

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.

SPECIAL ANNOUNCEMENT

Announcement 96-32, page 18.

A public hearing will be held on May 22, 1996, on proposed regulations to implement a provision of the Tax Reform Act of 1984 permitting the reissuance of mortgage credit certificates.

INCOME TAX

T.D. 8660, page 4.

Final regulations under section 1502 of the Code disallow losses and exclude gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

Notice 96-25, page 11.

Electricity produced from certain renewable resources; calendar year 1996 inflation adjustment factor and reference prices. This notice announces the calendar year 1996 inflation adjustment factor and reference prices for the renewable electricity production credit under section 45 of the Code.

EMPLOYMENT TAXES

T.D. 8661, page 7.

IA-03-94, page 12.

Temporary and proposed regulations under section 6302 of the Code relate to Federal tax deposits by electronic funds transfer. A public hearing on the proposed regulations will be held on July 16, 1996.

ADMINISTRATIVE

Announcement 96-25, page 13.

Copies of proposed examination guidelines pertaining to multiemployer plans are now available from the Service.

Finding Lists begin on page 23.

Announcement of Disbarments and Suspensions begins on page 20.

In addition, the Service is seeking public comments about these guidelines before they are finalized in the Internal Revenue Manual.

Announcement 96-26, page 13.

This announcement provides information to assist taxpayers in requesting a refund of the excise tax described in section 4972 of the Code for certain nondeductible contributions that were retroactively exempted from the section 4972 excise tax by the Retirement Protection Act of 1994.

Announcement 96-27, page 16.

American Flag Defender, Inc., Berlin, MD, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

Announcement 96-28, page 16.

T.D. 8635, 1996-3 I.R.B. 5, relating to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or remain an approved nonbank trustee, is corrected.

Announcement 96-29, page 17.

T.D. 8637, 1996-4 I.R.B. 29, providing final and temporary rules on backup withholding, statement mailing requirements, and due diligence, is corrected.

Announcement 96-30, page 17.

DL-1-95, 1996-6 I.R.B. 28, relating to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes, is corrected.

Announcement 96-31, page 18.

EE-35-95, 1996-5 I.R.B. 19, relating to proposed regulations that provide guidance on calculation of an employee's accrued benefit derived from the employee's contributions to a qualified defined pension plan, is corrected.

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 1502.—Regulations

26 CFR 1.1502–13: *Intercompany transactions.*

T.D. 8660

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Consolidated Groups—Intercompany Transactions and Related Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations disallowing losses and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

DATES: These regulations are effective March 14, 1996.

For dates of applicability, see the effective date provision of these regulations.

FOR FURTHER INFORMATION CONTACT: Victor Penico or Richard Osborne of the Office of Assistant Chief Counsel (Corporate), (202) 622-7750 or (202) 622-7770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have 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 1545–1433. Responses to these collections of information are required to obtain a benefit, the avoidance of a possible gain because of basis adjustments relating to built-in loss.

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 average annual burden per respondent is 15 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, D.C. 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 July 12, 1995, the IRS and Treasury issued proposed and temporary regulations disallowing loss incurred by a member (M) of a consolidated group with respect to the stock of the common parent (P stock). The regulations also eliminate gain in certain transactions by M with respect to P stock. The regulations are effective for transactions occurring on or after July 12, 1995.

The IRS received comments on the proposed regulations and held a public hearing on December 11, 1995. After consideration of the comments and the statements made at the hearing, the IRS and Treasury adopt the proposed regulations with revisions in this Treasury decision. The significant comments and changes are discussed below.

Explanation of provisions

Scope of the regulations

The proposed regulations disallow all losses on P stock and eliminate gain in specified circumstances. Some commentators suggested that the regulations should treat gain and loss more symmetrically. Some suggested the regulations should achieve this goal by eliminating gain in all circumstances. Others suggested the regulations should disallow loss only in “abusive” circumstances.

Eliminating gain in all circumstances would effectively require complete single entity treatment of P stock. Implementing such a system would significantly increase the complexity of the consolidated return regulations. Notice 94–49 (1994–1 C.B. 358), included a detailed discussion of issues relating to the single entity treatment of P stock.

Limiting the loss disallowance rule to “abusive situations” would allow consolidated groups to rely on the separate-entity treatment of stock to claim losses and single-entity treatment to avoid gains. For example, taxpayers might plan to take advantage of separate entity treatment by having M purchase P stock. If the value of the stock has gone down at a time when the group wants to issue equity, M will sell its P stock at a loss (and claim the loss). If the value of the stock has gone up, the group can take advantage of single entity treatment by having P sell the stock, and no gain would be recognized under section 1032. The same would hold true if instead P had acquired M already owning P stock. Commentators did not suggest any generally applicable method of distinguishing between transactions in which loss should be allowed and those in which loss should not be allowed.

The IRS and Treasury have therefore concluded that the final regulations should retain the general approach of the proposed regulations.

Built-in losses

Some commentators suggested that if M joins the group at a time when it holds P stock with a built-in loss the loss should be allowed because it accrued outside the group. The final regulations do not allow this loss because doing so without ensuring that the built-in gain is taxed would allow the same selectivity and inconsistencies that the regulation is designed to prevent. In addition, allowing the loss would require tracing, which is inconsistent with the approaches to similar issues in §§1.1502–20 and 1.1502–32.

Commentators further suggested that interactions between the proposed regulations and §1.1502–32 could cause the group to recognize an artificial gain from the purchase of a corporation owning depreciated P stock. If M joins the group at a time when it holds P

stock with a built-in loss and M subsequently sells the stock, P will have a downward basis adjustment in its M stock because of the disallowed loss. See §1.1502-32(b)(3)(iii)(A). The commentators asserted that this basis adjustment would be inappropriate if the group has a cost basis in M stock because the basis of M will reflect the value of the P stock at the time of acquisition (rather than M's basis in the P stock). To address this problem, the final regulations allow the built-in loss to be waived immediately before M joins the group. The loss waiver is modeled after a similar provision in §1.1502-32(b)(4). The election, however, is limited to direct acquisitions of a corporation holding P stock in a cost basis transaction.

Gain relief

Commentators suggested that the gain relief should be broadened. Some suggested that the requirement that M receive the P stock in a capital contribution or section 351(a) transaction be eliminated. Others suggested elimination of the requirement that M dispose of the P stock immediately. Commentators also suggested that the gain relief should apply to options and warrants in P stock, and not merely to P stock.

The final regulations retain the requirements for gain relief but extend the relief to positions in P stock. Any further expansion of the gain relief would require additional limitations and complexities.

For instance, if M were not required to dispose of the P stock immediately, the regulations would have to require that M have no minority shareholders. If M had minority shareholders, the gain relief mechanism (treating cash as contributed to M followed by a purchase of the stock by M) would allow P a full basis adjustment in M stock for post-contribution appreciation rather than a pro rata adjustment as required by §1.1502-32 in the case of minority shareholders. Amending the mechanism to allow only pro rata adjustments (for example, through a direct basis adjustment rather than a cash transaction) would create further complexities, such as the interaction with §1.1502-20.

Expanding gain relief would require further adjustments if M stock were sold to another member of the group. For example, if B purchases the stock

of M from another member, B's basis in M will reflect the value of any P stock held by M. Thus, an increase to B's basis in the stock of M when M disposes of P stock would be unwarranted. Additional special rules would be needed if M were permitted to acquire P stock by purchase rather than through a capital contribution. Moreover, the IRS and Treasury believe that in many cases gain on P stock is avoidable without further expansion of the regulations. See, e.g., §1.1032-2(b) (no gain or loss on M's use of certain P stock in triangular reorganizations). Therefore, the final regulations retain the requirements of the proposed regulations for gain relief.

In addition, commentators claimed that the relief when M is newly formed was unclear. The final regulations clarify that M can be newly formed as part of the plan to dispose of P stock.

Dealers in P stock

Some commentators suggested that if a subsidiary is a dealer in P stock, it should be allowed to recognize losses from its dealing activity. They argued that dealing in P stock increases the liquidity of the stock and that the proposed regulations would curtail this activity by forcing the recognition of gain but disallowing loss with respect to P stock.

In response to these comments, the final regulations include an exception for dealers in P stock or positions in P stock. Under the final regulations, a dealer in P stock or positions recognizes both gain and loss on shares of the stock to the extent taken into account because of section 475(a) (or 1256(a) in the case of dealer equity options). To be eligible for this exception, M must regularly trade in P stock (of the same class) in the ordinary course of its business as a dealer. In addition, the gain or loss on a share is eligible only to the extent it is taken into account under section 475(a) (or in the case of dealer equity options, section 1256(a) to the extent that it would be taken into account under the principles of section 475), and the basis of the share of stock must not be adjusted by reference to the basis of any other property (for example, under §1.302-2) or by reference to income, gain, deduction or loss from other property. For example, loss that is suspended under section 475(b)(3) and

that is recognized under section 1001 as the result of a disposition of the security is not eligible for the relief, but loss taken into account under section 475(a) immediately before a taxpayer ceases to be the owner of the security is eligible for relief. Finally, relief is not available if either M or any other member of the group has structured or engaged in any transaction while a member (or in anticipation of becoming a member) during the taxable year or in any year within the preceding five taxable years that is open for assessment under section 6501 with a principal purpose of avoiding gain or creating loss on P stock subject to section 475(a).

Positions in P stock

In response to comments, the final regulations clarify that the scope of loss disallowance is coextensive with the scope of section 1032. For example, cash-settled options are within the scope of loss disallowance. See Rev. Rul. 88-31 (1988-1 C.B. 302). No inference is intended as to the extent to which section 1032 and these regulations apply to derivative positions in P stock other than options.

One commentator argued that the loss disallowance rule should not apply to options in P stock because the selectivity available for stock is not present with respect to options. The final regulations do not adopt this approach. If M purchases an option to acquire P stock and the option expires when it is worthless, M has a loss. If the option is in the money, M can purchase the P stock and hold it indefinitely. Thus, the group would have the ability to recognize losses while avoiding gains.

Effective dates

The final regulations apply to gain or loss taken into account on or after July 12, 1995, and to transactions (such as a member leaving the group) occurring on or after July 12, 1995. Thus, the regulations are intended to cover the same gain, loss and transactions covered by the rules published in 1995-32 I.R.B. 47. If, however, a taxpayer takes a gain or loss into account, or engages in a transaction, on or after July 12, 1995, during a tax year ending prior to December 31, 1995, the taxpayer may treat the gain, loss or transaction under

the rules of the temporary rules published in 1995–32 I.R.B. 47 instead of under the rules of the final regulations.

Special Analysis

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 is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) 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.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for §1.1502–13 to read as follows:

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

Section 1.1502–13 also issued under 26 U.S.C. 1502. * * *

Par. 2. In §1.267(f)–1(k), the first sentence is amended by removing the reference “‘1.1502–13T(f)(6)’” and adding “‘1.1502–13(f)(6)’” in its place.

Par. 3. Section 1.1502–13(f)(6) is added to read as follows:

§1.1502–13 Intercompany transactions.

* * * * *

(f) * * *

(6) *Stock of common parent.* In addition to the general rules of this

section, this paragraph (f)(6) applies to parent stock (P stock) and positions in P stock held or entered into by another member. For this purpose, P stock is any stock of the common parent held by another member or any stock of a member (the issuer) that was the common parent if the stock was held by another member while the issuer was the common parent.

(i) *Loss stock—(A) Recognized loss.* Any loss recognized, directly or indirectly, by a member with respect to P stock is permanently disallowed and does not reduce earnings and profits. See §1.1502–32(b)(3)(iii)(A) for a corresponding reduction in the basis of the member’s stock.

(B) *Other cases.* If a member, M, owns P stock, the stock is subsequently owned by a nonmember, and, immediately before the stock is owned by the nonmember, M’s basis in the share exceeds its fair market value, then, to the extent paragraph (f)(6)(i)(A) of this section does not apply, M’s basis in the share is reduced to the share’s fair market value immediately before the share is held by the nonmember. For example, if M owns shares of P stock with a \$100x basis and M becomes a nonmember at a time when the P shares have a value of \$60x, M’s basis in the P shares is reduced to \$60x immediately before M becomes a nonmember. Similarly, if M contributes the P stock to a nonmember in a transaction subject to section 351, M’s basis in the shares is reduced to \$60x immediately before the contribution. See §1.1502–32(b)(3)(iii)(B) for a corresponding reduction in the basis of M’s stock.

(C) *Waiver of built-in loss on P stock—(1) In general.* If a nonmember that owns P stock with a basis in excess of its fair market value becomes a member of the P consolidated group in a qualifying cost basis transaction, the group may make an irrevocable election to reduce the basis of the P stock to its fair market value immediately before the nonmember becomes a member of the P group. If the nonmember was a member of another consolidated group immediately before becoming a member of the P group, the reduction in basis is treated as occurring immediately after it ceases to be a member of the prior group. A qualifying cost basis transaction is the purchase (*i.e.*, a transaction in which basis is determined under section 1012) by members of the P consolidated group

(while they are members) in a 12-month period of an amount of the nonmember’s stock satisfying the requirements of section 1504(a)(2).

(2) *Election.* The election described in this paragraph (6)(i)(C) must be made in a separate statement entitled “ELECTION TO REDUCE BASIS OF P STOCK UNDER §1.1502–13(f)(6).” The statement must be filed with the P consolidated group’s return for the year in which the nonmember becomes a member, and it must be signed by both P and the nonmember. The statement must identify the fair market value of, and the amount of the basis reduction in, the P stock.

(ii) *Gain stock.* If a member, M, would otherwise recognize gain on a qualified disposition of P stock, then immediately before the qualified disposition, M is treated as purchasing the P stock from P for fair market value with cash contributed to M by P (or, if necessary, through any intermediate members). A disposition is a qualified disposition only if—

(A) The member acquires the P stock directly from the common parent (P) through a contribution to capital or a transaction qualifying under section 351(a) (or, if necessary, through a series of such transactions involving only members);

(B) Pursuant to a plan, the member transfers the stock immediately to a nonmember that is not related, within the meaning of section 267(b) or 707(b), to any member of the group;

(C) No nonmember receives a substituted basis in the stock within the meaning of section 7701(a)(42);

(D) The P stock is not exchanged for P stock;

(E) P neither becomes nor ceases to be the common parent as part of, or in contemplation of, the disposition or plan; and

(F) M is neither a nonmember that becomes a member nor a member that becomes a nonmember as part of, or in contemplation of, the disposition or plan.

(iii) *Mark-to-market of P stock.* Paragraphs (f)(6)(i) and (ii) of this section shall not apply to any gain or loss from a share of P stock held by a member, M, if—

(A) M regularly trades in P stock (of the same class) with customers in the ordinary course of its business as a dealer;

(B) The gain or loss on the share is taken into account by M pursuant to section 475(a);

(C) M's basis in the share is not adjusted by reference to the basis of any other property or by reference to income, gain, deduction, or loss from other property; and

(D) Neither M nor any other member of the group has structured or engaged in any transaction while a member (or in anticipation of becoming a member), during the taxable year or in any year within the preceding five taxable years that is open for assessment under section 6501, with a principal purpose of avoiding gain or creating loss on P stock subject to section 475(a).

(iv) *Options, warrants, and other positions*—(A) *In general.* This paragraph (f)(6) applies with appropriate adjustments to positions in P stock to the extent that P's gain or loss from an equivalent position would not be recognized under section 1032. Thus, if M purchases an option to buy or sell P stock and sells the option at a loss, the loss is permanently disallowed under paragraph (f)(6)(i)(A) of this section. Similarly, if M is the grantor of such an option and becomes a nonmember, then the principles of paragraph (f)(6)(i)(B) of this section apply to the extent that M would recognize loss from cash settlement of the option at its fair market value immediately before M becomes a nonmember, and proper adjustments must be made in the amount of any gain or loss subsequently realized from the position by M. If P grants M an option to acquire P stock in a transaction meeting the requirements of paragraph (f)(6)(ii) of this section, M is treated as having purchased the option from P for fair market value with cash contributed to M by P.

(B) *Mark-to-market of positions in P stock.* For purposes of paragraph (f)(6)(iii) of this section, gain or loss with respect to a position taken into account under section 1256(a) is treated as taken into account under section 475(a) to the extent that the gain or loss would be taken into account under the principles of section 475.

(v) *Effective date.* This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995. For example, if S sells P stock to B at a loss prior to July 12,

1995, and B sells the P stock to a nonmember after July 12, 1995, S's loss is disallowed because it is taken into account after July 12, 1995. If a taxpayer takes a gain or loss into account or engages in a transaction on or after July 12, 1995, during a tax year ending prior to December 31, 1995, the taxpayer may treat the gain or loss or the transaction under the rules of §1.1502-13T(f)(6) (published in 1995-32 I.R.B. 47), instead of under the rules of this paragraph (f)(6).

* * * * *

Par. 5. In §1.1502-13(g)(2)(i)(B), the last sentence is amended by removing the language “paragraph (f)(4) of this section and §1.1502-13T(f)(6)” and adding “paragraphs (f)(4) and (6) of this section.”

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved March 8, 1996.

Leslie Samuels,
Assistant Secretary of the Treasury
(Tax Policy).

(Filed by the Office of the Federal Register on March 13, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 14, 1996, 61 F.R. 10447)

Section 6302.—Mode or Time of Collection

26 CFR 1.6302-4T: Use of financial institutions in connection with individual income taxes (temporary).

T.D. 8661

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 31

Federal Tax Deposits by Electronic Funds Transfer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT) under section 6302 of the Internal Revenue Code. The document also includes temporary regulations providing authority for the

voluntary payment of certain Federal taxes by EFT. The regulations would provide the public with additional guidance needed to make deposits by EFT and would affect certain taxpayers not previously required to make deposits by EFT. The text of these temporary regulations also serves as the text of a cross-reference notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: March 21, 1996.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202-622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1994, the IRS issued Treasury Decision 8553 (59 FR 35414), setting forth temporary regulations relating to the deposit of Federal taxes by EFT. Those temporary regulations explained which taxpayers must make deposits by electronic funds transfer, which taxes must be so deposited, and when the deposits must commence. The text of those temporary regulations also served as the text of a cross-reference notice of proposed rulemaking published in the same issue of the Federal Register at 59 FR 35418.

The IRS received many comment letters in response to the publication of those temporary regulations. In addition, a number of oral comments were made at the public hearing held on October 3, 1994. With limited exceptions, those comments will not be addressed in this document, but instead will be addressed in final regulations that the IRS expects to publish in the near future.

Under the temporary regulations currently in place, the requirement to begin EFT deposits is based on the taxpayer's total deposits of the taxes imposed by chapters 21 (FICA taxes), 22 (railroad retirement taxes) and 24 (income tax withheld at source) of the Internal Revenue Code during certain “determination periods.” If the taxpayer's deposits of those taxes during a determination period exceed a prescribed dollar threshold, the taxpayer must begin to deposit by EFT on and after the applicable effective date prescribed in the temporary regulations, unless otherwise exempted.

The amendments to the temporary regulations set forth in this document provide a special rule for any taxpayer that does not make deposits of the taxes imposed by chapters 21, 22, and 24, but that does make deposits of other taxes required to be deposited pursuant to regulations issued under

section 6302 (for instance, corporate income taxes). If the taxpayer's total deposits for all other depository taxes during a prescribed determination period exceed a prescribed dollar threshold, the taxpayer must begin depositing by EFT on and after the applicable effective date prescribed in

these amendments to the temporary regulations, unless otherwise exempted. (A taxpayer will become subject to the EFT requirement for the January 1, 1998, applicable effective date by exceeding the threshold amount during either calendar year 1995 or calendar year 1996.) The phase-in schedule is as follows:

<i>Threshold Amount</i>	<i>Determination Period</i>	<i>Applicable Effective Date</i>
\$50 thousand	1-1-95 to 12-31-95	January 1, 1998
\$50 thousand	1-1-96 to 12-31-96	January 1, 1998
\$20 thousand	1-1-97 to 12-31-97	January 1, 1999

The current temporary regulations provide that a taxpayer subject to the EFT requirement must use EFT for all deposits required to be made on and after the applicable effective date. This requirement may subject a taxpayer to two different modes of deposit with respect to the same return period. For example, assume an employer is required to deposit by EFT beginning with the January 1, 1997, applicable effective date. The employer pays its employees weekly and has a payday on December 31, 1996. The employment taxes incurred for that payday would be reportable on the fourth quarter 1996 Form 941, but the due date for the deposit of those taxes would occur in early January 1997. Under the current rule, all the deposits relating to the fourth quarter 1996 Form 941 would be made by paper coupon (FTD coupon) with the exception of the deposit for the December 31 payroll, which would be made by EFT. For purposes of consistency, this rule is being changed with respect to the January 1, 1997, applicable effective date and thereafter to provide that the first deposit required to be made by EFT is the first deposit with respect to a deposit obligation incurred for a return period beginning on or after the applicable effective date. Thus, under the revised rule, the deposit with respect to the December 31 payday in the example would be made by FTD coupon rather than by EFT.

The current temporary regulations provide that a deposit by EFT is deemed made (i) at the time a debit is made (the amount is withdrawn from the taxpayer's account) if the Government's authorized financial agent debits the taxpayer's account; or (ii) in all other cases, at the time the funds are

credited to the Treasury's general account. Comments by the Federal Reserve Board, the Financial Management Service, and IRS personnel recommended a clarification of that provision. Based on those recommendations, the current temporary regulations are amended to provide that a deposit by EFT is deemed made (i) at the time a debit is made (the amount is withdrawn from the taxpayer's account and not returned or reversed) if the Government's authorized agent originates a debit entry which instructs the taxpayer's financial institution to debit the taxpayer's account for a Federal tax payment; or (ii) in all other cases (assuming the amount is not returned or reversed), either at the time the funds are paid into the Treasury's general account at the Federal Reserve Bank of New York or at the time the funds are invested under Treasury's Tax and Loan program (see 31 CFR Part 203). Investment occurs when the funds are credited by the Federal Reserve Bank to the depository institution's note balance.

These temporary regulations also define the term *taxpayer*. For purposes of the EFT requirement, a taxpayer is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation. This definition responds to numerous inquiries following the issuance of the current temporary regulations.

Sections 31.6302-1T(h)(2) (describing the taxes required to be deposited by EFT) and 31.6302-1T(h)(8) (describing when a deposit of tax by EFT is deemed to be a payment of tax) have been revised solely for purposes of

clarity. No substantive change is being made to either of the provisions.

These temporary regulations allow individual taxpayers to make voluntary payments of income tax by EFT, even though individual income tax is not required to be deposited with a government depository. The voluntary EFT payments are to be made in accordance with instructions provided in procedures to be prescribed by the Commissioner at a future date.

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 rules and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary 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 Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & 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 31 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6302-4T also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 1.6302-4T is added to read as follows:

§1.6302-4T Use of financial institutions in connection with individual income taxes (temporary).

Voluntary payments by electronic funds transfer. An individual may voluntarily remit by electronic funds transfer all payments of tax imposed by subtitle A of the Code, including any payments of estimated tax. Such payments must be made in accordance with procedures to be prescribed by the Commissioner.

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

Par. 3. The authority citation for part 31 continues to read in part as follows:

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

Par. 4. Section 31.6302-1T is amended as follows:

1. Paragraph (h)(1)(ii)(A) is redesignated as paragraph (h)(1)(ii)(A)(I); the first sentence in newly designated paragraph (h)(1)(ii)(A)(I) is removed, and three new sentences are added in its place; and, in the last sentence of the newly designated paragraph, the text preceding the table is revised.

2. Paragraph (h)(1)(ii)(A)(2) is added.

3. Paragraphs (h)(2), (h)(3), (h)(7) and (h)(8) are revised.

The additions and revisions read as follows:

§31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA)—deposits required to be made by electronic funds transfer after December 31, 1994 (temporary).

* * * * *

(h) * * * (1) * * *

(ii) *Periods after December 31, 1994.* (A)(I) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes described in paragraph (h)(2) of this section by electronic funds transfer (as defined in paragraph (h)(3) of this section) unless exempted under paragraph (h)(4) of this section. If the

applicable effective date is January 1, 1995, or January 1, 1996, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on and after the applicable effective date. If the applicable effective date is January 1, 1997, or thereafter, the requirement to deposit by electronic funds transfer applies to all deposits required to be made with respect to deposit obligations incurred for return periods beginning on and after the applicable effective date. * * * The threshold amounts, determination periods and applicable effective dates for purposes of this paragraph (h)(1)(ii)(A)(I) are as follows: * * *

(2) Unless exempted under paragraph (h)(4) of this section, a taxpayer that does not deposit any of the taxes imposed by chapters 21, 22, and 24 during the applicable determination periods set forth in paragraph (h)(1)(ii)(A)(I) of this section, but that does make deposits of other depository taxes (as described in paragraph (h)(2) of this section), is nevertheless subject to the requirement to deposit by electronic funds transfer if the taxpayer's aggregate deposits of all depository taxes exceed the threshold amount set forth in this paragraph (h)(1)(ii)(A)(2) during an applicable 12-month determination period. This requirement to deposit by electronic funds transfer applies to all depository taxes due with respect to deposit obligations incurred on and after the applicable effective date. The threshold amount, determination periods, and applicable effective dates for purposes of this paragraph (h)(1)(ii)(A)(2) are as follows:

<i>Threshold Amount</i>	<i>Determination Period</i>	<i>Applicable Effective Date</i>
\$50 thousand	1-1-95 to 12-31-95	January 1, 1998
\$50 thousand	1-1-96 to 12-31-96	January 1, 1998
\$20 thousand	1-1-97 to 12-31-97	January 1, 1999

* * * * *

(2) *Taxes required to be deposited by electronic funds transfer.* The requirement to deposit by electronic funds transfer under paragraph (h)(1)(ii) of this section applies to all the taxes required to be deposited under §§1.6302-1, 1.6302-2, and 1.6302-3 of this chapter; §§31.6302-1, 31.6302-2, 31.6302-3, 31.6302-4, and 31.6302(c)-3; and §40.6302(c)-1 of this chapter.

(3) *Definitions*—(i) *Electronic funds transfer.* An *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 94-48 (1994-2 C.B. 694), (see §601.601-(d)(2) of this chapter), or in accordance with procedures subsequently prescribed by the Commissioner.

(ii) *Taxpayer.* For purposes of this section, a *taxpayer* is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation.

* * * * *

(7) *Time deemed deposited.* A deposit of taxes by electronic funds transfer will be deemed made—

(i) At the time a debit is made (the amount is withdrawn from the taxpayer's account and not returned or reversed) if the Government's authorized agent originates a debit entry which instructs the taxpayer's financial institution to debit the taxpayer's account for a Federal tax payment; or

(ii) In all other cases (assuming the amount is not returned or reversed), either at the time that the funds are paid into the Treasury's general account at the Federal Reserve Bank of New York, or at the time that the funds are invested under Treasury's Tax and Loan program (see 31 CFR Part 203). Investment occurs when the funds are credited by the Federal Reserve Bank to the depository institution's note balance.

(8) *Time deemed paid.* In general, an amount deposited under this paragraph (h) will be considered to be a payment of tax on the last day prescribed for filing the applicable return for the

return period (determined without regard to any extension of time for filing the return) or, if later, at the time deemed deposited under paragraph (h)(7) of this section. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 22, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 21, 1996, 61 F.R. 11548)

Part III. Administrative, Procedural, and Miscellaneous

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1996

Notice 96-25

This notice publishes the inflation adjustment factor and reference prices for calendar year 1996 for the renewable electricity production credit under § 45(a) of the Internal Revenue Code. The 1996 inflation adjustment factor and reference prices are used in determining the availability of the credit. The 1996 inflation adjustment factor and reference prices apply to calendar year 1996 sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt-hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under § 45(a) is reduced by an amount that bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents bears to (B) 3 cents. Under § 45(b)(2), the 1.5 cents in § 45(a) and the 8 cents in § 45(b)(1) are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs.

Section 45(c)(1) defines qualified energy resources as wind and closed-loop biomass. Section 45(c)(3) defines

a qualified facility as any facility owned by the taxpayer that originally is placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.

Section 45(d)(2)(A) requires that the Secretary not later than April 1 of each calendar year determine and publish in the Federal Register the inflation adjustment factor and the reference prices for the calendar year. As required by § 45(d)(2)(A), the inflation adjustment factor and the reference prices for the 1996 calendar year were published in the Federal Register on March 29, 1996, (61 Fed. Reg. 14208).

Section 45(d)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(d)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICES

The inflation adjustment factor for calendar year 1996 is 1.0750. The reference prices for calendar year 1996 are 5.5 cents per kilowatt-hour for facilities producing electricity from wind energy resources and 0 cents per kilowatt-hour for facilities producing

electricity from closed-loop biomass energy resources. The reference price for electricity produced from closed-loop biomass, as defined in § 45(c)(2), is based on a determination under § 45(d)(2)(C) that in calendar year 1995 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

PHASE-OUT CALCULATION

Because the 1996 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8 cents per kilowatt hour multiplied by the inflation adjustment factor, the phase-out of the credit provided in § 45(b)(1) does not apply to electricity produced from wind or closed-loop biomass energy resources sold during calendar year 1996.

CREDIT AMOUNT

As required by § 45(b)(2), the 1.5¢ amount in § 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by § 45(b)(2), the renewable electricity production credit for calendar year 1996 is 1.6¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

DRAFTING INFORMATION CONTACT

The principal author of this notice is David A. Selig of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Selig on (202) 622-3040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Federal Tax Deposits by Electronic Funds Transfer

IA-03-94

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 relating to the deposit of Federal taxes by electronic funds transfer under section 6302 of the Internal Revenue Code. 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 and outlines of topics to be discussed at the public hearing scheduled for July 16, 1996, beginning at 10 a.m., must be received by June 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA-03-94), 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-03-94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the Commissioner's Conference Room, room 3313, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Vincent G. Surabian, 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:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the Federal Register contain amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) and an addition to the Income Tax Regulations (26 CFR part 1). These amendments relate to the deposit of Federal taxes by electronic funds transfer. The text of those 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 timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 16, 1996, beginning at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building. 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 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 19, 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 outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entry to read as follows:

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

Section 1.6302-4 also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 1.6302-4 is added to read as follows:

§1.6302-4 Use of financial institutions in connection with individual income taxes.

[The text of this proposed section is

the same as the text of §1.6302-4T published elsewhere in this issue of the Federal Register].

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

Par. 3. The authority citation for part 31 continues to read in part as follows:

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

Par. 4. Proposed §31.6302-1(h), published July 11, 1994, (59 FR 35418) by cross-referencing temporary regulations published the same day (59 FR 35414) is amended as follows:

1. Paragraph (h)(1)(ii)(A) is redesignated as paragraph (h)(1)(ii)(A)(I); the first sentence in the paragraph is removed, and three new sentences are added in its place; and, in the last sentence of the newly designated paragraph, the text preceding the table is revised.

2. Paragraph (h)(1)(ii)(A)(2) is added.

3. Paragraphs (h)(2), (h)(3), (h)(7) and (h)(8) are revised.

The revised and added provisions read as follows:

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

[The text of paragraphs (h)(1)(ii)(A)(I), (h)(1)(ii)(A)(2), (h)(2), (h)(3), (h)(7) and (h)(8) is the same as the text of those paragraphs in §31.6302-1T 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 March 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for March 21, 1996, 61 F.R. 11595)

Employee Plans; Examination Guidelines

Announcement 96-25

The Internal Revenue Service has developed proposed examination guidelines for employee plans examiners to use when examining multi-

employer plans. The guidelines provide technical background and guidance as to issues that should be considered during an examination. The guidelines are not intended to be all inclusive, and may be modified based on specific issues encountered by the examiners during an examination.

As with earlier examination guidelines, the Service is seeking public comments with respect to the proposed examination guidelines pertaining to multiemployer plans before those guidelines are finalized in the Internal Revenue Manual.

A copy of the proposed examination guidelines pertaining to multiemployer plans may be obtained by submitting a written request to the Internal Revenue Service, Attention: Assistant Commissioner (Employee Plans and Exempt Organizations), CP:E:EP:FC, 1111 Constitution Avenue, N.W., Washington, DC 20224. Written comments on the guidelines pertaining to multiemployer plans may be submitted on or before July 22, 1996, to the Internal Revenue Service, Attention: Assistant Commissioner (Employee Plans and Exempt Organizations), CP:E:EP:P:1, 1111 Constitution Avenue, N.W., Washington, DC 20224.

Refund Requests under Section 4972(c)(6)

Announcement 96-26

This announcement provides information to assist taxpayers in requesting refunds of the excise tax under § 4972 of the Internal Revenue Code for nondeductible contributions that were retroactively exempted from the § 4972 excise tax by the Retirement Protection Act of 1994 (RPA '94).

Section 4972 imposes an excise tax on employers (other than governmental and tax exempt employers) equal to 10 percent of the nondeductible contributions made to a qualified employer plan. Section 4972(c)(6)(B), added by § 755 of RPA '94, provides a limited exception to this excise tax. Under § 4972(c)(6)(B), the § 4972 excise tax does not apply to contributions to defined contribution plans that are nondeductible solely because of the § 404(a)(7) combined limit on deductions for contributions. The § 4972(c)(6)(B) exception to the § 4972 excise tax applies only if the

defined benefit plans of the employer taken into account under § 404(a)(7) have more than 100 participants under § 404(a)(1)(D), and only to the extent that nondeductible contributions to defined contribution plans do not exceed 6 percent of compensation paid or accrued to beneficiaries under the defined contribution plans.

Section 4972(c)(6)(B) is effective for taxable years ending on or after December 31, 1992. For some of the taxable years to which § 4972(c)(6)(B) applies, the § 4972 excise tax was due before the enactment of § 4972(c)(6)(B) in RPA '94. Accordingly, employers that paid the § 4972 excise tax for taxable years ending on or after December 31, 1992, may be entitled to a refund.

In order to request a refund of the § 4972 excise tax on account of § 4972(c)(6)(B) for an employer's taxable year, the employer must submit an amended Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, for that taxable year. The words “§ 4972(c)(6)(B) Refund Request” should be printed clearly and highlighted on the top right corner of the Form 5330. Under § 301.6402-2(b)(1) of the Procedure and Administration Regulations, a claim for refund must set forth in detail each ground upon which a refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The Service has identified the information listed on the attached sample worksheet (Exhibit 1) as needed to provide sufficient facts to enable the Service to evaluate § 4972(c)(6)(B) claims. This information generally relates to contributions, limits on deductions and participant compensation for all relevant qualified employer plans. The § 4972 excise tax for the taxable year, calculated consistently with the computations shown in the sample worksheet, should be entered in line 12j of Form 5330, and the remainder of the form should be completed consistently with this calculation. Employers must also include copies of all previously filed Forms 5330 that reflect § 4972 tax liability for any of the taxable years affected, as well as any additional information relevant under the particular circumstances.

The Service is issuing a field directive to the affected Internal Revenue Service Centers, to assist those Service Centers in processing refund requests under § 4972(c)(6)(B).

Exhibit 1

Worksheet for Computation of Corrected Section 4972 Excise Tax

General Information

Employer's taxable year ending (month/day/year): _____

EIN: _____

List of Plans subject to 404(a)(7)

Name of defined benefit plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Name of money purchase pension plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Name of profit-sharing and stock bonus plan(s):	Plan No.
_____	_____
_____	_____
_____	_____

Contributions to defined benefit and money purchase pension plans that are deductible (before giving effect to section 404(a)(7))

- 1. Contributions paid for year:
 - (a) to defined benefit plans listed above _____
 - (b) to money purchase plans listed above _____
- 2. Nondeductible carryover from prior years (carryover under section 404(a)(1)(E)) _____
- 3. Deductible limit for year (taking into account section 404(a)(1)(D), but not section 404(a)(7)) _____
- 4. Amount deductible before giving effect to section 404(a)(7) (lesser of the sum of lines (1)(a), (1)(b) and (2), or line (3)) _____

Contributions to profit-sharing and stock bonus plans listed above that are deductible (before giving effect to section 404(a)(7))

- 5. Contributions paid for year to profit-sharing and stock bonus plans listed above _____
- 6. Nondeductible carryover from prior years (carryover under section 404(a)(3)(A)(ii)) _____
- 7. Deductible limit for year (before giving effect to section 404(a)(7)) _____
- 8. Amount deductible before giving effect to section 404(a)(7) (lesser of the sum of lines (5) and (6), or line (7)) _____

Determination of Section 404(a)(7) Deductible Limit

9. Total compensation under section 404(a)(7)(A)(i) _____
10. 25% of line 9 _____
11. Amount of contributions made to defined benefit plans necessary to satisfy the minimum funding standard of section 412 (treating the minimum required contribution as not less than the unfunded current liability, for any plan to which section 404(a)(1)(D) applies) _____
12. Section 404(a)(7) limit (greater of line 10 or line 11) _____

Determination of deductible contribution amount

13. Deductible contributions without regard to section 404(a)(7) (line 4 plus line 8) _____
14. Deductible contributions under section 404(a)(7) without section 404(a)(7)(B) carryover (lesser of line 12 or line 13) _____
15. Contributions carried over from prior years under section 404(a)(7)(B), consisting of contributions:
- (a) Attributable to contributions to defined benefit plans and/or defined contribution plans that were not exempted from section 4972 tax for the taxable year in which contributed _____
 - (b) Attributable to contributions to defined contribution plans that were exempted from the section 4972 tax for the taxable year in which contributed _____
 - (c) Total (sum of (a) and (b)) _____

Note: Line 15(c) is not necessarily the same as the sum of lines 2 and 6.

16. Deductible section 404(a)(7)(B) carryover (lesser of line 15(c), or line 10 minus line 14, but not less than zero) _____
17. Total deductible contribution amount (line 14 plus line 16) _____

Determination of nondeductible contributions exempt from section 4972 tax

18. Nondeductible contributions for the year exempted from section 4972 tax (least of: (1) line 13 minus line 14; (2) line 1(b) plus line 5; or (3) 6% of compensation of participants in the employer's defined contribution plans) _____
19. Deductible portion of nondeductible carryover contributions exempt from section 4972 tax for the taxable year in which contributed (lesser of (1) line 16 minus line 15(a), with the result not less than zero, and (2) line 15(b)) _____
20. Net section 404(a)(7) nondeductible carryover contributions exempt from section 4972 tax (line 15(b) minus line 19) _____
21. Total nondeductible contributions and carryovers exempted from the section 4972 tax for the current year (line 18 plus line 20) _____

Determination of corrected section 4972 excise tax

22. Contributions subject to section 4972 tax (sum of all contributions made for the year or carried over from previous years under section 404(a)(1)(E), 404(a)(3)(A)(ii), or 404(a)(7)(B), minus the sum of lines 17 and 21) _____
23. Section 4972 excise tax (10% times line 22) _____

Deletion from Cumulative List of Organizations Contributions to Which Are Deductible Under Section 170 of the Code

Announcement 96-27

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 22, 1996, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

American Flag Defender, Inc.
Berlin, MD

Nonbank Trustee Net Worth Requirements; Correction

Announcement 96-28

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8635 [1996-3 I.R.B. 5]) which were published in the Federal Register on Wednesday, December 20, 1995 (60 FR 65547), and relates to nonbank trustees with respect to the adequacy of net worth requirements that must be satisfied in order to be or remain an approved nonbank trustee.

EFFECTIVE DATE: December 20, 1995.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 401 and 408 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8635) contain errors that are misleading and in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8635), which was the subject of FR Doc. 95-30684, is corrected as follows:

§ 1.401(f)-1 [Corrected]

1. On page 65549, column 1, amendatory instruction 2. under "Par. 4.", line 1 is corrected by adding a closed quotation mark following the number "401(d)(1)".

§ 1.408-2 [Corrected]

2. On page 65549, column 1, amendatory instruction 8. under "Par. 5.", line 3, the language "the language '(n)(3) to (n)(7)' and" is corrected to read "the language '(n)(3) to (7)' and".

3. On page 65549, column 1, amendatory instruction 9. under "Par. 5.", line 5, the language "adding 'the address prescribed by the'" is corrected

to read "adding 'address prescribed by the'; and in the last two lines, the language "(e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)-(v)(B)." is corrected to read "(e)(5)(iv), and in the first sentence of newly designated (e)(7)(v)(B)."

4. On page 65549, column 2, the amendatory instruction 17. under "Par. 5." is corrected to read as follows:

17. Removing the language "subparagraph, subdivision (n)(3)(v)" and adding "paragraph (e)(5), and paragraph (e)(2)(v)" in its place, and removing the language "subparagraph (n)(8)" and adding "paragraph (e)(7)" in its place, in newly designated paragraph (e)(5)(viii).

5. On page 65549, column 2, amendatory instruction 18. under "Par. 5.", line 3, the language '(e)(5)(i)(A)(3)' in its place, and" is corrected to read '(e)(5)(i)(A)(3)' in its place, and".

6. On page 65549, column 2, amendatory instruction 20. under "Par. 5." is corrected to read as follows:

20. Adding new paragraph (e)(5)-(ii)(A) and (D).

7. On page 65549, column 2, § 1.408-2 (e)(5)(ii)(A), second line from the bottom of the paragraph, the reference to "paragraph (e)(6)(ii)(B) and (C)" is corrected to read "paragraph (e)(5)(ii)(B) and (C)".

8. On page 65549, column 3, § 1.408-2 (e)(5)(ii)(D), sixth line from the top of the column, the reference to "paragraph (e)(5)(ii)(B)(2)" is corrected to read "paragraph (e)(5)-(ii)(B)(2)".

9. On page 65549, column 3, § 1.408-2 (e)(5)(ii)(D), eighth line from the top of the column, the reference to "paragraph (e)(5)(ii)-(C)(2)" is corrected to read "paragraph (e)(5)(ii)(C)(2)".

10. On page 65549, column 3, § 1.408-2 (e)(5)(ii)(D), (ii) paragraph (c) of the *Example*, line 2, the reference to "§ 1.408-2 (e)(6)(ii)(B)" is corrected to read "§ 1.408-2 (e)(5)-(ii)(B)".

11. On page 65550, column 1, § 1.408-2 (e)(5)(ii)(D), (ii) paragraph (d) of the *Example*, line 2, the reference to "§ 1.408-2 (e)(6)(ii)(C)" is corrected to read "§ 1.408-2 (e)(5)-(ii)(C)".

Michael L. Slaughter,
Acting Chief, Regulations Unit
Assistant Chief Counsel (Corporate).

Backup Withholding, Statement Mailing Requirements, and Due Diligence; Correction

Announcement 96-29

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD 8637 [1996-4 I.R.B. 29]) which were published in the Federal Register Thursday, December 21, 1995 (60 FR 66105), providing final and temporary rules on backup withholding, statement mailing requirements, and due diligence.

EFFECTIVE DATE: December 21, 1995.

FOR FURTHER INFORMATION CONTACT: Renay France of the Office of Assistant Chief Counsel (Income Tax and Accounting) with respect to domestic transactions, (202) 622-4910 (not a toll-free call); and Teresa Burridge Hughes of the Office of Assistant Chief Counsel (International) with respect to international transactions, (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under sections 3406, 6042, 6044, 6049, and 6050N of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 8637) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8637), which was

the subject of FR Doc. 95-30733, is corrected as follows:

§ 1.6049-6 [Corrected]

1. On page 66111, column 2, in the Par. 4. amendatory instruction, an amendatory instruction is added after 2.c. to read “d. Paragraph (a), fifth sentence.”

§ 31.3406(d)-4 [Corrected]

2. On page 66126, column 1, § 31.3406(d)-4 (a)(3), line 18, the language “as described in sections 3406(a)(1)(B) or” is corrected to read “as described in section 3406(a)(1)(B) or”.

3. On page 66126, column 2, § 31.3406(d)-4 (b)(1)(iii), line 4, the language “subject to withholding under sections” is corrected to read “subject to withholding under section”.

§ 31.3406(h)-2 [Corrected]

4. On page 66130, column 3, § 31.3406(h)-2 (b)(2)(i), line 5, the language “under section 3406 31 percent of the fair” is corrected to read “under section 3406, 31 percent of the fair”.

PART 35a—[CORRECTED]

5. On page 66134, columns 1 and 2, Par. 12 and Par. 13 amendatory instructions are corrected to read as follows:

Par. 12. The authority citation for part 35a continues to read in part as follows:

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

Par. 13. Section 35a.3406-2 is amended by adding paragraph (l) to read as follows:

§ 35a.3406-2 *Imposition of backup withholding for notified payee underreporting of reportable interest or dividend payments.*

* * * * *

(1) *Effective date.* This section is effective until December 31, 1996.

Michael L. Slaughter,
*Acting Chief, Regulations Unit
Assistant Chief Counsel (Corporate).*

Disclosure of Returns and Return Information to Procure Property or Services for Tax Administration Purposes; Correction

Announcement 96-30

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking which was published in the Federal Register for Friday, December 15, 1995 (60 FR 64402). The proposed regulations relate to the disclosure of returns and return information in connection with the procurement of property and services for tax administration purposes.

FOR FURTHER INFORMATION CONTACT: Donald Squires, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 6103 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking which is the subject of FR Doc. 95-30505, is corrected as follows:

1. On page 64402, column three, in the heading, the “Agency number” “[DL-01-95]” is corrected to read “[DL-40-95]”.

2. On page 64402, column three, in the preamble following the “ADDRESSES:” caption, lines 2 and 8, the language “(DL-01-95)” is corrected to read “(DL-40-95)”.

Cynthia E. Grigsby,
*Chief, Regulations Unit
Assistant Chief Counsel (Corporate).*

Allocation of Accrued Benefits Between Employer and Employee Contributions; Correction

Announcement 96-31

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE-35-95 [1996-5 I.R.B. 19]) which was published in the Federal Register on Friday, December 22, 1995 (60 FR 66532), relating to proposed regulations that provide guidance on calculation of an employee's accrued benefit derived from the employee's contributions to a qualified defined pension plan.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer, (202) 622-4606, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction proposes amendments that reflect changes made to section 411(c)(2) by the Omnibus Budget Reconciliation Act of 1987 and the Omnibus Budget Reconciliation Act of 1989.

Need for Correction

As published, the notice of proposed rulemaking (EE-35-95) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (EE-35-95), which was the subject of FR Doc. 95-31006, is corrected as follows:

§ 1.411(c)-1 [Corrected]

1. On page 66535, column 1, § 1.411(c)-1 (c)(6)(ii), paragraphs (1)

through (8) of *Example 1.*, are correctly designated as paragraphs (A) through (H) of *Example 1.*

2. On page 66535, column 1, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (D) of *Example 1.*, line 4, the language "determined in paragraph (3) of this *Example*" is corrected to read "determined in paragraph (C) of this *Example*".

3. On page 66535, column 1, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (D) of *Example 1.*, the last line, the language "\$11,913 — 9.196 = \$1,295." is corrected to read "\$11,913 ÷ 9.196 = \$1,295."

4. On page 66535, column 1, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (H) of *Example 1.*, second and third lines from the bottom of the column, the language "contributions, the sum of paragraphs (4) and (7) of this *Example 1.* (\$1,295 + \$1,654 =)" is corrected to read "contributions, the sum of paragraphs (D) and (G) of this *Example 1.* (\$1,295 + \$1,654 =)".

5. On page 66535, column 2, § 1.411(c)-1 (c)(6)(ii), paragraphs (1) through (5) of *Example 2.* are correctly designated as paragraphs (A) through (E) of *Example 2.*

6. On page 66535, column 2, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (B) of *Example 2.*, last line, the language "\$6,480 from paragraph 2 of *Example 1.*" is corrected to read "\$6,480 from paragraph (B) of *Example 1.*".

7. On page 66535, column 2, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (C) of *Example 2.*, last line, the language "from paragraph 3 of *Example 1.*" is corrected to read "from paragraph (C) of *Example 1.*".

8. On page 66535, column 2, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, line 4, the language "determined in paragraph (3) of this *Example*" is corrected to read "determined in paragraph (C) of this *Example*".

9. On page 66535, column 2, § 1.411(c)-1 (c)(6)(ii), newly designated paragraph (D) of *Example 2.*, last line, the language "\$1,295 from paragraph 4 of *Example 1.*" is corrected to read "\$1,295 from paragraph (D) of *Example 1.*".

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel (Corporate).

Reissuance of Mortgage Credit Certificates; Hearing

Announcement 96-32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to implementing a provision of the Tax Reform Act of 1984 permitting the reissuance of mortgage credit certificates.

DATES: The public hearing will be held on Wednesday, May 22, 1996, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, May 1, 1996.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20044. Requests to speak and outlines of oral comments should be mailed to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:R [FI-47-92], Room 5228, Washington, D.C., 20044.

FOR FURTHER INFORMATION CONTACT: Evangelista Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 25 of the Internal Revenue Code. The proposed regulations appeared in the Federal Register for Wednesday, December 22, 1993 (58 FR 67745).

The rules of §601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments

within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, May 1, 1996, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be

limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answer thereto.

Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after

outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,
Chief, Regulations Unit
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on April 4, 1996, 8:45 a.m., and published in the issue of the Federal Register for April 5, 1996, 61 F.R. 15204)

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attor-

ney, certified public accountant, enrolled agent or enrolled actuary and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Miller, Gorden A.	Mineral Wells, WV	CPA	February 1, 1996 to April 30, 1996
Barnes, Charles E.	Louisville, KY	Enrolled Agent	Indefinite from February 1, 1996
Polizzi, Angelo J.	Grosse Point, MI	Attorney	Indefinite from February 6, 1996
Pegler, Charles R.	Islandia, NY	CPA	Indefinite from February 7, 1996
Foster, David M.	Birmingham, MI	Attorney	Indefinite from February 9, 1996
Smith, Jerry A.	Evansville, IN	CPA	February 9, 1996 to November 8, 1996
Penn, Michael J.	Dearborn, MI	CPA	February 9, 1996 to February 8, 1997
Mueller, E. Laird	Seal Beach, CA	CPA	February 12, 1996 to June 11, 1996
Zeizima, Paul P.	Norwalk, CT	CPA	April 1, 1996 to May 31, 1996
Van Houten, Robert R.	Danbury, CT	CPA	May 1, 1996 to April 30, 1997

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly

or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Gimbel, Stephen	Columbia, SC	CPA	January 20, 1996
Tropsa, Donna C.	Stamford, CT	Attorney	January 20, 1996
Seifert, Frank J.	Birmingham, AL	CPA	January 20, 1996
Hansen, Joe B.	Lubbock, TX	CPA	March 2, 1996

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal

Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled

agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Ginsberg, Melvin R.	Univ. Heights, OH	Attorney	Indefinite from January 24, 1996
Lahey, Charles W.	South Bend, IN	Attorney	Indefinite from January 24, 1996
DePiano, Robert	Venice, CA	Attorney	Indefinite from January 24, 1996
Kraig, Jerry B.	Shaker Hgts, OH	Attorney	Indefinite from January 29, 1996
Brown, David M.	Los Angeles, CA	Attorney	Indefinite from January 29, 1996
Hanke Jr., Dale L.	Duluth, MN	Attorney	Indefinite from February 1, 1996
Guillory, Patrick R.	San Francisco, CA	Attorney	Indefinite from February 1, 1996
Miller, Brian R.	Grove, OK	CPA	Indefinite from February 23, 1996
McLeod, Timothy R.	Saginaw, MI	Attorney	Indefinite from February 26, 1996
Simone, Robert F.	Philadelphia, PA	Attorney	Indefinite from February 26, 1996
Bowen, David Lee	Frisco City, AL	CPA	Indefinite from February 27, 1996
Lindley, Clarkson	Wayzata, MN	Attorney	Indefinite from February 27, 1996

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 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.