the issuer's right to redeem the stock (even if the right is immediately exercisable), but only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to that right is more likely than not to occur. However, even if redemption is more likely than not to occur, paragraph (b)(1) of this section does not apply if the redemption premium is solely in the nature of a penalty for premature redemption. A redemption premium is not a penalty for premature redemption unless it is a premium paid as a result of changes in economic or market conditions over which neither the issuer nor the holder has legal or practical control.

(ii) *Safe harbor.* For purposes of this paragraph (b)(3), redemption pursuant to an issuer's right to redeem is not treated as more likely than not to occur if—

(A) The issuer and the holder are not related within the meaning of section 267(b) or 707(b) (for purposes of applying sections 267(b) and 707(b) (including section 267(f)(1)), the phrase "20 percent" shall be substituted for the phrase "50 percent");

(B) There are no plans, arrangements, or agreements that effectively require or are intended to compel the issuer to redeem the stock (disregarding, for this purpose, a separate mandatory redemption obligation described in paragraph (b)(2) of this section); and

(C) Exercise of the right to redeem would not reduce the yield of the stock, as determined under principles similar to the principles of section 1272(a) and the regulations under sections 1271 through 1275.

(iii) *Effect of not satisfying safe harbor.* The fact that a redemption right is not described in paragraph (b)(3)(ii) of this section does not affect the determination of whether a redemption pursuant to the right to redeem is more likely than not to occur.

(4) *Coordination of multiple redemption provisions.* If stock may be redeemed at more than one time, the time and price at which redemption is most likely to occur must be determined based on all of the facts and circum-

stances as of the issue date. Any constructive distribution under paragraph (b)(1) of this section will result only with respect to the time and price identified in the preceding sentence. However, if redemption does not occur at that identified time, the amount of any additional premium payable on any later redemption date, to the extent not previously treated as distributed, is treated as a constructive distribution over the period from the missed call or put date to that later date, to the extent required under the principles of this paragraph (b).

(5) *Consistency.* The issuer's determination as to whether there is a constructive distribution under this paragraph (b) is binding on all holders of the stock, other than a holder that explicitly discloses that its determination as to whether there is a constructive distribution under this paragraph (b) differs from that of the issuer. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the date the holder acquired the stock. The issuer must provide the relevant information to the holder in a reasonable manner. For example, the issuer may provide the name or title and either the address or telephone number of a representative of the issuer who will make available to holders upon request the information required for holders to comply with this provision of this paragraph (b).

* * * * *

(d) * * *

Example 4—(i) Facts. Corporation X is a domestic corporation with only common stock outstanding. In connection with its acquisition of Corporation T, X issues 100 shares of its 4% preferred stock to the shareholders of T, who are unrelated to X both before and after the transaction. The issue price of the preferred stock is \$40 per share. Each share of preferred stock is convertible at the shareholder's election into three shares of X common stock. At the time the preferred stock is issued, the X common stock has a value of \$10 per share. The preferred stock does not provide for its mandatory redemption or for redemption at the option of the holder. It is callable at the option of X at any time beginning three years from the date of issuance for \$100 per share. There are no other plans, arrangements, or agreements that effectively require or are intended to compel X to redeem the stock.

(ii) *Analysis.* The preferred stock is described in the safe harbor rule of paragraph (b)(3)(ii) of this section because X and the former shareholders of T are unrelated, there are no plans, arrangements, or agreements that effectively

require or are intended to compel X to redeem the stock, and calling the stock for \$100 per share would not reduce the yield of the preferred stock. Therefore, the \$60 per share call premium is not treated as a constructive distribution to the shareholders of the preferred stock under paragraph (b) of this section.

Example 5—(i) Facts—(A) Corporation Y is a domestic corporation with only common stock outstanding. On January 1, 1996, Y issues 100 shares of its 10% preferred stock to a holder. The holder is unrelated to Y both before and after the stock issuance. The issue price of the preferred stock is \$100 per share. The preferred stock is—

(1) Callable at the option of Y on or before January 1, 2001, at a price of \$105 per share plus any accrued but unpaid dividends; and

(2) Mandatorily redeemable on January 1, 2006, at a price of \$100 per share plus any accrued but unpaid dividends.

(B) The preferred stock provides that if Y fails to exercise its option to call the preferred stock on or before January 1, 2001, the holder will be entitled to appoint a majority of Y's directors. Based on all of the facts and circumstances as of the issue date, Y is likely to have the legal and financial capacity to exercise its right to redeem. There are no other facts and circumstances as of the issue date that would affect whether Y will call the preferred stock on or before January 1, 2001.

(ii) *Analysis.* Under paragraph (b)(3)(i) of this section, paragraph (b)(1) of this section applies because, by virtue of the change of control provision and the absence of any contrary facts, it is more likely than not that Y will exercise its option to call the preferred stock on or before January 1, 2001. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply because the provision that failure to call will cause the holder to gain control of the corporation is a plan, arrangement, or agreement that effectively requires or is intended to compel Y to redeem the preferred stock. Under paragraph (b)(4) of this section, the constructive distribution occurs over the period ending on January 1, 2001. Redemption is most likely to occur on that date, because that is the date on which the corporation minimizes the rate of return to the holder while preventing the holder from gaining control. The de minimis exception of paragraph (b)(1) of this section does not apply because the \$5 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) ($5 \times .0025 \times \$105 = \1.31). Accordingly, \$5 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five-year period ending on January 1, 2001, under principles similar to the principles of section 1272(a).

* * * * *

Example 7—(i) Facts—(A) Corporation Z is a domestic corporation with only common stock outstanding. On January 1, 1996, Z issues 100 shares of its 10% preferred stock to C, an individual unrelated to Z both before and after the stock issuance. The issue price of the preferred stock is \$100 per share. The preferred stock is—

(1) Not callable for a period of 5 years from the issue date;

(2) Callable at the option of Z on January 1, 2001, at a price of \$110 per share plus any accrued but unpaid dividends;

(3) Callable at the option of Z on July 1, 2002, at a price of \$120 per share plus any accrued but unpaid dividends; and

(4) Mandatorily redeemable on January 1, 2004, at a price of \$150 per share plus any accrued but unpaid dividends.

(B) There are no other plans, arrangements, or agreements between Z and C concerning redemption of the stock. Moreover, there are no other facts and circumstances as of the issue date that would affect whether Z will call the preferred stock on either January 1, 2001, or July 1, 2002.

(i) *Analysis.* This stock is described in paragraph (b)(2) of this section because it is mandatorily redeemable. It is also potentially described in paragraph (b)(3)(i) of this section because it is callable at the option of the issuer. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on January 1, 2001, because the call would reduce the yield of the stock when compared to the yield produced by the January 1, 2004, mandatory redemption feature. Moreover, absent any other facts indicating a contrary result, the fact that redemption on January 1, 2001, would produce the lowest yield indicates that redemption is most likely to occur on that date. Under paragraph (b)(4) of this section, paragraph (b)(1) of this section applies with respect to the issuer's right to call on January 1, 2001, because redemption is most likely to occur on January 1, 2001, for \$110 per share. The de minimis exception of paragraph (b)(1) of this section does not apply because the \$10 per share difference between the redemption price payable in 2001 and the issue price exceeds the amount determined under the principles of section 1273(a)(3) ($5 \times .0025 \times \$110 = \1.38). Accordingly, \$10 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five-year period ending January 1, 2001, under principles similar to the principles of section 1272(a).

(ii) *Coordination rules—*(A) If Z does not exercise its option to call the preferred stock on January 1, 2001, paragraph (b)(4) of this section provides that the principles of paragraph (b) of this section must be applied to determine if any remaining constructive distribution occurs. Under paragraphs (b)(3)(i) and (b)(4) of this section, paragraph (b)(1) of this section applies because, absent any other facts indicating a contrary result, the fact that redemption on July 1, 2002, would produce a lower yield than the yield produced by the mandatory redemption feature indicates that redemption on that date is most likely to occur. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on July 1, 2002, because, as of January 1, 2001, a call by Z on July 1, 2002, for \$120 would reduce the yield of the stock. The de minimis exception of paragraph (b)(1) of this section does not apply because the \$10 per share difference between the redemption price and the issue price (revised as of the missed call date as provided by paragraph (b)(4) of this section) exceeds the amount determined under the principles of section 1273(a)(3) ($1 \times .0025 \times \$120 = \0.30). Accordingly, the \$10 per share of additional redemption premium that is payable on July 1, 2002, is treated as a constructive distribution received by the holder on an economic accrual basis over the period between

January 1, 2001, and July 1, 2002, under principles similar to the principles of section 1272(a).

(B) If Z does not exercise its second option to call the preferred stock on July 1, 2002, then the \$30 additional redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b)(2) and (b)(1) of this section. The de minimis exception of paragraph (b)(1) of this section does not apply because the \$30 per share difference between the redemption price and the issue price (revised as of the second missed call date) exceeds the amount determined under the principles of section 1273(a)(3) ($1 \times .0025 \times \$150 = \0.38). The holder is treated as receiving the constructive distribution on an economic accrual basis over the period between July 1, 2002, and January 1, 2004, under principles similar to the principles of section 1272(a).

Example 8—(i) Facts. The facts are the same as in paragraph (i) of *Example 7*, except that, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is unlikely that Z will exercise the right to redeem on either January 1, 2001, or July 1, 2002.

(ii) *Analysis.* The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on either January 1, 2001, or July 1, 2002, because each call would reduce the yield of the stock. Under paragraph (b)(3)(i) of this section, neither option to call is more likely than not to occur, because, based on all of the facts and circumstances as of the issue date (including an expected lack of funds on the part of Z), it is not more likely than not that Z will exercise either option. However, the \$50 per share redemption premium that is payable on January 1, 2004, is treated as a constructive distribution under paragraphs (b)(1) and (2) of this section, regardless of whether Z is anticipated to have sufficient funds to redeem on that date, because Z is required to redeem the stock on that date. The de minimis exception of paragraph (b)(1) of this section does not apply because the \$50 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) ($8 \times .0025 \times \$150 = \3).

* * * * *

(e) *Effective date.* The rules of paragraph (b) of this section and *Examples 4, 5, 7, and 8* of paragraph (d) of this section apply to stock issued on or after December 20, 1995. For rules applicable to previously issued stock, see §1.305-5(b) and (d) *Examples (4), (5), and (7)* (as contained in the 26 CFR part 1 edition revised April 1, 1995). Although the rules of paragraph (b) of this section and the revised examples do not apply to stock issued before December 20, 1995, the rules of sections 305(c)(1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.). Moreover, except as provided in section 11322(b)-

(2) of the Revenue Reconciliation Act of 1990 (Public Law 101-508 Stat.), with respect to stock issued on or after October 10, 1990, and issued before December 20, 1995, the economic accrual rule of section 305(c)(3) will apply to the entire call premium on stock that is not described in paragraph (b)(2) of this section if the premium is considered to be unreasonable under the principles of §1.305-5(b) (as contained in the 26 CFR part 1 edition revised April 1, 1995). A call premium described in the preceding sentence will be accrued over the period of time during which the preferred stock cannot be called for redemption.

Par. 4. Section 1.305-7 is amended by revising the fourth sentence in the concluding text of paragraph (a) to read as follows:

§1.305-7 Certain transactions treated as distributions.

(a) * * *

* * * For example, where a redemption premium exists with respect to a class of preferred stock under the circumstances described in §1.305-5(b) and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In §602.101, paragraph (c) is amended in the table by adding the entry “1.305-5 . . . 1545-1438” in numerical order.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 11, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 20, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1995, 60 F.R. 66134)

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

The adjusted federal long-term rate is set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for

the month of March 1996. See Rev. Rul. 96-15, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, on this page.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth for March 1996.

Rev. Rul. 96-15

This revenue ruling provides various prescribed rates for federal income tax purposes for March 1996 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 96-15 TABLE 1

Applicable Federal Rates (AFR) for March 1996

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.05%	4.99%	4.96%	4.94%
110% AFR	5.57%	5.49%	5.45%	5.43%
120% AFR	6.08%	5.99%	5.95%	5.92%
<i>Mid-Term</i>				
AFR	5.45%	5.38%	5.34%	5.32%
110% AFR	6.01%	5.92%	5.88%	5.85%
120% AFR	6.56%	6.46%	6.41%	6.37%
150% AFR	8.23%	8.07%	7.99%	7.94%
175% AFR	9.64%	9.42%	9.31%	9.24%
<i>Long-Term</i>				
AFR	6.07%	5.98%	5.94%	5.91%
110% AFR	6.69%	6.58%	6.53%	6.49%
120% AFR	7.31%	7.18%	7.12%	7.07%

REV. RUL. 96-15 TABLE 2

Adjusted AFR for March 1996

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.46%	3.43%	3.42%	3.41%
Mid-term adjusted AFR	4.26%	4.22%	4.20%	4.18%
Long-term adjusted AFR	5.19%	5.12%	5.09%	5.07%

REV. RUL. 96-15 TABLE 3

Rates Under Section 382 for March 1996

Adjusted federal long-term rate for the current month	5.19%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months).	5.31%

REV. RUL. 96-15 TABLE 4

Appropriate Percentages Under Section 42(b)(2)
for March 1996

Appropriate percentage for the 70% present value low-income housing credit	8.35%
Appropriate percentage for the 30% present value low-income housing credit	3.58%

REV. RUL. 96-15 TABLE 5

Rate Under Section 7520 for March 1996

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

6.6%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, page 9.

Section 6050I.—Returns Relating to Cash Received in Trade or Business, Etc.

26 CFR 1.6050I-1: Returns relating to cash in excess of \$10,000 received in a trade or business.

T.D. 8652

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602**

Cash Reporting by Court Clerks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the information reporting requirements of Federal and State court clerks upon receipt of more than \$10,000 in cash as bail for any individual charged with a specified criminal offense. The final regulations reflect changes to the law made by the Violent Crime Control and Law Enforcement Act of 1994, and affect court clerks who receive more than \$10,000 in cash as bail.

EFFECTIVE DATE: These regulations are effective February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Susie K. Bird, (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1449. Responses to this collection of information are required to implement the statutory requirements of section 6050I(g).

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

The time estimates for the reporting requirements contained in this regulation are reflected in the burden estimates for Form 8300.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

This document provides final Income Tax Regulations (26 CFR parts 1 and 602) under section 6050I(g) of the Internal Revenue Code of 1986 (Code). This provision was added by section

20415 of the Violent Crime Control and Law Enforcement Act of 1994 (the Act)(Public Law 103-322).

On December 15, 1994, the IRS published in the Federal Register temporary regulations (TD 8572, 59 FR 64572 [1995-1 C.B. 200]) with a cross-reference to a notice of proposed rulemaking (IA-57-94, 59 FR 64635 [1995-1, C.B. 952]).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all comments, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Revisions and Summary of Comments

Under the temporary and proposed regulations, reporting may be required when more than \$10,000 in cash is received as bail by a clerk of a Federal or State court. The temporary and proposed regulations provide that a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. One commentator suggested that the regulations clarify whether reporting under section 6050I(g) is required by a clerk if an entity that is not a part of the court receives bail. In some jurisdictions, for example, a sheriff receives bail. The final regulations provide that if someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail. Thus, the clerk must make the return of information if the other requirements of section 6050I(g) are satisfied.

Under the temporary and proposed regulations, a statement must be sent to each payor of bail reporting certain information, including the "aggregate amount of reportable cash received during the calendar year by the clerk

who made the information return required by [section 6050I(g)] in all cash transactions relating to the payor of bail.” The temporary and proposed regulations reflect the statutory requirement in section 6050I(g)(5)(B) that clerks provide the aggregate amount of reportable cash. A commentator asked whether separately reported amounts satisfy this aggregate amount requirement. The final regulations clarify that the aggregate amount requirement can be satisfied either by sending a single written statement with an aggregate amount listed or by furnishing a copy of each Form 8300 relating to that payor of bail.

In addition, the final regulations clarify that, if multiple payments are made to satisfy bail reportable under this section and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated and the information return required by section 6050I(g) must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000. However, payments made to satisfy separate bail requirements are not required to be aggregated.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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 their impact on small businesses.

Drafting Information

The principal author of these regulations is Susie K. Bird, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.6050I–2T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.6050I–2 also issued under 26 U.S.C. 6050I. * * *

§§1.6050I–OT and 1.6050I–2T [Removed]

Par. 2. Sections 1.6050I–OT and 1.6050I–2T are removed.

Par. 3. Sections 1.6050I–0 and 1.6050I–2 are added to read as follows:

§1.6050I–0 Table of contents.

This section lists the major captions that appear in §§1.6050I–1 and 1.6050I–2.

§1.6050I–1 Returns relating to cash in excess of \$10,000 received in a trade or business.

- (a) Reporting requirement.
 - (1) In general.
 - (2) Cash received for the account of another.
 - (3) Cash received by agents.
 - (i) General rule.
 - (ii) Exception.
 - (iii) Example.
- (b) Multiple payments.
 - (1) Initial payment in excess of \$10,000.
 - (2) Initial payment of \$10,000 or less.
 - (3) Subsequent payments.
 - (4) Example.
- (c) Meaning of terms.
 - (1) Cash.
 - (i) Amounts received prior to February 3, 1992.
 - (ii) Amounts received on or after February 3, 1992.
 - (iii) Designated reporting transaction.
 - (iv) Exception for certain loans.
 - (v) Exception for certain installment sales.

- (vi) Exception for certain down payment plans.
 - (vii) Examples.
 - (2) Consumer durable.
 - (3) Collectible.
 - (4) Travel or entertainment activity.
 - (5) Retail sale.
 - (6) Trade or business.
 - (7) Transaction.
 - (8) Recipient.
 - (d) Exceptions to the reporting requirements of section 6050I.
 - (1) Receipt of cash by certain financial institutions.
 - (2) Receipt of cash by certain casinos having gross annual gaming revenue in excess of \$1,000,000.
 - (i) In general.
 - (ii) Casinos exempt under 31 CFR 103.45(c).
 - (iii) Reporting of cash received in a nongaming business.
 - (iv) Example.
 - (3) Receipt of cash not in the course of the recipient’s trade or business.
 - (4) Receipt is made with respect to a foreign cash transaction.
 - (i) In general.
 - (ii) Example.
 - (e) Time, manner, and form of reporting.
 - (1) Time of reporting.
 - (2) Form of reporting.
 - (3) Manner of reporting.
 - (i) Where to file.
 - (ii) Verification.
 - (iii) Retention of returns.
 - (f) Requirement of furnishing statements.
 - (1) In general.
 - (2) Form of statement.
 - (3) When statement is to be furnished.
 - (g) Cross-reference to penalty provisions.
 - (1) Failure to file correct information return.
 - (2) Failure to furnish correct statement.
 - (3) Criminal penalties.
- §1.6050I–2 Returns relating to cash in excess of \$10,000 received as bail by court clerks.
- (a) Reporting requirement.
 - (b) Meaning of terms.
 - (c) Time, form, and manner of reporting.

- (1) Time of reporting.
 - (i) In general.
 - (ii) Multiple payments.
- (2) Form of reporting.
- (3) Manner of reporting.
 - (i) Where to file.
 - (ii) Verification of identity.
- (d) Requirement to furnish statements.
 - (1) Information to Federal prosecutors.
 - (i) In general.
 - (ii) Form of statement.
 - (2) Information to payors of bail.
 - (i) In general.
 - (ii) Form of statement.
 - (iii) Aggregate amount.
- (e) Cross-reference to penalty provisions.
- (f) Effective date.

§1.6050I-2 Returns relating to cash in excess of \$10,000 received as bail by court clerks.

(a) *Reporting requirement.* Any clerk of a Federal or State court who receives more than \$10,000 in cash as bail for any individual charged with a specified criminal offense must make a return of information with respect to that cash receipt. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

(b) *Meaning of terms.* The following definitions apply for purposes of this section—

Cash means—

(1) The coin and currency of the United States, or of any other country, that circulate in and are customarily used and accepted as money in the country in which issued; and

(2) A cashier's check (by whatever name called, including treasurer's check and bank check), bank draft, traveler's check, or money order having a face amount of not more than \$10,000.

Specified criminal offense means—

(1) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(2) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(3) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(4) Any State criminal offense substantially similar to an offense described in this paragraph (b).

(c) *Time, form, and manner of reporting*—(1) *Time of reporting*—(i) *In general.* The information return required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash bail is received.

(ii) *Multiple payments.* If multiple payments are made to satisfy bail reportable under this section and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated and the information return required by this section must be filed with the Internal Revenue Service by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000. However, if payments are made to satisfy separate bail requirements, no aggregation is required. Thus, if in Month 1 a clerk receives \$6,000 in bail for an individual charged with a specified criminal offense and later, in Month 2, receives \$7,000 in bail for that same individual charged with another specified criminal offense, no aggregation is required.

(2) *Form of reporting.* The return of information required by paragraph (a) of this section must be made on Form 8300 and must contain the following information—

(i) The name, address, and taxpayer identification number (TIN) of the individual charged with the specified criminal offense;

(ii) The name, address, and TIN of each person posting the bail (payor of bail), other than a person posting bail who is licensed as a bail bondsman in the jurisdiction in which the bail is received;

(iii) The amount of cash received;

(iv) The date the cash was received; and

(v) Any other information required by Form 8300 or its instructions.

(3) *Manner of reporting*—(i) *Where to file.* Returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 8300. A copy of the in-

formation return required to be filed under this section must be retained for five years from the date of filing.

(ii) *Verification of identity.* A clerk required to make an information return under this section must, in accordance with §1.6050I-1(e)(3)(ii), verify the identity of each payor of bail listed in the return.

(d) *Requirement to furnish statements*—(1) *Information to Federal prosecutors*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to the United States Attorney for the jurisdiction in which the individual charged with the specified crime resides and the United States Attorney for the jurisdiction in which the specified criminal offense occurred (applicable United States Attorney(s)). The written statement must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received.

(ii) *Form of statement.* The written statement must include the information required by paragraph (c)(2) of this section. The requirement of this paragraph (d)(1)(ii) will be satisfied if the clerk provides to the applicable United States Attorney(s) a copy of the Form 8300 that is filed with the Internal Revenue Service pursuant to this section.

(2) *Information to payors of bail*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to each payor of bail whose name is set forth in a return required by this section. A statement required under this paragraph (d)(2) must be furnished to a payor of bail on or before January 31 of the year following the calendar year in which the cash is received. A statement will be considered furnished to a payor of bail if it is mailed to the payor's last known address.

(ii) *Form of statement.* The statement required by this paragraph (d)(2) need not follow any particular format, but must contain the following information—

(A) The name and address of the clerk's office making the return;

(B) The aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by this section in all cash transactions relating to the payor of bail; and

(C) A legend stating that the information contained in the statement has been reported to the Internal Revenue Service and the applicable United States Attorney(s).

(iii) *Aggregate amount.* The requirement of furnishing the aggregate amount in paragraph (d)(2)(ii)(B) of this section will be satisfied if the clerk provides to the payor of bail either a single written statement listing the aggregate amount, or a copy of each Form 8300 relating to that payor of bail.

(e) *Cross-reference to penalty provisions.* See sections 6721 through 6724 for penalties relating to the failure to comply with the provisions of this section.

(f) *Effective date.* This section applies to cash received by court clerks on or after February 13, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 5. In §602.101, paragraph(c) is amended by removing the entry “1.6050I-2T” from the table and adding the entry “1.6050I-2 1545-1449” in numerical order in the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 29, 1995, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1996, 61 F.R. 6)

Section 6050P.—Returns Relating to the Cancellation of Indebtedness by Certain Entities

26 CFR 1.6050P-1: Information reporting for discharges of indebtedness by certain financial entities.

T.D. 8654

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the information reporting requirements of applicable financial entities for discharges of indebtedness. The final regulations reflect changes to the Internal Revenue Code of 1986 (Code) made by section 13252 of the Omnibus Budget Reconciliation Act of 1993 (the Act). The final regulations affect certain financial institutions and federal executive agencies.

DATES: These regulations are effective December 22, 1996.

For dates of applicability, see §1.6050P-1(h).

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall (timing and amount of discharge) at (202) 622-4930 or Michael F. Schmit (other issues) at (202) 622-4960, both of the Office of Assistant Chief Counsel (Income Tax and Accounting). Neither telephone number is toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1419. Responses to this collection of information are required for the IRS to monitor whether discharged debtors are properly complying with tax laws respecting cancellations of indebtedness.

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

The time estimates for the reporting requirements contained in these final regulations are reflected in the burden estimates for Form 1099-C.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

Section 6050P was added to the Code by section 13252 of the Act. Section 6050P requires certain financial entities to report discharges of indebtedness of \$600 or more during any calendar year, and requires reporting entities to make a return at such time and in such form as the Secretary may by regulations prescribe.

On December 27, 1993, temporary regulations (TD 8506 [1994-1 C.B. 286]) relating to the reporting of discharge of indebtedness under section 6050P were published in the Federal Register (58 FR 68301). A notice of proposed rulemaking (IA-63-93 [1994-1 C.B. 803]) cross-referencing the temporary regulations was published in the Federal Register for the same day (58 FR 68337).

Written comments were received in response to the notice of proposed rulemaking. Fourteen speakers provided testimony at a public hearing held on March 30, 1994. In response to the comments and testimony, the IRS and Treasury issued Notice 94-73 (1994-2 C.B. 553), providing interim relief from penalties for failure to comply with certain of the reporting requirements of the temporary regulations. The Notice provided that, with respect to a discharge of indebtedness occurring before the later of January 1, 1995, or the effective date of the final regulations under section 6050P, no penalties would be imposed for the failure to report a discharge of indebtedness:

(a) Under title 11 of the United States Code;

(b) Resulting from the expiration of the statute of limitations for collection of an indebtedness;

(c) For an amount other than principal in the case of indebtedness arising in connection with a lending transaction; or

(d) For a person other than the primary (or first-named) debtor in the case of indebtedness incurred before January 1, 1995, that involves multiple debtors.

After consideration of all the comments, the proposed regulations under section 6050P are adopted, as revised by this Treasury decision, effective for discharges of indebtedness occurring after December 21, 1996. The temporary regulations and interim relief from penalties provided in Notice 94-73 remain in effect through December 21, 1996, at which time the temporary regulations are removed. However, no penalties will be imposed for the failure to report a discharge of indebtedness occurring after December 21, 1996, and before January 1, 1997, if the failure to report would have qualified for penalty relief under Notice 94-73 had the discharge occurred prior to December 22, 1996. Additionally, the final regulations provide that a financial entity subject to section 6050P may, at its discretion, apply any of the provisions of the final regulations to any discharge of indebtedness occurring on or after January 1, 1996, and before December 22, 1996. The comments and revisions to the proposed regulations are discussed below.

At the request of commentators, the IRS and Treasury are considering the issuance of guidance providing uniform procedures for requesting extensions of time within which to file information returns with the IRS and related statements to taxpayers. This guidance, if issued, would apply to the information reporting requirements set forth in this Treasury decision.

Explanation of Revisions and Summary of Comments

1. Identifiable events

Comments were received relating to the issue of when an indebtedness is discharged for purposes of section 6050P. Under the temporary and proposed regulations, indebtedness is con-

sidered discharged, and reporting is required, upon the occurrence of an identifiable event indicating that the indebtedness will never have to be repaid by the debtor, taking into account all of the facts and circumstances. The temporary and proposed regulations list three identifiable events, but make clear that the three items do not represent an exclusive list of events requiring reporting.

Commentators objected to this facts and circumstances test, and stated that the final regulations should instead provide an exclusive list of reporting events. The comments indicated that creditors do not have the resources to weigh all the facts and circumstances in order to determine whether a debt will never have to be repaid by the debtor.

In response to these comments, the final regulations provide that, for purposes of section 6050P, indebtedness is considered discharged, and reporting is required, only upon the occurrence of certain identifiable events. The regulations contain an exclusive list of eight identifiable events, and provide that, in the absence of the occurrence of one of these events, a Form 1099-C is not required to be filed.

A. Discharges of indebtedness in bankruptcy

Commentators objected to the requirement in the temporary and proposed regulations relating to the reporting of a discharge of indebtedness in bankruptcy. The commentators stated that the obligation to report debts discharged in bankruptcy was extremely burdensome due to the large number of information returns that these bankruptcies would generate. These commentators also stated that some lenders do not receive information regarding a debtor's bankruptcy discharge in the normal course of business.

Commentators also objected to the requirement to report debts discharged in bankruptcy because income from a discharge in bankruptcy is excludable under section 108(a)(1)(A). Additionally, while acknowledging that section 108(b) generally requires the reduction of tax attributes for amounts of cancellation of indebtedness income excluded under section 108(a), these commentators indicated that the majority of bankruptcies involve consumer

debt, the discharge of which is unlikely to give rise to attribute reduction. Thus, they contended that the reporting of consumer debts discharged in bankruptcy will not further the purposes of section 6050P.

Finally, based on language in section 6050P, commentators contended that the IRS and Treasury lacked authority to require reporting in bankruptcy. Under section 6050P(a), "any applicable financial entity which discharges ... the indebtedness of any person" is subject to the rules of section 6050P. Commentators argued that creditors should not be subject to the rules of section 6050P for debts discharged in bankruptcy because it is the bankruptcy court, not the creditor, that discharges the debt.

In promulgating the temporary regulations, the IRS and Treasury fully considered the issue of whether bankruptcy discharges could be excluded from the reporting requirement. The legislative history to section 6050P states that "information returns are required regardless of whether the debtor is subject to tax on the discharged debt. For example, Congress does not expect reporting financial institutions and agencies to determine whether the debtor qualifies for an exclusion under section 108." H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 1, 671 (1993). This language indicates that Congress intended that discharges resulting in excluded income (such as bankruptcy discharges) be reported.

Accordingly, the IRS and Treasury do not believe that a requirement to report debts discharged in bankruptcy is outside the scope of section 6050P. In enacting section 6050P, Congress intended to increase debtor compliance in reporting discharges of indebtedness. With respect to the tax consequences to the debtor, it generally makes no difference whether the debt is voluntarily discharged by the financial entity, or discharged by a court order. Further, the creditor is receiving an amount that is less than the amount of the outstanding indebtedness whether the debt is voluntarily discharged or ordered to be discharged by a court. Thus, the language "any applicable financial entity which discharges ... indebtedness" should not be narrowly construed to exclude instances in which a debt is ordered to be discharged or is discharged by operation of law.

The IRS and Treasury believe that an objective of the legislative history quoted above is that information reporting under section 6050P not impose an undue burden on filers by requiring determinations regarding whether discharges result in income to debtors. However, the legislative history does not preclude an exception for certain discharges in appropriate circumstances. Accordingly, in response to the above concerns of the commentators, the final regulations provide an exception from reporting in the case of certain bankruptcy discharges. Under the final regulations, indebtedness discharged in bankruptcy is required to be reported only if the creditor knows that the debtor incurred the indebtedness for business or investment purposes. Therefore, reporting is not required for consumer debts discharged in bankruptcy or in cases in which the creditor is not aware of the purpose for the borrowing or that purpose is not clear. Information relating to whether a debt was incurred for business or investment purposes will be available to a creditor in some cases, such as those in which loan documents require the borrower to state the purpose of the loan. This limited reporting of debts discharged in bankruptcy will exclude information returns relating to consumer debt, while retaining reporting for those discharges most likely to involve the reduction of tax attributes under section 108(b). Pursuant to Notice 94-73, no penalties will be imposed for the failure to report any indebtedness discharged before December 22, 1996, in bankruptcy. Additionally, no penalties will be imposed for the failure to report any indebtedness discharged after December 21, 1996, and before January 1, 1997, in bankruptcy, since the failure to report would have qualified for penalty relief under Notice 94-73 had the discharge occurred prior to December 22, 1996.

B. Expiration of statute of limitations for collection

Under the temporary and proposed regulations, an identifiable event includes a cancellation or extinguishment by operation of law that renders a debt unenforceable, such as the expiration of the statute of limitations for collection of an indebtedness.

Comments were received relating to the requirement to report indebtedness discharged as a result of the expiration

of the statute of limitations. Commentators argued that expiration of the statute of limitations should not be an identifiable event because of the recordkeeping and other administrative burdens that are created by such a rule. Commentators noted that the statute of limitations for collection of debt varies from state to state, and that debtors may relocate and be subject to the rules of multiple jurisdictions. Further, they contended, an isolated payment by a debtor will frequently restart the running of the statute of limitations. According to the commentators, making lenders track the expiration of the statute of limitations for reporting purposes would require special computer applications not needed for any other creditor function, require legal expertise in the collection department, and be very costly.

As a legal matter, commentators argued that the statute of limitations is an affirmative defense, and affects only judicial enforceability of the obligation. Most commentators indicated that collection activity routinely continues after the expiration of the statute of limitations. The temporary and proposed regulations list collection activity on the part of the creditor as a factor to be considered in determining whether debt has been discharged. Thus, even under the temporary and proposed regulations, expiration of the statute of limitations would rarely mark the date on which debt is considered discharged, because collection activity routinely continues after that date.

In response to these comments, the final regulations provide that expiration of the statute of limitations for collection of an indebtedness is an identifiable event for which a Form 1099-C is required to be filed only if, and at such time as, a debtor's affirmative defense of the expiration of the statute of limitations is upheld in a final judgment or decision of a judicial proceeding, and the period for appealing the judgment or decision has expired.

C. Other discharges by operation of law

As stated above, the temporary and proposed regulations provide that an identifiable event includes a cancellation or extinguishment by operation of law that renders a debt unenforceable (such as the expiration of the statute of limitations for collection of the in-

debtedness). The temporary and proposed regulations do not specify all of the circumstances requiring reporting under this identifiable event.

In order to further the goal of providing an exclusive list of reporting events, the final regulations specify those discharges occurring by operation of law that are required to be reported under section 6050P. In addition to the statute of limitations identifiable event previously discussed, the events relating to operation of law that must be reported are (i) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii); (ii) a cancellation or extinguishment of an indebtedness upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding; (iii) a cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding; and (iv) a cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness. This final event relating to an election of foreclosure remedies will require reporting only where a mortgage lender or holder is barred by local law from pursuing a deficiency judgment or note collection proceeding following exercise of a power of sale contained in a mortgage or deed of trust.

A discharge of indebtedness occurring by operation of law not enumerated above is not required to be reported under the final regulations.

D. Collection activity

Commentators indicated that the temporary and proposed regulations were unclear regarding the effect of continuing collection activity on the requirement to report under section 6050P. The temporary and proposed regulations provide that collection activity is one of the facts and circumstances to be taken into account in determining whether a discharge of indebtedness has occurred. The commentators argued that the final regulations should clarify that reporting is not required prior to termination of collection efforts on the part of the creditor.

In response to these comments, the final regulations address the effect of collection efforts on the requirement to report under section 6050P. Under the final regulations, an identifiable event occurs and reporting is required upon a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge indebtedness. For this purpose, a defined policy may be either a written policy or a creditor's established business practice.

Additionally, under the final regulations, there is a rebuttable presumption that an identifiable event has occurred during a calendar year if a creditor has not received a payment on an indebtedness at any time during a 36-month testing period ending at the close of the year. This presumption is rebutted by the creditor if the creditor (or a third-party collection agency on behalf of the creditor) has engaged in significant, bona fide collection activity at any time during the 12-month period ending at the close of the calendar year, or if facts and circumstances existing as of January 31 of the calendar year following expiration of the 36-month testing period indicate that the indebtedness has not been discharged. Under the final regulations, significant, bona fide collection activity does not include merely nominal or ministerial collection action, such as an automated mailing. Further, facts and circumstances indicating that an indebtedness has not been discharged include the existence of a lien relating to the indebtedness against the debtor (to the extent of the value of the security), or the sale or packaging for sale of the indebtedness by the creditor.

E. Other reportable discharges

Under the temporary and proposed regulations, an identifiable event includes an agreement between the applicable financial entity and the debtor to discharge an indebtedness, provided that the last event necessary to effectuate the discharge has occurred. The final regulations retain this reporting requirement, restating that an identifiable event includes a discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor to discharge indebtedness at less than full consideration. As under the temporary regulations, this identifiable event will not occur until the last event necessary to effectuate the discharge has occurred.

The final regulations also provide that a discharge of indebtedness occurring before the date on which an identifiable event occurs may, at the creditor's discretion, be reported under section 6050P.

2. Definition of indebtedness

Commentators objected to the broad definition of indebtedness provided in the temporary and proposed regulations. The temporary and proposed regulations provide that, for purposes of reporting the amount of indebtedness discharged, an indebtedness is any amount owed to the creditor including principal, interest, penalties, fees, administrative costs, and fines, to the extent the amount constitutes an indebtedness under section 61(a)(12). Commentators argued that this definition is overly broad and should be amended to include principal only (or the primary indebtedness in the case of a non-lending transaction). In response to these comments, the final regulations provide certain exceptions relating to the reporting of amounts other than stated principal.

A. Reporting of interest

Commentators offered two main objections to the reporting of interest. First, commentators stated that reporting interest was burdensome because interest is not tracked by lenders once indebtedness is written off or placed on nonaccrual status on the lender's books. Second, commentators suggested that reporting of interest would be of marginal benefit to the IRS because in many cases discharged interest may be excluded from gross income under sections 108(e)(2) and 111.

In response to these comments, and in an effort to reduce the information reporting burden on affected filers, the final regulations do not require the reporting of amounts of discharged interest (whether or not arising in connection with a lending transaction), despite the fact that some discharged interest will give rise to gross income. However, at the option of the applicable financial entity, interest may be included in the amount reported. Additionally, as provided in Notice 94-73, in the case of a discharge of indebtedness before December 22, 1996, no penalties will be imposed for failure to

report an amount other than principal in the case of indebtedness arising in connection with a lending transaction.

B. Penalties, fees, administrative costs, and fines

Commentators also argued that, like interest, penalties, fees, administrative costs, and fines are not tracked by lenders once an indebtedness is written off on the books of the lender. Thus, they contended, tracking these amounts would require additional computer programming and recordkeeping, and would be very costly. With respect to lending transactions, the IRS and Treasury have concluded that the benefits that would be derived from requiring the reporting of penalties, fees, administrative costs, and fines are outweighed by the burden associated with the requirement. Accordingly, the final regulations provide that, in the case of a lending transaction, only discharged amounts of stated principal are required to be reported. In the case of non-lending transactions, the amount owed, such as a fee, fine, or penalty, is reportable if discharged.

3. Reporting for multiple debtors

Commentators recommended that the multiple debtor rules of the temporary and proposed regulations be amended so that reporting is required only with respect to the primary or first-named debtor on the lender's account. The rationale for this approach is that, in general, lenders track loans involving multiple debtors only by the name of the borrower of record, and thus, the information required to be reported under section 6050P (e.g., the name, address, and taxpayer identification number (TIN)) for debtors other than the primary debtor is generally not available to lenders. In addition, the commentators pointed out that most other information return regulations require reporting only with respect to a single taxpayer (e.g., §1.6050H-1 requires reporting only with respect to one designated interest payor even if multiple debtors are liable on a mortgage). Finally, these commentators stated that the majority of multiple debtor situations involve a husband and wife who will likely file a joint return, and therefore, requiring reporting for each debtor is not necessary.

The IRS and Treasury believe, however, that requiring reporting for multi-

ple debtors is consistent with section 6050P(a)(1), which provides that the reporting of a name, address, and TIN is required for *each person whose indebtedness was discharged*. Further, while reporting with respect to only one taxpayer is required under many information reporting sections of the Code, section 6050J, which is comparable to section 6050P in that it relates to the reporting of acquisitions and abandonments of property securing indebtedness, requires reporting for each person who is a borrower with respect to the secured indebtedness. Moreover, in Notice 94-73, the IRS addressed the concerns of commentators by providing that no penalties would be imposed for failure to report a discharge of indebtedness for other than the primary (or first-named) debtor in the case of indebtedness incurred before January 1, 1995, thus allowing creditors time to begin collecting the necessary information for all debtors in the case of indebtedness incurred after December 31, 1994. The final regulations incorporate this relief.

In order to reduce the information reporting burden on applicable financial entities, the final regulations contain two exceptions relating to multiple debtor reporting. In the case of indebtedness of less than \$10,000 incurred on or after January 1, 1995, that involves multiple debtors, reporting is required only for the primary (or first-named) debtor. Additionally, to avoid duplication, the final regulations provide a husband/wife exception to the requirement for reporting in the case of multiple debtors. Under this exception, only one Form 1099-C must be prepared if the creditor knows, or has reason to know, that the co-obligors were husband and wife living at the same address when the indebtedness was incurred, and does not know or have reason to know that such circumstances have changed at the time of the discharge. These two exceptions apply to discharges of indebtedness after December 31, 1994.

The final regulations retain the rule of the temporary and proposed regulations relating to the amount to be reported with respect to each joint and several debtor.

4. Multiple creditors/lending pools/ REMICs

Commentators indicated that further guidance should be provided in the

final regulations regarding section 6050P reporting obligations in the case of participation loans, lending pools, and other multiple-creditor situations. In response to these comments, the final regulations provide a general rule that, in the case of an indebtedness owned (or treated as owned for federal income tax purposes) by more than one creditor, each creditor that is an applicable financial entity must comply with the reporting requirements of this section with respect to any discharge of indebtedness of \$600 or more allocable to such creditor. A creditor will be considered to have complied with the requirements of this section if a lead bank or other designee of the creditor complies on its behalf.

Comments were received advocating an exception from reporting for discharges of certain widely-owned securitized indebtedness. The commentators reasoned that the owners of widely-held securitized indebtedness will generally have no knowledge regarding when a discharge occurs, or the amount of discharged debt allocable to each owner. Further, commentators suggested that it is likely that a significant portion of such securitized indebtedness may be owned by persons that are not applicable financial entities and, therefore, are not subject to section 6050P.

The IRS and Treasury believe, however, that it would be inconsistent with the purpose of section 6050P to provide a general exception from reporting for such securitized indebtedness. Section 6050P is intended to increase the likelihood that a debtor will comply with the tax laws relating to discharge of indebtedness by requiring the reporting of that event to the IRS. The fact that indebtedness has been securitized and sold to numerous owners generally does not affect the tax consequences to the debtor upon a discharge of that indebtedness. Thus, the IRS and Treasury do not believe that a discharge of indebtedness should be excepted from section 6050P reporting simply because that indebtedness was part of a securitization arrangement.

Commentators also argued that the discharge of an indebtedness held by a real estate mortgage investment conduit (REMIC) should not be required to be reported under section 6050P. Because a REMIC is not an applicable financial entity, commentators contended that section 6050P should not apply upon a

discharge of indebtedness held by a REMIC.

However, section 860F(e) provides that, for purposes of subtitle F of the Code (Procedure and Administration, including section 6050P), a REMIC is treated as a partnership and holders of residual interests in the REMIC are treated as partners. Under the final regulations, indebtedness owned by a partnership is treated as owned by the partners. Thus, arguably a discharge of REMIC indebtedness should be treated similar to partnership indebtedness and thus should be reported to the extent the residual owners of the REMIC are applicable financial entities.

Because the IRS and Treasury believe that further study of these issues is warranted, the final regulations reserve on the application of section 6050P to discharges of indebtedness held (1) in a pass-through securitized indebtedness arrangement, or (2) by a REMIC. For this purpose, a pass-through securitized indebtedness arrangement is any arrangement whereby one or more debt obligations are pooled and held for twenty or more persons whose interests in the debt obligations are undivided co-ownership interests that are freely transferrable. Co-ownership interests that are actively traded personal property (as defined in §1.1092(d)-1) are presumed to be freely transferrable and held by twenty or more persons. Pending issuance of further guidance, no penalties will be imposed for failure to report a discharge of indebtedness held under these circumstances. This relief from penalties does not extend to arrangements formed for a principal purpose of avoiding the reporting requirements of this section. The IRS and Treasury welcome comments regarding compliance with section 6050P in the case of pass-through securitized indebtedness arrangements and REMICs.

5. Coordination of Form 1099-A and Form 1099-C

The legislative history to section 6050P indicates that Congress intended that the IRS and Treasury coordinate reporting under section 6050P with the reporting required under section 6050J. Section 6050J requires information relating to foreclosures and abandonments of secured property to be reported on Form 1099-A.

The final regulations provide that if, in the same calendar year, a discharge

of indebtedness reportable under section 6050P occurs in connection with a foreclosure or abandonment of secured property reportable under section 6050J, it is not necessary to file both a Form 1099-A and a Form 1099-C for the same debtor. Under the final regulations, the filing requirements of section 6050J will be satisfied with respect to a debtor if, in lieu of filing a Form 1099-A, a Form 1099-C is filed in accordance with the instructions for the filing of that form. This coordinated filing provision applies to discharges of indebtedness after December 31, 1994.

6. *Direct or indirect subsidiary*

Commentators requested that the final regulations include a definition of a direct or indirect subsidiary for purposes of section 6050P. Section 6050P(c)(1)(C) provides that the definition of applicable financial entity includes a direct or indirect subsidiary of an entity described in section 6050P(c)(1)(A). In response to these comments, the final regulations provide that, for purposes of section 6050P(c)(1)(C), the term direct or indirect subsidiary means a corporation in a chain of corporations beginning with the entity described in section 6050P(c)(1)(A), if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of all classes of stock, of such corporation is directly owned by the entity described in section 6050P(c)(1)(A), or by one or more other corporations in the chain.

7. *Other exceptions from reporting*

The IRS and Treasury received numerous comments advocating that the final regulations include exceptions from reporting with respect to certain discharges of indebtedness.

A. *Reporting for non-U.S. debtors*

Comments were received relating to the inclusion in final regulations of an exception for reporting discharges of indebtedness of certain foreign debtors. These comments noted that, in some cases, discharges of indebtedness that involve such debtors will not result in income that is taxable in the United States.

On the other hand, there clearly are cases in which a foreign person may be

subject to U.S. tax with respect to a discharge of indebtedness. Because there is no clear guidance on which financial institutions may rely for purposes of determining whether a foreign person would be subject to U.S. tax with respect to cancellation of indebtedness income, it is not appropriate to provide a general exception for foreign persons. However, the IRS and Treasury are continuing to study the issue of whether reporting is necessary in the case of foreign debtors whose debt is discharged by foreign branches of U.S. financial institutions. Accordingly, pending the issuance of further guidance, no penalties will be imposed if an applicable financial entity fails to report a discharge of indebtedness of a foreign debtor by a foreign branch of the entity.

B. *Reporting where debt is acquired by related persons*

Comments were received requesting that the final regulations clarify whether reporting is required in circumstances in which there is a deemed discharge of indebtedness pursuant to the regulations under section 108(e)(4). Section 108(e)(4) and implementing regulations (see §1.108-2) provide that the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor is treated as if the debtor had acquired the indebtedness and may result in a realization by the debtor of income from discharge of indebtedness. Commentators indicated that applicable financial entities often will be unaware that the conditions of section 108(e)(4) have been satisfied and that the debtor's indebtedness is considered to have been discharged. In response to these comments, the final regulations provide that no reporting is required under section 6050P in the case of a discharge of indebtedness under section 108(e)(4) unless the disposition of the indebtedness by the creditor was made with a view to avoiding the reporting requirements of this section.

C. *Reporting for guarantors of indebtedness*

Commentators also requested guidance on whether, and under what circumstances, a Form 1099-C must be filed for a guarantor of an indebtedness when the underlying indebtedness is

discharged. The final regulations provide that, in the case of guaranteed debt, a guarantor is not treated as a debtor for purposes of reporting under section 6050P. Thus, reporting for guarantors is not required.

D. *Reporting for non-lending transactions*

A number of comments were received advocating an exception in the final regulations for discharges of indebtedness where the indebtedness is incurred in a non-lending transaction. Advocates of this exception argued that the primary reason applicable financial entities, and not all trade or businesses, were made subject to section 6050P is that financial entities have extensive involvement in lending transactions where the majority of discharges of indebtedness will occur. Commentators argued that when an applicable financial entity is a creditor as a result of a non-lending transaction, it should be treated in the same manner as a non-applicable financial entity with respect to that indebtedness, and not be subject to section 6050P if a discharge occurs.

Neither the language of section 6050P nor its legislative history provides any indication that Congress intended for discharges of non-lending indebtedness to be excluded from reporting. Moreover, it makes no difference in determining whether a debtor has income under section 61(a)(12) that the indebtedness was incurred in a non-lending transaction. Accordingly, the final regulations do not adopt this suggestion.

E. *Reporting of disputed liabilities*

The temporary and proposed regulations do not address the reporting requirements under section 6050P in the case of the settlement of a disputed liability. The preamble to the temporary regulations solicited public comment relating to this issue. Several commentators urged that the final regulations include an exception from reporting for settlements of bona fide disputed liabilities.

The determination regarding whether the settlement of a disputed liability results in discharge of indebtedness income under section 61(a)(12) is inherently factual. Thus, it continues to be the position of the IRS and Treasury that this issue should be addressed on a

case-by-case basis, rather than by these final regulations. Therefore, the final regulations do not provide an exception from reporting for disputed liabilities. Instead, resolution of the question of whether there may have been a discharge of indebtedness reportable under this section remains the obligation of the applicable financial entity. The IRS and Treasury recognize that a creditor and debtor may take inconsistent positions on this issue. The IRS does not intend to impose penalties for good faith failures to report settlements that constitute discharges of indebtedness.

8. Miscellaneous comments

Comments were also received relating to whether applicable financial entities have any information reporting obligations in instances where payments are received on previously discharged debts. In response to those inquiries, the final regulations clarify that no additional reporting or Form 1099-C correction is required if a creditor receives a payment of all or a portion of a discharged debt that has been reported to the IRS for a prior calendar year.

Comments were received respecting the TIN solicitation requirements of the temporary and proposed regulations. In response to those comments, the final regulations provide that a reasonable effort (rather than all reasonable efforts) must be made to obtain the correct name/TIN combination of the person whose indebtedness is discharged.

The IRS and Treasury received a number of other comments in addition to those summarized above. Some of the suggestions contained in the comments have been adopted in the final regulations. Other suggested changes were not adopted primarily because those suggestions were inconsistent with the purpose of the statute and its legislative history.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not

apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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 authors of these regulations are Sharon L. Hall and Michael F. Schmit, Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.6050P-1T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *
Section 1.6050P-1 also issued under 26 U.S.C. 6050P. * * *

Par. 2. Sections 1.6050P-0 and 1.6050P-1 are added to read as follows:

§1.6050P-0 Table of contents.

This section lists the major captions that appear in §1.6050P-1.

§1.6050P-1 Information reporting for discharges of indebtedness by certain financial entities.

- (a) Reporting requirement.
 - (1) In general.
 - (2) No aggregation.
 - (3) Amounts not includible in income.
 - (4) Time and place for reporting.
 - (i) In general.
 - (ii) Indebtedness discharged in bankruptcy.

- (b) Date of discharge.
 - (1) In general.
 - (2) Identifiable events.
 - (i) In general.
 - (ii) Statute of limitations.
 - (iii) Decision to discontinue collection activity; creditor's defined policy.
 - (iv) Expiration of non-payment testing period.
 - (3) Permitted reporting.
- (c) Indebtedness.
- (d) Exceptions from reporting requirement.
 - (1) Certain bankruptcy discharges.
 - (i) In general.
 - (ii) Business or investment debt.
 - (2) Interest.
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 - (4) Indebtedness of foreign persons held by foreign branches of U.S. financial institutions.
 - (i) Reporting requirements.
 - (ii) Definition.
 - (5) Acquisition of indebtedness by related party.
 - (6) Releases.
 - (7) Guarantors and sureties.
- (e) Additional rules.
 - (1) Multiple debtors.
 - (i) In general.
 - (ii) Amount to be reported.
 - (2) Multiple creditors.
 - (i) In general.
 - (ii) Partnerships.
 - (iii) Pass-through securitized indebtedness arrangement.
 - (A) Reporting requirements.
 - (B) Definition.
 - (iv) REMICs.
 - (3) Coordination with reporting under section 6050J.
 - (4) Direct or indirect subsidiary.
 - (5) Use of magnetic media.
 - (6) TIN solicitation requirement.
 - (i) In general.
 - (ii) Manner of soliciting TIN.
 - (7) Recordkeeping requirements.
 - (8) No multiple reporting.
- (f) Requirement to furnish statement.
 - (1) In general.
 - (2) Furnishing copy of Form 1099-C.
 - (3) Time and place for furnishing statement.

- (g) Penalties.
- (h) Effective dates.
 - (1) In general.
 - (2) Earlier application.

§1.6050P-1 Information reporting for discharges of indebtedness by certain financial entities.

(a) *Reporting requirement*—(1) *In general.* Except as provided in paragraph (d) of this section, any applicable financial entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least \$600 during a calendar year must file an information return on Form 1099-C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, a discharge of indebtedness is deemed to have occurred, except as provided in paragraph (b)(3) of this section, if and only if there has occurred an identifiable event described in paragraph (b)(2) of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred. The return must include the following information—

- (i) The name, address, and taxpayer identification number (TIN), as defined in section 7701(a)(41), of each person for which there was an identifiable event during the calendar year;
- (ii) The date on which the identifiable event occurred, as described in paragraph (b) of this section;
- (iii) The amount of indebtedness discharged, as described in paragraph (c) of this section;
- (iv) An indication whether the identifiable event was a discharge of indebtedness in a bankruptcy, if known; and
- (v) Any other information required by Form 1099-C or its instructions, or current revenue procedures.

(2) *No aggregation.* For purposes of reporting under this section, multiple discharges of indebtedness of less than \$600 are not required to be aggregated unless such separate discharges are pursuant to a plan to evade the reporting requirements of this section.

(3) *Amounts not includible in income.* Except as otherwise provided in this section, discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the

discharged debt under sections 61 and 108 or otherwise by applicable law.

(4) *Time and place for reporting*—
(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099-C on or before February 28 of the year following the calendar year in which the identifiable event occurs.

(ii) *Indebtedness discharged in bankruptcy.* Indebtedness discharged in bankruptcy that is required to be reported under this section must be reported for the later of the calendar year in which the amount of discharged indebtedness first becomes ascertainable, or the calendar year in which the identifiable event occurs.

(b) *Date of discharge*—(1) *In general.* Solely for purposes of this section, except as provided in paragraph (b)(3) of this section, indebtedness is discharged on the date of the occurrence of an identifiable event specified in paragraph (b)(2) of this section.

(2) *Identifiable events*—(i) *In general.* An identifiable event is—

(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);

(B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);

(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;

(D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;

(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor

to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section.

(ii) *Statute of limitations.* In the case of an expiration of the statute of limitations for collection of an indebtedness, an identifiable event occurs under paragraph (b)(2)(i)(C) of this section only if, and at such time as, a debtor's affirmative statute of limitations defense is upheld in a final judgment or decision of a judicial proceeding, and the period for appealing the judgment or decision has expired.

(iii) *Decision to discontinue collection activity; creditor's defined policy.* For purposes of the identifiable event described in paragraph (b)(2)(i)(G) of this section, a creditor's defined policy includes both a written policy of the creditor and the creditor's established business practice. Thus, for example, a creditor's established practice to discontinue collection activity and abandon debts upon expiration of a particular non-payment period is considered a defined policy for purposes of paragraph (b)(2)(i)(G) of this section.

(iv) *Expiration of non-payment testing period.* There is a rebuttable presumption that an identifiable event under paragraph (b)(2)(i)(H) of this section has occurred during a calendar year if a creditor has not received a payment on an indebtedness at any time during a testing period (as defined in this paragraph (b)(2)(iv)) ending at the close of the year. The testing period is a 36-month period increased by the number of calendar months during all or part of which the creditor was precluded from engaging in collection activity by a stay in bankruptcy or similar bar under state or local law. The presumption that an identifiable event has occurred may be rebutted by the creditor if the creditor (or a third-party collection agency on behalf of the creditor) has engaged in significant, bona fide collection activity at any time during the 12-month period ending at the close of the calendar year, or if facts and circumstances existing as of January 31 of the calendar year following expiration of the 36-month period indicate that the indebtedness has not

been discharged. For purposes of this paragraph (b)(2)(iv)—

(A) Significant, bona fide collection activity does not include merely nominal or ministerial collection action, such as an automated mailing;

(B) Facts and circumstances indicating that an indebtedness has not been discharged include the existence of a lien relating to the indebtedness against the debtor (to the extent of the value of the security), or the sale or packaging for sale of the indebtedness by the creditor; and

(C) In no event will an identifiable event described in paragraph (b)(2)(i)-(H) of this section occur prior to December 31, 1997.

(3) *Permitted reporting.* If a discharge of indebtedness occurs before the date on which an identifiable event occurs, the discharge may, at the creditor's discretion, be reported under this section.

(c) *Indebtedness.* For purposes of this section, indebtedness means any amount owed to an applicable financial entity, including stated principal, fees, stated interest, penalties, administrative costs and fines. The amount of indebtedness discharged may represent all, or only a part, of the total amount owed to the applicable financial entity.

(d) *Exceptions from reporting requirement—(1) Certain bankruptcy discharges—(i) In general.* Reporting is required under this section in the case of a discharge of indebtedness in bankruptcy only if the creditor knows from information included in the reporting entity's books and records pertaining to the indebtedness that the debt was incurred for business or investment purposes as defined in paragraph (d)(1)(ii) of this section.

(ii) *Business or investment debt.* Indebtedness is considered incurred for business purposes if it is incurred in connection with the conduct of any trade or business other than the trade or business of performing services as an employee. Indebtedness is considered incurred for investment purposes if it is incurred to purchase property held for investment, as defined in section 163(d)(5).

(2) *Interest.* The discharge of an amount of indebtedness that is interest is not required to be reported under this section.

(3) *Non-principal amounts in lending transactions.* In the case of a

lending transaction, the discharge of an amount other than stated principal is not required to be reported under this section. For this purpose, a lending transaction is any transaction in which a lender loans money to, or makes advances on behalf of, a borrower (including revolving credits and lines of credit).

(4) *Indebtedness of foreign debtors held by foreign branches of U.S. financial institutions—(i) Reporting requirements.* [Reserved]

(ii) *Definition.* An indebtedness held by a foreign branch of a U.S. financial institution is described in this paragraph (d)(4) only if—

(A) The financial institution is engaged through a branch or office in the active conduct of a banking or similar business outside the United States;

(B) The branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business;

(C) The business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal working hours;

(D) The indebtedness is extended outside of the United States by the branch or office in connection with that trade or business; and

(E) The financial institution does not know or have reason to know that the debtor is a United States person.

(5) *Acquisition of indebtedness by related party.* No reporting is required under this section in the case of a deemed discharge of indebtedness under section 108(e)(4) (relating to the acquisition of an indebtedness by a person related to the debtor), unless the disposition of the indebtedness by the creditor was made with a view to avoiding the reporting requirements of this section.

(6) *Releases.* The release of a co-obligor is not required to be reported under this section if the remaining debtors remain liable for the full amount of any unpaid indebtedness.

(7) *Guarantors and sureties.* Solely for purposes of the reporting requirements of this section, a guarantor is not a debtor. Thus, in the case of guaranteed indebtedness, reporting under this section is not required with respect to a guarantor, whether or not there has

been a default and demand for payment made upon the guarantor.

(e) *Additional rules—(1) Multiple debtors—(i) In general.* In the case of indebtedness of \$10,000 or more incurred on or after January 1, 1995, that involves more than one debtor, a reporting entity is subject to the requirements of paragraph (a) of this section for each debtor discharged from such indebtedness. In the case of indebtedness incurred prior to January 1, 1995, and indebtedness of less than \$10,000 incurred on or after January 1, 1995, involving multiple debtors, reporting under this section is required only with respect to the primary (or first-named) debtor. Additionally, only one return of information is required under this section if the reporting entity knows, or has reason to know, that co-obligors were husband and wife living at the same address when an indebtedness was incurred, and does not know or have reason to know that such circumstances have changed at the date of a discharge of the indebtedness. This paragraph (e)(1) applies to discharges of indebtedness after December 31, 1994.

(ii) *Amount to be reported.* In the case of multiple debtors jointly and severally liable on an indebtedness, the amount of discharged indebtedness required to be reported under this section with respect to each debtor is the total amount of indebtedness discharged. For this purpose, multiple debtors are presumed to be jointly and severally liable on an indebtedness in the absence of clear and convincing evidence to the contrary.

(2) *Multiple creditors—(i) In general.* Except as otherwise provided in this paragraph (e)(2), if indebtedness is owned (or treated as owned for federal income tax purposes) by more than one creditor, each creditor that is an applicable financial entity must comply with the reporting requirements of this section with respect to any discharge of indebtedness of \$600 or more allocable to such creditor. A creditor will be considered to have complied with the requirements of this section if a lead bank, fund administrator, or other designee of the creditor complies on its behalf in any reasonable manner, such as by filing a single return reporting the aggregate amount of indebtedness discharged, or by filing a return with respect to the portion of the discharged indebtedness allocable to the creditor. For purposes of this paragraph (e)(2)(i),

any reasonable method may be used to determine the portion of discharged indebtedness allocable to each creditor.

(ii) *Partnerships*. For purposes of paragraph (e)(2)(i) of this section, indebtedness owned by a partnership is treated as owned by the partners.

(iii) *Pass-through securitized indebtedness arrangement*—(A) *Reporting requirements*. [Reserved]

(B) *Definition*. For purposes of this paragraph (e)(2)(iii), a pass-through securitized indebtedness arrangement is any arrangement whereby one or more debt obligations are pooled and held for twenty or more persons whose interests in the debt obligations are undivided co-ownership interests that are freely transferrable. Co-ownership interests that are actively traded personal property (as defined in §1.1092-1(d)-1) are presumed to be freely transferrable and held by twenty or more persons.

(iv) *REMICs*. [Reserved]

(3) *Coordination with reporting under section 6050J*. If, in the same calendar year, a discharge of indebtedness reportable under section 6050P occurs in connection with a transaction also reportable under section 6050J (relating to foreclosures and abandonments of secured property), an applicable financial entity need not file both a Form 1099-A and a Form 1099-C with respect to the same debtor. The filing requirements of section 6050J will be satisfied with respect to a borrower if, in lieu of filing Form 1099-A, a Form 1099-C is filed in accordance with the instructions for the filing of that form. This paragraph (e)(3) applies to discharges of indebtedness after December 31, 1994.

(4) *Direct or indirect subsidiary*. For purposes of section 6050P(c)(1)(C), the term direct or indirect subsidiary means a corporation in a chain of corporations beginning with an entity described in section 6050P(c)(1)(A), if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of all classes of stock, of such corporation is directly owned by the entity described in section 6050P(c)(1)(A), or by one or more other corporations in the chain.

(5) *Use of magnetic media*. Any return required under this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. A failure to

file on magnetic media when required constitutes a failure to file an information return under section 6721. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so under applicable regulations and revenue procedures.

(6) *TIN solicitation requirement*—(i) *In general*. For purposes of reporting under this section, a reasonable effort must be made to obtain the correct name/taxpayer identification number (TIN) combination of a person whose indebtedness is discharged. A TIN obtained at the time an indebtedness is incurred satisfies the requirement of this section, unless the entity required to file knows that such TIN is incorrect. If the TIN is not obtained prior to the occurrence of an identifiable event, it must be requested of the debtor for purposes of satisfying the requirement of this paragraph (e)(6).

(ii) *Manner of soliciting TIN*. Solicitations made in the manner described in §301.6724-1(e)(1)(i) and (2) of this chapter will be deemed to have satisfied the reasonable effort requirement set forth in paragraph (e)(6)(i) of this section. A TIN solicitation made after the occurrence of an identifiable event must clearly notify the debtor that the Internal Revenue Service requires the debtor to furnish its TIN, and that failure to furnish such TIN may subject the debtor to a \$50 penalty imposed by the Internal Revenue Service. A TIN provided under this section is not required to be certified under penalties of perjury.

(7) *Recordkeeping requirements*. Any applicable financial entity required to file a return with the Internal Revenue Service under this section must also retain a copy of the return, or have the ability to reconstruct the data required to be included on the return under paragraph (a)(1) of this section, for at least four years from the date such return is required to be filed under paragraph (a)(4) of this section.

(8) *No multiple reporting*. If discharged indebtedness is reported under this section, no further reporting under this section is required for the amount so reported, notwithstanding that a subsequent identifiable event occurs with respect to the same amount. Further, no additional reporting or Form 1099-C correction is required if a creditor receives a payment of all or a portion of a discharged indebtedness

reported under this section for a prior calendar year.

(f) *Requirement to furnish statement*—(1) *In general*. Any applicable financial entity required to file a return under this section must furnish to each person whose name is shown on such return a written statement that includes the following information—

(i) The information required by paragraph (a)(1) of this section;

(ii) The name, address, and TIN of the applicable financial entity required to file a return under paragraph (a) of this section;

(iii) A legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service; and

(iv) Any other information required by Form 1099-C or its instructions, or current revenue procedures.

(2) *Furnishing copy of Form 1099-C*. The requirement to provide a statement to the debtor will be satisfied if the applicable financial entity furnishes copy B of the Form 1099-C or a substitute statement that complies with the requirements of the current revenue procedure for substitute Forms 1099.

(3) *Time and place for furnishing statement*. The statement required by this paragraph (f) must be furnished to the debtor on or before January 31 of the year following the calendar year in which the identifiable event occurs. The statement will be considered furnished to the debtor if it is mailed to the debtor's last known address.

(g) *Penalties*. For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(h) *Effective dates*—(1) *In general*. The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994.

(2) *Earlier application*. Notwithstanding the provisions of paragraph (h)(1) of this section, an applicable financial entity may, at its discretion, apply any of the provisions of this section to any discharge of indebtedness occurring on or after January 1, 1996, and before December 22, 1996.

§§1.6050P-0T and 1.6050P-1T [Removed]

Par. 3. Sections 1.6050P-0T and 1.6050P-1T are removed.

PART 602—OMB CONTROL
NUMBERS UNDER THE
PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 5. In §602.101, paragraph (c) is amended by removing the entry for 1.6050P-1T and adding an entry in numerical order in the table to read “1.6050P-1 1545-1419”.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 12, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 3, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 4, 1996, 61 F.R. 262)

**Section 6081.—Extensions of Time
for Filing Returns**

*26 CFR 1.6081-4: Automatic extension of time
for filing individual income tax returns.*

T.D. 8651

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 301, and 602

**Automatic Extension of Time for
Filing Individual Income Tax Returns**

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that reflect new simpler procedures for an individual to obtain an automatic extension of time to file an individual income tax return. The text of the temporary regulations also serves as the text of the cross reference notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: These regulations are effective January 4, 1996.

For dates of applicability, see §1.6081-4T and §301.6651-1T.

FOR FURTHER INFORMATION
CONTACT: Margaret A. Owens, (202)
622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1479. Responses to this collection of information are required to obtain a benefit (an automatic 4-month extension of time to file an individual income tax return).

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

For further information concerning the collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

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

Background

This document amends the Income Tax Regulations (26 CFR Part 1) under section 6081 of the Internal Revenue Code of 1986 to implement Notice 93-22 (1993-1 C.B. 305). Notice 93-22, released April 7, 1993, grants relief to individuals who want an automatic 4-month extension of time to file an individual income tax return but who

are unable to pay by the due date for the return the tax properly estimated to be due. The notice allows these individuals to obtain an automatic 4-month extension of time to file their individual income tax returns for taxable years ending on or after December 31, 1992, by filing Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, without an accompanying remittance. Individuals may rely on Notice 93-22 for taxable years ending on or after December 31, 1992 and before December 31, 1995. Notice 93-22 also advised taxpayers that the regulations under section 6081 will be amended to reflect this change in the procedure for an individual to obtain an automatic 4-month extension of time to file. In addition, this document amends the Regulations on Procedure and Administration (26 CFR Part 301) (relating to an automatic extension of time for filing an individual income tax return).

Explanation of Provisions

Under §1.6081-4, an individual required to file an income tax return is allowed an automatic 4-month extension of time to file if (a) an application is prepared on Form 4868, (b) the application is signed by the individual or a person duly authorized by the individual, (c) the application is filed on or before the date the return is due, (d) the application shows the full amount properly estimated as tax, and (e) the application is accompanied by full remittance of the amount properly estimated as tax that is unpaid as of the date prescribed for the filing of the return.

These temporary regulations provide that individuals may obtain an automatic 4-month extension of time to file an individual income tax return without remitting the unpaid amount of any tax properly estimated to be due with the application for extension of time to file. Under these temporary regulations, an individual's inability to pay is not a condition for obtaining an automatic 4-month extension. However, taxpayers are encouraged to make payments, as large as possible, in order to reduce interest and penalties required by law.

In addition, these temporary regulations provide that the IRS may prescribe other manners for submitting an application in lieu of a paper application on Form 4868.

The temporary regulations remove the regulatory requirement that applications for an automatic 4-month extension be signed. Thus, notwithstanding the 1995 Form 4868 instructions, an unsigned application will be processed. In addition, the Commissioner may prescribe additional methods of obtaining an extension of time to file that do not require a signature.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Margaret A. Owens, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6081-4 is amended by revising paragraph (a) to read as follows:

§1.6081-4 Automatic extension of time for filing individual income tax returns.

(a) [Reserved] For further guidance see §1.6081-4T(a).

* * * * *

Par. 3. Section 1.6081-4T is added to read as follows:

§1.6081-4T Automatic extension of time for filing individual income tax returns—taxable years ending on or after December 31, 1995 (temporary).

(a) *In general*—(1) *Period of extension.* An individual who is required to file an individual income tax return for any taxable year ending on or after December 31, 1995, will be allowed an automatic 4-month extension of time to file the return after the date prescribed for filing the return provided the requirements contained in paragraphs (a)(2), (3), and (4) of this section are met. In the case of an individual described in §1.6081-5(a)(5) or (6), the automatic 4-month extension will run concurrently with the extension of time to file granted pursuant to §1.6081-5.

(2) *Manner for submitting an application.* An application must be submitted—

(i) On Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return; or

(ii) In any other manner as may be prescribed by the Commissioner.

(3) *Time and place for filing application.* Except in the case of an individual described in §1.6081-5(a)(5) or (6), the application must be filed on or before the date prescribed for filing the individual income tax return. In the case of an individual described in §1.6081-5(a)(5) or (6), the application must be filed on or before the expiration of the extension of time to file granted pursuant to §1.6081-5. The application must be filed with the IRS office designated in the application's instructions.

(4) *Proper estimate of tax.* An application for extension must show the full amount properly estimated as tax for the taxable year.

(5) *Allowance of extension.* Upon properly preparing and timely filing an application, the 4-month extension will be considered as allowed. Except in undue hardship cases, no extension of time for filing an individual income tax return will be granted under §1.6081-1 until an automatic extension has been allowed pursuant to the provisions of this paragraph (a).

(b) and (c) [Reserved].

(d) *Penalties.* See section 6651 and the regulations under that section for the additions to tax for failure to file an individual income tax return or failure to pay the amount shown as tax on the return. In particular, see §301.6651-1(c)(3) of this chapter (relating to a presumption of reasonable cause in certain circumstances involving an automatic extension of time for filing an individual income tax return).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6651-1 is amended by revising paragraph (c)(3) to read as follows:

§301.6651-1 Failure to file tax return or to pay tax.

* * * * *

(c)(3) [Reserved] For further guidance see §301.6651-1T (c)(3).

* * * * *

Par. 6. Section 301.6651-1T is added to read as follows:

§301.6651-1T Failure to file tax return or to pay tax—taxable years ending on or after December 31, 1995 (temporary).

(a) through (c)(2) [Reserved].

(c)(3) If, for a taxable year ending on or after December 31, 1995, an individual taxpayer satisfies the requirements of §1.6081-4T(a) of this chapter (relating to an automatic extension of time for filing an individual income tax return), reasonable cause shall be presumed, for the period of the extension of time to file, with respect to any underpayment of tax if—

(i) The excess of the amount of tax shown on the individual income tax return over the amount of tax paid on or before the regular due date of the return (by virtue of taxes withheld by the employer, estimated tax payments, and any payment with an application for extension of time to file pursuant to §1.6081-4T of this chapter) is no greater than 10 percent of the amount of tax shown on the individual income tax return; and

(ii) Any balance due shown on the individual income tax return is remitted with the return.

**PART 602—OMB CONTROL
NUMBERS UNDER THE
PAPERWORK REDUCTION ACT**

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 8. In §602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read “1.6081-4T 1545-1479”.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 20, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 3, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 4, 1996, 61 F.R. 260)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, page 9.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 1996. See Rev. Rul. 96-15, page 9.

Part III. Administrative, Procedural, and Miscellaneous

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

Rev. Proc. 96-27

SECTION 1. PURPOSE

This revenue procedure publishes the population figures for states and the District of Columbia for use in determining the 1996 calendar year (1) population-based component of the state housing credit ceiling under § 42(h)(3)(C)(i) of the Internal Revenue Code, and (2) volume cap under § 146.

SECTION 2. BACKGROUND

.01 State Housing Credit Ceiling

(1) Section 42(h)(1) provides generally that any building (other than a building a certain percentage of which is financed with proceeds of tax-exempt private activity bonds) is eligible for the low-income housing credit under § 42 only if it receives an allocation of a housing credit dollar amount from the state or local housing credit agency (state agency) of the jurisdiction in which the building is located.

(2) Section 42(h)(3)(A) provides that the aggregate housing credit dollar amount that a state agency may allocate for any calendar year is the portion of the state housing credit ceiling (credit ceiling) allocated to the state agency for the calendar year.

(3) Section 42(h)(3)(C) defines the credit ceiling as an amount equal to the sum of four components. One component, the "population component," equals \$1.25 multiplied by the state population.

(4) Section 42(h)(3)(G) provides that for purposes of § 42(h), population is determined in accordance with § 146(j).

.02 Volume Cap

(1) Section 103(a) provides that gross income does not include interest on any state or local bond. However, § 103(b) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond within the meaning of § 141.

(2) Section 141(e)(2) provides that one requirement that must be met in

order for a private activity bond to be a "qualified bond" is that the issue of which the bond is a part must meet the applicable requirements of § 146.

(3) Section 146(a) provides that a private activity bond meets the requirements of § 146 if the aggregate face amount of the issue of private activity bonds of which it is a part, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority (issuing authority) during the calendar year, does not exceed the issuing authority's volume cap for the calendar year.

(4) The volume cap for any issuing authority is defined by § 146(b) as a percentage of the state ceiling for the calendar year.

(5) Section 146(d) defines the state ceiling applicable to any state for any calendar year after 1987 as the greater of \$50 multiplied by the state population or \$150,000,000.

(6) Section 146(j) provides that population determinations of any state (or issuing authority) are made with respect to any calendar year on the basis of the most recent census estimate of the resident population of the state (or issuing authority) released by the Bureau of the Census before the beginning of that calendar year.

.03 Population Figures

(1) On January 26, 1996, in press release CB96-10, the Bureau of the Census released resident population estimates for the 50 states and the District of Columbia as of July 1, 1995.

(2) The estimates released in press release CB96-10 were not released before the beginning of calendar year 1996. Accordingly, the estimates do not meet the statutory requirements of § 146(j), and may not be used by state agencies, states, or issuing authorities for purposes of determining the 1996 calendar year credit ceiling or volume cap.

(3) The most recent census estimates of the resident population of the states (or issuing authorities) released by the Bureau of the Census before the beginning of calendar year 1996 are those contained in CB94-204, which are estimates as of July 1, 1994. These population estimates are the same estimates published in Notice 95-8,

1995-1 C.B. 293, for use by state agencies, states, and issuing authorities in determining the 1995 calendar year credit ceiling and volume cap.

SECTION 3. SCOPE

The state population figures published in this revenue procedure are to be used by state agencies, states, and issuing authorities in determining the 1996 calendar year credit ceiling and volume cap.

SECTION 4. PROCEDURE

.01 For purposes of § 146(j), the state population figures to be used by state agencies, states, and issuing authorities for the 1996 calendar year are the estimates of the resident population of states for July 1, 1994, released by the Bureau of the Census on December 28, 1994, in press release CB94-204. For convenience, these estimates are reprinted below.

Resident Population Estimates for July 1, 1994

<i>State</i>	<i>Population</i>
Alabama	4,219,000
Alaska	606,000
Arizona	4,075,000
Arkansas	2,453,000
California	31,431,000
Colorado	3,656,000
Connecticut	3,275,000
Delaware	706,000
D.C.	570,000
Florida	13,953,000
Georgia	7,055,000
Hawaii	1,179,000
Idaho	1,133,000
Illinois	11,752,000
Indiana	5,752,000
Iowa	2,829,000
Kansas	2,554,000
Kentucky	3,827,000
Louisiana	4,315,000
Maine	1,240,000
Maryland	5,006,000
Massachusetts	6,041,000
Michigan	9,496,000
Minnesota	4,567,000
Mississippi	2,669,000
Missouri	5,278,000
Montana	856,000
Nebraska	1,623,000
Nevada	1,457,000

<i>State</i>	<i>Population</i>	<i>State</i>	<i>Population</i>
New Hampshire	1,137,000	Tennessee	5,175,000
New Jersey	7,904,000	Texas	18,378,000
New Mexico	1,654,000	Utah	1,908,000
New York	18,169,000	Vermont	580,000
North Carolina	7,070,000	Virginia	6,552,000
North Dakota	638,000	Washington	5,343,000
Ohio	11,102,000	West Virginia	1,822,000
Oklahoma	3,258,000	Wisconsin	5,082,000
Oregon	3,086,000	Wyoming	476,000
Pennsylvania	12,052,000		
Rhode Island	997,000		
South Carolina	3,664,000		
South Dakota	721,000		

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective

for determinations of population under § 146(j) for the 1996 calendar year.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Timothy L. Jones of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this notice contact Mr. Wilson on (202) 622-3040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Retirement Bonds

EE-148-81

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations relating to retirement bonds as part of the President's Regulatory Reinvention Initiative.

DATES: The proposed regulations are withdrawn January 8, 1996.

FOR FURTHER INFORMATION CONTACT: Philip Bennet, (202) 622-3926.

SUPPLEMENTARY INFORMATION:

Background

As part of the President's Regulatory Reinvention Initiative, the Treasury Department and the IRS identified obsolete regulations that relate to prior law, provide elections for prior years, or are otherwise outdated due to changes in the underlying statutory provisions.

* * * * *

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, proposed regulations §1.409-1(b)(2)(i) that were published in the Federal Register on January 23, 1984 (49 FR 2794 [EE-148-81, 1984-1, C.B. 580]) are withdrawn.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 5, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 8, 1996, 61 F.R. 552)

Notice of Proposed Rulemaking and Notice of Public Hearing

Automatic Extension of Time for Filing Individual Income Tax Returns

IA-41-93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations that reflect the new procedures for obtaining an automatic extension of time to file an individual income tax return. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by April 1, 1996. Outlines of topics to be discussed at the public hearing scheduled for May 8, 1996, beginning at 10:00 a.m. must be received by April 1, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA-41-93), Room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA-41-93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the IRS Auditorium.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Margaret A. Owens, 202-622-6232 (not a toll-free number). Concerning submissions and the public hearing, Michael Slaughter, 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 4, 1996.

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

The collection of information is in §1.6081-4T(a). This information is required by the IRS to monitor the filing of individual income tax returns. This information will be used to determine which individuals need automatic 4-month extensions of time to file. The likely respondents are individuals or households. Responses to this collection of information are required to obtain a benefit (an automatic 4-month extension of time to file an individual income tax return).

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

Estimates of the reporting burden in this Notice of Proposed Rulemaking will be reflected in the burden of Form 4868.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the Federal Register

contain amendments to the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301). The temporary regulations provide rules relating to obtaining an automatic 4-month extension of time to file an individual income tax return. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 8, 1996, at 10:00 a.m., at the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by April 1, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 1, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Margaret A. Owens, Office of the Assistant Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6081-4 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (d).

The revised and added provisions read as follows:

§1.6081-4 Automatic extension of time for filing individual income tax returns.

[The text of proposed paragraphs (a) and (d) are the same as the text of §1.6081-4T(a) and (d) published elsewhere in this issue of the Federal Register].

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. In §301.6651-1, paragraph (c)(3) is revised to read as follows:

§301.6651-1 Failure to file tax return or to pay tax.

* * * * *

(c)(3) [The text of this proposed paragraph (c)(3) is the same as the text of §301.6651-1T(c)(3) published elsewhere in this issue of the Federal Register].

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 3, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 4, 1996, 61 F.R. 338)

Supplemental Tables of Income Tax Rates and Exempt Personal Service Income Under New Income Tax Treaties and Protocols

Announcement 96-12

The United States recently exchanged instruments of ratification for new income tax treaties with France, Portugal, and Sweden. The United States also exchanged instruments of ratification for new protocols with Canada and Mexico. The effective dates are as follows:

Canada. The provisions for taxes withheld on interest, dividends, royalties, and pensions and annuities (other than social security benefits) are effective for amounts paid or credited after December 31, 1995. For other taxes, and for taxes withheld on social security benefits, the provisions are effective for tax years beginning after 1995.

France. The provisions for taxes withheld on interest, dividends, and royalties are effective for amounts paid or credited after February 1, 1996. For other taxes, the provisions are effective for tax periods beginning on and after January 1, 1996.

Mexico. The provisions under the new protocol are effective October 26, 1995.

Portugal. The provisions of the new treaty for taxes withheld at source are effective for amounts paid or credited on or after January 1, 1996. For other taxes, the new treaty is effective for taxable years beginning on or after January 1, 1996.

Sweden. The provisions of the new treaty for taxes withheld at source are effective for amounts paid or credited on or after January 1, 1996. For other

taxes, the new treaty is effective for taxable years beginning on or after January 1, 1996.

The Internal Revenue Service prepared Tables 1 and 2 below, as an aid in determining the taxability of certain types of income. Table 1 lists tax rates for investment income such as divi-

dends, interest, and royalties. Table 2 lists the different kinds of personal service income that may be fully or partially exempt from U.S. tax. Mexico is not included because the protocol does not change any income tax provisions.

These tables are similar in format to

Tables 1 and 2 in the 1995 editions of Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*, and Publication 901, *U.S. Tax Treaties*. Taxpayers and withholding agents may use these tables until the Service revises Publications 515 and 901.

Table 1. Tax Rates for 1996 on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties

Income Code Number		1	2	3	6	7	9	10	11	12	13	14	21
Country of Residence of Payee					Dividends Paid by:					Copyright Royalties ^a			
Name	Code	Interest Paid by U.S. Obligors General ^{a,d}	Interest on Real Property Mortgages ^{a,d}	Interest Paid to a Controlling Foreign Corporation ^{a,d}	U.S. Corporation General ^{a,b,d}	U.S. Subsidiary to Foreign Parent Corporation ^{a,b,d}	Capital Gains ^a	Industrial Royalties ^{a,d}	Motion Pictures and Television ^d	Other ^d	Real Property Income and Natural Resources Royalties ^c	Pensions and Annuities	Social Security Payment ^l
Canada	CA	10	10 ^j	10	15 ^e	6 ^e	30 ^k	0	10	0	30	15	30
France	FR	0	0 ^j	0	15 ^e	5 ^e	0 ^{d,g}	5	0	0	30	0 ^{f,h}	30
Portugal	PO	10	10 ^j	10	15 ^e	15 ^e	0 ^{d,g}	10	10	10	30	0 ^{h,i}	30
Sweden	SW	0	0 ^j	0	15 ^e	15 ^e	0 ^{d,g}	0	0	0	30	0 ^h	30

^aUnder some treaties, the reduced rates of withholding may not apply to a foreign corporation unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

^bNo U.S. tax is imposed on a percentage of any dividend paid by a U.S. corporation that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared. (See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.)

^cWithholding at a different rate may be required on the disposition of a U.S. real property interest. See Publication 515.

^dThe exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. The exemption or reduction in rate also does not apply if the property giving rise to the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services. Even with the treaty, if the income is not effectively connected with a trade or business in the United States, the recipient will be considered as not having a permanent establishment in the United States under section 894(b) of the Internal Revenue Code.

^eThe rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, the reduced rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal) in the REIT.

^fA U.S. government pension paid to an individual who is a resident and a national of France and who is not a U.S. national is exempt from tax.

^gExemption does not apply to gains from the sale of U.S. real property. For the withholding tax rate on the sale of U.S. real property, see Publication 515.

^hExemption does not apply to U.S. government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. A U.S. government pension paid to an individual who is either (a) a resident and national of Portugal, or (b) a resident and citizen of Sweden is exempt from tax.

ⁱIncludes alimony.

^jExemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).

^kGenerally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.

^lApplies to 85% of the social security payments received from the U.S. government. The effective rate on the total social security payments received is 85% of the rate shown in the table. These rates also apply to the social security equivalent portion of tier 1 railroad retirement benefits (income code 22) received from the U.S. The remainder of tier 1, all of tier 2, dual, and supplemental railroad retirement benefits (income code 23) are taxed as shown in column 14 of this table.

Table 2. Compensation for Personal Services Performed in United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

Country (1)	Code (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Canada	16	Independent personal services ²	No limit	Any contractor	No limit ³	XIV
	17	Dependent personal services	No limit	Any U.S. or foreign resident	\$10,000	XV
	19	Studying and training: Remittance or allowances ¹⁵	183 days	Any foreign resident ⁵	No limit ³	XV
				No limit	Any foreign resident	No limit
France	15	Scholarship or fellowship grant ¹¹	5 yrs. ¹²	Any U.S. or foreign resident ⁷	No limit	21(1)
	16	Independent personal services ²	No limit	Any contractor	No limit	14
		20	Public entertainment	No limit	Any contractor	\$10,000 ⁸
	17	Dependent personal services ^{5,9}	183 days	Any foreign resident	No limit	15
		20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 ⁸
	18	Teaching ^{6,13}	2 yrs. ¹²	U.S. educat'l or research inst.	No limit	20
	19	Studying and training: ⁶ Remittances or allowances	5 yrs. ¹²	Any foreign resident	No limit	21(1)
			Compensation during study or training	12 consec. mos. 5 yrs. ¹²	French resident Other foreign or U.S. resident	\$8,000 \$5,000 p.a.
		Compensation while gaining experience	12 consec. mos.	French resident ¹⁰	\$8,000	21(2)
	Portugal	15	Scholarship or fellowship grant ¹¹	5 yrs.	Any U.S. or foreign resident ⁷	No limit
16		Independent personal services ²	182 days	Any contractor	No limit	15
		20	Public entertainment	No limit	Any contractor	\$10,000 p.a. ⁸
17		Dependent personal services ^{5,9}	182 days	Any foreign resident	No limit	16
		20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 p.a. ⁸
18		Teaching ^{6,14}	2 yrs.	U.S. educational institution	No limit	22
19		Studying and training: ⁶ Remittances or allowances	5 yrs.	Any foreign resident	No limit	23(1)
			Compensation during study or training	12 consec. mos. 5 yrs.	Portuguese resident Other foreign or U.S. resident	\$8,000 \$5,000 p.a.
		Compensation while gaining experience	12 consec. mos.	Portuguese resident ¹⁰	\$8,000	23(2)
Sweden		16	Independent personal services ²	No limit	Any contractor	No limit
	20	Public entertainment	No limit	Any contractor	\$6,000 ⁴	18
	17	Dependent personal services ^{5,9}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$6,000 ⁴	18
	19	Studying and training: Remittance or allowances ¹⁵	No limit	Any foreign resident	No limit	21

¹Refers to income codes described in Publication 515 and to be reported on Forms 1042-S.

²Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base.

³For public entertainers, the exemption does not apply if the gross receipts, including reimbursement, are more than \$15,000 for the calendar year.

⁴Exemption does not apply if gross receipts (including reimbursements) exceed this amount during any 12-month period.

⁵Exemption does not apply if the employee's compensation is borne by a permanent establishment or a fixed base that the employer has in the United States.

⁶Does not apply to compensation for research work primarily for private benefit.

⁷Grant must be from a nonprofit organization.

⁸Exemption does not apply if gross receipts (or compensation for Portugal), including reimbursements, exceed this amount. Income is

fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.

⁹Does not apply to fees of a foreign director of a U.S. corporation.

¹⁰Applies only if training or experience is received from a person other than alien's employer.

¹¹Does not apply to payments from the National Institutes of Health (NIH) under its Visiting Associate Program and Visiting Scientist Program.

¹²The combined period of benefits under Articles 20 and 21(1) cannot exceed 5 years.

¹³Exemption does not apply if the individual previously claimed the benefit of this Article.

¹⁴Exemption does not apply if the individual either (a) previously claimed the benefit of this Article, or (b) during the immediately preceding period, claimed the benefit of Article 23. The benefits under Articles 22 and 23 cannot be claimed at the same time.

¹⁵Applies only to full-time student or trainee.

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 law 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 the 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

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 Contribution 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.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1995-27 through 1995-52 will be found in Internal Revenue Bulletin 1996-1, dated January 2, 1996.

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