

## 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 96-71, page 16.**

The Ninth Annual Institute on Current Issues in International Taxation, co-sponsored with The George Washington University, will be held December 12 and 13, 1996, at the J.W. Marriott Hotel in Washington, DC.

### INCOME TAX

#### **Rev. Rul. 96-38, page 4.**

**Pooled income fund; community trust; maintenance requirement.** This ruling provides guidance on when a fund maintained by a community trust satisfies the maintenance requirement for a pooled income fund under section 642(c)(5)(E) of the Code.

#### **T.D. 8680, page 5.**

#### **IA-29-96, page 14.**

Temporary and proposed regulations relate to extensions of time for making certain elections under the Code. A public hearing on the proposed regulations will be held on October 30, 1996. Rev. Procs. 87-32 and 92-20 modified.

#### **PS-22-96, page 15.**

Proposed regulations relate to the final generation-skipping transfer (GST) tax regulations under chapter 13 of the Code.

#### **GL-7-96, page 13.**

Proposed regulations under section 6335 of the Code relate to the sale of seized property.

### EXEMPT ORGANIZATIONS

#### **Announcement 96-73, page 18.**

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

#### **Announcement 96-74, page 19.**

A list is provided of organizations that no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

### ADMINISTRATIVE

#### **Notice 96-40, page 11.**

**Accounting methods.** Comments are invited on possible changes to Rev. Proc. 92-20, 1992-1 C.B. 685, which provides the general procedures for a taxpayer to change a method of accounting.

#### **Rev. Proc. 96-39, page 11.**

**Section 355 No Rule.** This procedure amplifies the "No Rule" Rev. Proc. 96-3, 1996-1 I.R.B. 82, to include certain transactions under section 355 of the Code.

#### **Announcement 96-72, page 16.**

T.D. 8644, 1996-7 I.R.B. 16, relating to generation-skipping transfer tax, 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 semi-annually 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 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 Decision Under the Internal Revenue Code of 1986

## Section 170.—Charitable Contributions

26 CFR 1.170A-9: Definition of section 170(b)(1)(A) organization.

Does a fund satisfy the pooled income fund requirements of § 642(c)(5)(E) of the Internal Revenue Code if the fund is maintained by a community trust and in the instrument of transfer either (1) the donor gives the community trust complete discretion to determine how the remainder interest will be used to further charitable purposes, or (2) the donor requests or requires that the community trust place the proceeds from the remainder interest in one of its component funds that is designated to benefit a specific charitable organization? See Rev. Rul. 96-38, on this page.

## Section 355.—Distribution of Stock and Securities of a Controlled Corporation

26 CFR 1.355-2: Limitations.

The revenue procedure amplifies the “No Rule” revenue procedure, Rev. Proc. 96-3, 1996-1 I.R.B. 82, to include certain transactions under § 355 of the Code. See Rev. Proc. 96-39, page 11.

## Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-5: Definition of pooled income fund.  
(Also § 170; 1.170A-9.)

**Pooled income fund; community trust; maintenance requirement.** This ruling provides guidance on when a fund maintained by a community trust satisfies the maintenance requirement for a pooled income fund under section 642(c)(5)(E) of the Code.

### Rev. Rul. 96-38

#### ISSUE

Does a fund satisfy the pooled income fund requirements of § 642(c)(5)(E) of the Internal Revenue Code if the fund is maintained by a community trust and in the instrument of transfer either (1) the donor gives the community trust complete discretion to determine how the remainder interest will be used to further charitable purposes, or (2) the donor requests or requires that the community trust place the proceeds from the remainder interest in one of its component funds that is designated to benefit a specific charitable organization?

#### FACTS

Both *A* and *B* are organizations described in § 170(b)(1)(A)(vi) and are community trusts described in § 1.170A-9(e)(10) of the Income Tax

Regulations. Each pooled income fund’s declaration of trust and instruments of transfer (collectively referred to as the “governing instrument”) satisfy the requirements of § 642(c)(5)(A)–(D) and (F); therefore, each proposed fund will qualify as a pooled income fund if the provisions of § 642(c)(5)(E) are satisfied.

*Situation 1.* *A* proposes to establish a pooled income fund that *A* will maintain. Under the terms of the governing instrument, a donor contributes to *A* an irrevocable remainder interest in the property that the donor transfers to the pooled income fund, and *A* has full discretion to determine how to use the remainder interest to further *A*’s charitable purposes.

*Situation 2.* *B* proposes to establish a pooled income fund that *B* will maintain. Under the terms of the governing instrument, a donor contributes to *B* an irrevocable remainder interest in the property that the donor has transferred to the pooled income fund. In the instrument of transfer, however, the donor may either request or require that after the death of the donor’s designated income beneficiaries, *B* place the proceeds of the remainder interest in one of *B*’s component funds that satisfies the requirements of § 1.170A-9(e)(11)(ii) and is designated to benefit a specific charitable organization. Under the terms of *B*’s donor-designated component funds, *B* makes current distributions of the income of the component fund to the designated charitable organization. *B* may also distribute principal to the designated charitable organization to finance special projects or in extraordinary circumstances. As required in § 1.170A-9(e)(11)(v)(B)(1), *B*’s governing body has the power to modify any restriction on the distributions from its component funds if, in the sole judgment of the governing body, the restriction becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served.

#### LAW AND ANALYSIS

A pooled income fund is a trust that satisfies the requirements listed in § 642(c)(5). Section 642(c)(5)(A) and § 1.642(c)-5(b)(1) provide that each donor who transfers property to the trust must contribute an irrevocable remainder interest in the property to or for the

use of an organization described in § 170(b)(1)(A), except certain private foundations described in clauses (vii) and (viii) of § 170(b)(1)(A).

Section 642(c)(5)(E) provides that the trust must be maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee. Section 1.642(c)-5(b)(5) provides that the maintenance requirement of § 642(c)(5)(E) is satisfied only if the public charity exercises control directly or indirectly over the fund.

The maintenance requirement is designed to ensure that the fund’s assets will not be manipulated for the benefit of noncharitable interests and that the amount received by the charitable organization will reflect the amount of any charitable contribution deduction the donor may have taken for contributing the remainder interest. H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess. 58 (1969), 1969-3 C.B. 200, 237; and S. Rep. No. 552, 91st Cong., 1st Sess. 87 (1969), 1969-3 C.B. 423, 479. For an organization to satisfy the maintenance requirement of § 642(c)(5)(E), it may not be serving merely as a conduit for a gift to another beneficiary, but instead must be receiving a contribution itself that it will use to achieve its charitable purposes.

Under § 1.170A-9(e)(11), a group of funds is treated as a single community trust if the funds operate under a common name, have a common governing instrument, prepare common reports, and are under the direction of a common governing board that has the power to modify any restriction on distributions from any of the funds, if in the sole judgment of the governing body, the restriction becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served. Under § 1.170A-9(e)(11)(ii), a fund created by gift, bequest, or other transfer that is not subject to any material restriction or condition (within the meaning of § 1.507-2(a)(8)) can be treated as a component part of the single entity. A fund held by a community trust and designated by the donor to pay its income annually to a specific public charity is not subject to a material restriction and therefore may qualify as a component part of the community trust (component fund). § 1.507-2(a)(8)(v), *Example (3)*.

In *Situation 1*, the governing instrument provides that the donor contributes an irrevocable remainder interest in the contributed property to A, and A has discretion over how to use the remainder interest to further charitable purposes. Although A may elect to use some or all of the remainder interest for the benefit of other charitable organizations, A is given full dominion and control over the remainder interest. Therefore, for § 642(c)(5), a donor in *Situation 1* will be treated as contributing the remainder interest to A. Because A will maintain the fund, the fund will satisfy the requirements of § 642(c)(5)-(E) and will qualify as a pooled income fund under § 642(c)(5).

In *Situation 2*, the governing instrument allows a donor in the instrument of transfer either to request or to require that B place the proceeds from the remainder interest in one of its designated funds that is a component part of B under § 1.170A-9(e)(11)(ii). Under § 1.170A-9(e)(11), B's component funds, including its donor-designated funds, are treated as a single entity, rather than separate entities. Thus, even though the donor in *Situation 2* will either request or require that B place the proceeds of the remainder interest into one of its donor-designated funds, the donor will be treated under § 642(c)(5) as contributing the remainder interest to B. Because B will maintain the fund, the fund will satisfy the requirements of § 642(c)(5)(E) and will qualify as a pooled income fund under § 642(c)(5).

## HOLDINGS

(1) A fund maintained by a community trust satisfies the maintenance requirement of § 642(c)(5)(E) if, in the instrument of transfer, the donor gives the remainder interest to the community trust with full discretion to choose how the remainder interest will be used to further charitable purposes.

(2) A fund maintained by a community trust satisfies the maintenance requirement of § 642(c)(5)(E) if, in the instrument of transfer, the donor either requests or requires that the community trust place the proceeds of the remainder interest in a fund that has been designated to be used for the benefit of specific charitable organizations provided the fund is a component part that satisfies the requirements of § 1.170A-9(e)(11)(ii).

## DRAFTING INFORMATION

The principal author of this revenue ruling is Jeffrey A. Erickson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Erickson at (202) 622-3070 (not a toll-free call).

### Section 7805.—Rules and Regulations

*26 CFR 301.9100-1T: Extensions of time to make elections (temporary).*

### T.D. 8680

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 301 and 602

### Extensions of Time to Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning extensions of time for making certain elections under the Internal Revenue Code (Code). The regulations provide the standards that the Commissioner will use to grant taxpayers extensions of time for making these elections. The text of these temporary regulations also serves as the text of the proposed regulations set forth in IA-29-96 on page 14 in this issue of the Bulletin.

DATES: These regulations are effective June 27, 1996.

For dates of applicability, see § 301.9100-1T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Robert A. Testoff at (202) 622-4960 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### *Paperwork Reduction Act*

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1488. Responses to this collection of

information are required to obtain an extension of time for making an election.

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

For further information concerning this collection of information, where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to IA-29-96 on page 14 in this issue of the Bulletin.

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

### *Background*

This document contains temporary regulations amending the Regulations on Procedure and Administration (26 CFR part 301) concerning extensions of time for making certain elections. The regulations provide the standards that the Commissioner will use to grant taxpayers extensions of time for making these elections. These standards provide relief to taxpayers who reasonably and in good faith fail to make a timely election when granting relief will not prejudice the interests of the government. The regulations provide a means by which taxpayers can be in the same position they would have been in had they made their elections in a timely fashion.

### *Explanation of Provisions*

These temporary regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election when the deadline for making the election is prescribed by regulation, revenue ruling, revenue procedure, notice, or announcement published in the Federal Register or the Internal Revenue Bulletin (regulatory election). Under section 6081(a), these regulations also provide an automatic extension of time to make an election when the deadline for making the election is prescribed by statute (statutory election) and the deadline for making the election is the due date of the return or the due date of the return including extensions. These regulations

adopt and revise the standards for relief provided in Rev. Proc. 92-85, 1992-2 C.B. 490.

#### *Automatic Extensions*

Rev. Proc. 92-85 provides an automatic 12-month extension for certain regulatory elections listed in Appendix A of that revenue procedure. The temporary regulations continue the automatic 12-month extension and update the list of eligible regulatory elections.

Rev. Proc. 92-85 also provides an automatic 6-month extension for statutory elections when the deadline for making the election is prescribed as the due date of the return or the due date of the return including extensions. The temporary regulations expand the automatic 6-month extension to include regulatory elections.

#### *Other Extensions*

Rev. Proc. 92-85 provides relief for certain regulatory elections that do not qualify for relief under the automatic extensions. Rev. Proc. 92-85 requires a taxpayer to demonstrate that (1) it acted reasonably and in good faith and (2) granting relief will not prejudice the interests of the government. The temporary regulations continue to provide extensions for such regulatory elections upon a showing of reasonable action and good faith and no prejudice to the interests of the government.

The temporary regulations adopt the standards for reasonable action and good faith in Rev. Proc. 92-85. The regulations provide that a taxpayer is deemed to have acted reasonably and in good faith if: (1) the taxpayer applies for relief before the failure to make the regulatory election is discovered by the IRS; (2) the taxpayer inadvertently failed to make the election because of intervening events beyond its control; (3) the taxpayer failed to make the election because after exercising reasonable diligence the taxpayer was unaware of the necessity for the election; (4) the taxpayer reasonably relied on written advice of the IRS; or (5) the taxpayer relied on a qualified tax professional, including a professional employed by the taxpayer, and the professional failed to make or advise the taxpayer to make the election. However, a taxpayer is deemed to have not acted reasonably and in good faith if: (1) the taxpayer is requesting relief for an election to alter a return position for which an accuracy-related penalty could have been imposed

under section 6662; (2) the taxpayer was fully informed of the required election and related tax consequences and chose not to file the election; or (3) the taxpayer uses hindsight in requesting relief.

The temporary regulations adopt the standards for prejudice to the interests of the government in Rev. Proc. 92-85. The regulations provide that the interests of the government are deemed to be prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the regulatory election had been timely made. In addition, the interests of the government are ordinarily deemed to be prejudiced if the tax year in which the election should have been made or any affected tax years are closed by the statute of limitations.

#### *Accounting Method and Period Elections*

Rev. Proc. 92-85 provides limited relief (ordinarily not to exceed 90 days from the deadline for filing Form 3115, Application for Change in Accounting Method) for requests to change an accounting method subject to the procedure described in § 1.446-1(e)(3)(i) (requiring the advance written consent of the Commissioner). The temporary regulations continue this limited relief. Rev. Proc. 92-85 provides an automatic 12-month extension for the election to use the last-in, first-out (LIFO) inventory method under section 472 and also provides relief for the section 472 election beyond the automatic 12-month extension. Rev. Proc. 92-85 is otherwise inapplicable to accounting method regulatory elections, except for three specific elections listed in Appendix B of that revenue procedure.

The temporary regulations provide relief for all accounting method regulatory elections. For example, relief will now be available for elections under sections 197 (amortization of goodwill and certain other intangibles) and 468A (special rules for nuclear decommissioning costs).

The temporary regulations provide additional rules regarding what constitutes prejudice to the interests of the government for accounting method regulatory elections. The temporary regulations provide that the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if: (1) the election requires an adjustment under section 481(a); (2) the

taxpayer is under examination, requests relief to change from an impermissible method of accounting, and granting relief will provide the taxpayer a more favorable method of accounting or more favorable terms and conditions than the taxpayer would receive if the change is made as part of the examination; or (3) the election provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

Rev. Proc. 92-85 provides an automatic 12-month extension for elections to use other than the required taxable year under section 444. Rev. Proc. 92-85 also provides limited relief (ordinarily not to exceed 90 days from the deadline for filing Form 1128, Application to Adopt, Change, or Retain a Tax Year) for accounting period regulatory elections subject to Rev. Proc. 87-32, 1987-2 C.B. 396. Rev. Proc. 92-85 is otherwise inapplicable to accounting period regulatory elections. The temporary regulations extend the limited relief for elections subject to Rev. Proc. 87-32 to all other accounting period regulatory elections except for the section 444 election, and provide relief for the section 444 election beyond the automatic 12-month extension.

#### *Effect on other documents*

Rev. Proc. 92-85, 1992-2 C.B. 490, as modified and clarified by Rev. Proc. 93-28, 1993-2 C.B. 344, is obsolete as of June 27, 1996.

Rev. Proc. 92-20, 1992-1 C.B. 685, is modified as of June 27, 1996, to the extent that the provisions of this regulation apply to applications for relief with respect to requests to change an accounting method subject to the procedures of Rev. Proc. 92-20.

Rev. Proc. 87-32, 1987-2 C.B. 396, is modified as of June 27, 1996, to the extent that the provisions of this regulation apply to applications for relief with respect to requests to change an accounting period subject to the procedures of Rev. Proc. 87-32.

#### *Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regula-

tions, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

#### *Drafting Information*

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

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#### *Adoption of Amendments to the Regulations*

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

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.9100-1T also issued under 26 U.S.C. 6081;

Section 301.9100-2T also issued under 26 U.S.C. 6081;

Section 301.9100-3T also issued under 26 U.S.C. 6081; \* \* \*

Par. 2. Sections 301.9100-1T through 301.9100-3T are added to read as follows:

#### *§ 301.9100-1T Extensions of time to make elections (temporary).*

(a) - (c) [Reserved].

(d) *Introduction.* The regulations under this section and §§ 301.9100-2T through 301.9100-3T provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. The regulations under this section and §§ 301.9100-2T through 301.9100-3T also provide an automatic extension of time to make certain statutory elections. An extension of time is available for elections that a taxpayer is otherwise eligible to make and the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. Section 301.9100-2T provides automatic extensions of time for making regulatory and statutory elections when the deadline for making

the election is the due date of the return or the due date of the return including extensions. Section 301.9100-3T provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2T.

(e) *Terms.* The following terms have the meanings provided below:

*Election* includes an application for relief in respect of tax; a request to adopt, change, or retain an accounting method or accounting period; but does not include an application for an extension of time for filing a return under section 6081.

*Regulatory election* means an election whose deadline is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

*Statutory election* means an election whose deadline is prescribed by statute.

*Taxpayer* means any person within the meaning of section 7701(a)(1).

(f) *General standards for relief.* The Commissioner in the Commissioner's discretion may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I, provided the taxpayer demonstrates to the satisfaction of the Commissioner that—

(1) The taxpayer acted reasonably and in good faith; and

(2) Granting relief will not prejudice the interests of the government.

(g) *Exceptions.* Notwithstanding the provisions of paragraph (f) of this section, an extension of time will not be granted—

(1) For elections under section 4980A(f)(5);

(2) For elections required to be made prior to November 20, 1970, in the case of an election—

(i) Required to be made in or with the taxpayer's original income tax return;

(ii) Required to be exercised by filing a claim for credit or refund, unless the election is required to be exercised on or before a date that precedes the date of expiration of the period of limitations provided in section 6511;

(iii) Required to be filed in a petition to the Tax Court;

(iv) To change a previous election;

(v) To change an accounting method as described in §§ 1.77-1 of this chapter and 1.446-1 of this chapter;

(vi) To change an accounting period as described in § 1.442-1 of this chapter; or

(vii) To change the method of treating bad debts as described in § 1.166-1 of this chapter; or

(3) For elections that are expressly excepted from relief or where alternative relief is provided by a statute, a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

(h) *Effective dates.* In general, this section and §§ 301.9100-2T through 301.9100-3T are effective for all requests for relief being considered by the IRS on June 27, 1996, and for all requests for relief submitted on or after June 27, 1996. However, the automatic 12-month extension and the automatic 6-month extension provided in § 301.9100-2T are effective for elections whose due dates are on or after June 27, 1996.

#### *§ 301.9100-2T Automatic extensions (temporary).*

(a) *Automatic 12-month extension—*  
(1) *In general.* An automatic extension of 12 months from the original deadline for making a regulatory election is granted to make elections described in paragraph (a)(2) of this section provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 12-month extension period.

(2) *Elections eligible for automatic 12-month extension.* The following regulatory elections are eligible for the automatic 12-month extension described in paragraph (a)(1) of this section—

(i) The election to use other than the required taxable year under section 444;

(ii) The election to use the last-in, first-out (LIFO) inventory method under section 472;

(iii) The 15-month rule for filing an exemption application for a section 501(c)(9), 501(c)(17), or 501(c)(20) organization under section 505;

(iv) The 15-month rule for filing an exemption application for a section 501(c)(3) organization under section 508;

(v) The election to be treated as a homeowners association under section 528;

(vi) The election to adjust basis on partnership transfers and distributions under section 754;

(vii) The estate tax election to specially value qualified real property

(where the IRS has not yet begun an examination of the filed return) under section 2032A(d)(1);

(viii) The chapter 14 gift tax election to treat a qualified payment right as other than a qualified payment under section 2701(c)(3)(C)(i); and

(ix) The chapter 14 gift tax election to treat any distribution right as a qualified payment under section 2701(c)(3)(C)(ii).

(b) *Automatic 6-month extension.* An automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose deadlines are prescribed as the due date of the return or the due date of the return including extensions in the case of a taxpayer that timely filed its return for the year the election should have been made, provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 6-month extension period. This extension does not apply, however, to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

(c) *Corrective action.* For purposes of this section, *corrective action* means filing an original or an amended return for the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election. For those elections not required to be filed with a return, corrective action means taking the steps required to file the election in accordance with the statute, the regulation published in the Federal Register, or the revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must report their income in a manner that is consistent with the election and comply with all other requirements for making the election for the year the election should have been made and for all affected years; otherwise, the Service may invalidate the election.

(d) *Procedural requirements.* Any return, statement of election, or other form of filing that must be made to obtain an automatic extension must provide the following statement at the top of the document: "FILED PURSUANT TO § 301.9100-2T". Any filing made to obtain an automatic extension must be sent to the same address that the filing

to make the election would have been sent had the filing been timely made. No request for a letter ruling is required to obtain an automatic extension. Accordingly, user fees do not apply to taxpayers taking corrective action to obtain an automatic extension.

(e) The following example illustrates the rules of this section:

*Example.* Taxpayer A fails to make a certain election when filing A's 1996 income tax return on March 17, 1997, the due date of the return. This election does not affect the tax liability of any other taxpayer. The applicable regulation requires that the election be made by attaching the appropriate form to a timely filed return including extensions. In accordance with paragraphs (b) and (c) of this section, A may make the regulatory election by filing an amended return with the appropriate form by September 15, 1997 (6 months from the March 17, 1997, due date).

### § 301.9100-3T Other extensions (temporary).

(a) *In general.* Requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2T must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

(b) *Reasonable action and good faith*—(1) *In general.* Except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

(i) Requests relief under this section before the failure to make the regulatory election is discovered by the IRS;

(ii) Inadvertently failed to make the election because of intervening events beyond the taxpayer's control;

(iii) Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;

(iv) Reasonably relied on the written advice of the IRS; or

(v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

(2) *Reasonable reliance on a qualified tax professional.* For purposes of

this paragraph (b), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not—

(i) Competent to render advice on the regulatory election; or

(ii) Aware of all relevant facts.

(3) *Taxpayer deemed to have not acted reasonably or in good faith.* For purposes of this paragraph (b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer—

(i) Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) of this chapter and the new position requires or permits a regulatory election for which relief is requested;

(ii) Was fully informed of the required election and related tax consequences, but chose not to file the election; or

(iii) Uses hindsight in requesting relief. If specific facts have changed since the original deadline for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

(c) *Prejudice to the interests of the government*—(1) *In general*—(i) *Lower tax liability.* The interests of the government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

(ii) *Closed years.* The interests of the government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations

on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of this section) certifying that the requirements of paragraph (c)(1)(i) of this section are satisfied.

(2) *Special rules for accounting method regulatory elections.* The interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election is—

(i) Subject to the procedure described in § 1.446-1(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner), and the request for relief under this section is filed more than 90 days after the deadline for filing the Form 3115, Application for Change in Accounting Method;

(ii) Not an election described in paragraph (c)(2)(i) of this section and requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made);

(iii) Not an election described in paragraph (c)(2)(i) of this section, the taxpayer is under examination and requests relief under this section to change from an impermissible method of accounting, and granting relief will provide the taxpayer a more favorable method of accounting or more favorable terms and conditions than the taxpayer would receive if the change from the impermissible method is made as part of the examination; or

(iv) Not an election described in paragraph (c)(2)(i) of this section and the election provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.

(3) *Special rules for accounting period regulatory elections.* The interests of the government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the deadline for filing the Form 1128, Application to

Adopt, Change, or Retain a Tax Year (or other required statement).

(d) *Effect of amended returns—*(1) *Second examination under section 7605(b).* Taxpayers requesting and receiving an extension of time under this section waive any objections to a second examination under section 7605(b) for the issue(s) that is the subject of the relief request and any correlative adjustments.

(2) *Suspension of the period of limitations under section 6501(a).* A request for relief under this section does not suspend the period of limitations on assessment under section 6501(a). Thus, for relief to be granted, the IRS may require the taxpayer to consent under section 6501(c)(4) to an extension of the period of limitations on assessment for the tax year in which the regulatory election should have been made and any tax years that would have been affected by the election had it been timely made.

(e) *Procedural requirements—*(1) *In general.* Requests for relief under this section must provide evidence that satisfies the requirements in paragraphs (b) and (c) of this section, and must provide additional information as required by this paragraph (e).

(2) *Affidavit and declaration from taxpayer.* The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete." The individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(3) *Affidavits and declarations from other parties.* The taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. These individuals must include the taxpayer's income tax return preparer, any individual (including an employee of the taxpayer)

who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. Each affidavit must include the name, current address, and taxpayer identification number of the individual, and be accompanied by a dated declaration, signed by the individual, which states: "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented herein are true, correct, and complete."

(4) *Other Information.* The request for relief filed under this section must also contain the following information—

(i) The taxpayer must state whether the taxpayer's return(s) for the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court. The taxpayer must notify the IRS office considering the request for relief if the IRS starts an examination of any such return while the taxpayer's request for relief is pending;

(ii) The taxpayer must state when the applicable return, form, or statement used to make the election was required to be filed and when it was actually filed;

(iii) The taxpayer must submit a copy of any documents that refer to the election;

(iv) When requested, the taxpayer must submit a copy of the taxpayer's income tax return for any taxable year for which the taxpayer requests an extension and any return affected by the election; and

(v) When applicable, the taxpayer must submit a copy of the income tax returns of other taxpayers affected by the election.

(5) *Filing instructions.* A request for relief under this section is a request for a letter ruling. Requests for relief should be submitted in accordance with the applicable procedures for requests for a letter ruling and must be accompanied by the applicable user fee.

(f) *Examples.* The following examples illustrate the provisions of this section:

*Example 1. Taxpayer discovers own error.* Taxpayer A prepares A's 1996 income tax return. A is unaware that a particular regulatory election is available to report a transaction in a particular manner. A files the 1996 return without making the election and reporting the transaction in a different manner. In 1998, A hires a qualified tax professional to prepare A's 1998 return. The professional discovers that A did not make the election. A promptly files for relief in accordance with this section. Assuming paragraphs (b)(3)(i) through (iii) of this section do not apply, A is deemed to have acted reasonably and in good faith.

*Example 2. Reliance on qualified tax professional.* Taxpayer B hires a qualified tax professional to advise B on preparing B's 1996 income tax return and provides the professional with all the information requested. The professional fails to advise B that a regulatory election is necessary in order for B to report income on B's 1996 return in a particular manner. Nevertheless, B reports this income in a manner that is consistent with having made the election. In 1999, during the examination of the 1996 return by the IRS, the examining agent discovers that the election has not been filed. B promptly files for relief in accordance with this section, including attaching an affidavit from B's professional stating that the professional failed to advise B that the election was necessary. Assuming paragraphs (b)(3)(i) through (iii) of this section do not apply, B is deemed to have acted reasonably and in good faith.

*Example 3. Accuracy-related penalty.* Taxpayer C reports income on its 1996 income tax return in a manner that contravenes a statutory provision. C was aware of the statutory provision that prohibited the manner in which C reported this income, but did not provide adequate disclosure of the return position within the meaning of § 1.6662-3(c) of this chapter. In 1999, during the examination of the 1996 return, the IRS raises an issue regarding the reporting of this income on C's return. C requests relief under this section to elect an alternative method of reporting the income. Under paragraph (b)(3)(i) of this section, C is

deemed to have not acted reasonably and in good faith because C seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662.

*Example 4. Election not requiring adjustment under section 481(a).* Taxpayer D prepares D's 1996 income tax return. D is unaware that a particular accounting method regulatory election is available. D files the 1996 return using another method of accounting. In 1998, D hires a qualified tax professional to prepare D's 1998 return. The professional discovers that D did not make the election. D promptly files for relief in accordance with this section. Assume the applicable regulation provides that the election does not require an adjustment under section 481(a) and the election is not subject to the procedure described in § 1.446-1(e)(3)(i) of this chapter. Further assume that if D were granted an extension of time to make the election, D would pay no less tax than if the election had been timely made. Under paragraph (c) of this section, the interests of the government are not deemed to be prejudiced.

*Example 5. Election requiring adjustment under section 481(a).* The facts are the same as in *Example 4* of this paragraph (f) except that the applicable regulation provides that the election requires an adjustment under section 481(a). Under paragraph (c)(2)(ii) of this section, the interests of the government are deemed to be prejudiced except in unusual or compelling circumstances.

*Example 6. Under examination.* A regulation permits an automatic change from an impermissible method of accounting on a cut-off basis. Any change to this method made as part of an examination is made with a section 481(a) adjustment. Taxpayer E reports income on E's 1996 income tax return using the impermissible method of accounting. In 1999, during the examination of the 1996 return by the IRS, the examining agent questions the propriety of E's method of accounting. E requests relief under this section to make the change pursuant to the regulation for 1996. E will receive less favorable terms and conditions if the change in method of accounting is made with

a section 481(a) adjustment by the examining agent than if the change is made on a cut-off basis pursuant to the regulation. Under paragraph (c)(2)(iii) of this section, the interests of the government are deemed to be prejudiced except in unusual and compelling circumstances.

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

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 4. Section 602.101(c) is amended by adding the following entries in numerical order to the table:

*§ 602.101 OMB Control numbers*

* * * * *	
(c) * * *	
* * * * *	
CFR part or section where identified and described	Current OMB control No.
* * * * *	
§ 301.9100-2T.....	1545-1488
§ 301.9100-3T.....	1545-1488
* * * * *	

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Donald C. Lubick,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on June 26, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 27, 1996, 61 F.R. 33365)

## Part III. Administrative, Procedural, and Miscellaneous

### Request for Comments on Procedures Relating to Voluntary and Involuntary Changes in Method of Accounting

#### Notice 96-40

This notice invites public comment on possible changes to Rev. Proc. 92-20, 1992-1 C.B. 685, which provides the general procedures for a taxpayer to change a method of accounting. These changes may include (1) adding procedures for changes in method of accounting made by the district director as part of an examination and by an appeals officer as part of a settlement, and (2) revising some of the existing procedures to better achieve prompt voluntary compliance with proper tax accounting principles.

#### BACKGROUND

Section 446(e) of the Internal Revenue Code and § 1.446-1(e) of the Income Tax Regulations state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes.

Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the terms and conditions under which taxpayers will be permitted to change a method of accounting. The terms and conditions the Commissioner may prescribe include the taxable year for which the change in method of accounting is effective and the taxable year or years in which a § 481(a) adjustment is taken into account.

Rev. Proc. 92-20 sets forth the general procedures under § 1.446-1(e) for obtaining the consent of the Commissioner to change a method of accounting. Rev. Proc. 92-20 uses a gradation of incentives to encourage prompt voluntary compliance. Under this approach, taxpayers that voluntarily file a request to change prior to being contacted for an examination of their income tax returns receive the most favorable terms and conditions. Once contacted for an examination, taxpayers are generally precluded from requesting a change without the consent of the district director. However, some taxpayers that have been contacted for examination may request a change during certain "window periods." For example, certain tax-

payers may request a change during the first 90 days after contact for examination, but will then receive terms and conditions less favorable than those available if they had requested a change prior to such contact. Other taxpayers requesting a change during certain other available window periods receive terms and conditions no less favorable than those available if they had requested the change prior to contact for examination. Taxpayers that are required by the district director to change their method of accounting as part of an examination receive the least favorable terms and conditions.

In addition, Rev. Proc. 92-20 generally provides less favorable terms and conditions for changes from a "Category A method" of accounting than from a "Category B method." A Category A method is any method that is specifically not permitted by the Code, regulations, or a decision of the Supreme Court or any method that differs from a method that is specifically required by any of these authorities. A Category B method is any method that is not a Category A method.

The Service also has provided a number of procedures for taxpayers to obtain automatic consent to change certain methods of accounting. Taxpayers complying with these procedures are deemed to have obtained the consent of the Commissioner to change their method of accounting.

#### REQUEST FOR PUBLIC COMMENT

Rev. Proc. 92-20 provides no guidance on changes in method of accounting made by the district director on examination or by an appeals officer in a settlement. In addition, the Service and Treasury are evaluating whether using window periods and characterizing a method of accounting as a Category A or B method are effective in encouraging prompt voluntary compliance. Accordingly, the Service and Treasury request comments on possible changes to Rev. Proc. 92-20 including, but not limited to, the following:

(1) What are the consequences to the Service and the taxpayer when the district director, as part of an examination, or an appeals officer, as part of a settlement, makes an adjustment that involves a method of accounting? For example, under what circumstances does such an adjustment constitute a change

in method of accounting imposed by the Service (e.g., only if the adjustment includes a § 481(a) adjustment)? When does such a change become final (e.g., when the taxpayer agrees to assessment of the tax, when the period of limitations for filing a claim for refund expires, or at some other point)? What are the effects of such a change on taxable years for which a return has been filed and taxable years for which a return has not yet been filed?

(2) Are the various window periods of Rev. Proc. 92-20 effective in encouraging prompt voluntary compliance with proper tax accounting principles? If not, what alternatives should the Service consider?

(3) Should the distinction between Category A and Category B methods of accounting be modified or eliminated? If so, what alternatives should the Service consider?

(4) Should the Service provide automatic consent procedures for more accounting method changes? If so, for what changes?

Taxpayers may submit comments in writing to:

Internal Revenue Service  
Attn: CC:DOM:CORP:R (IA-Branch  
7, Room 5228).  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044.

Alternatively, taxpayers may submit comments electronically via the IRS Internet site at:

[http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

All comments should be received by September 30, 1996. The comments submitted will be available for public inspection and copying.

#### DRAFTING INFORMATION

The principal author of this notice is Robert Testoff of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Testoff on (202) 622-4960 (not a toll-free call).

*26 CFR 601.201: Rulings and determination letters.*

*(Also §§ 355; 1.355-2.)*

#### Rev. Proc. 96-39

##### SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 96-3, 1996-1 I.R.B. 82,

which sets forth the areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Domestic) and the Associate Chief Counsel (Employee Benefits and Exempt Organizations) relating to issues on which the Internal Revenue Service will not issue advance rulings or determination letters.

## SECTION 2. BACKGROUND

Section 5 of Rev. Proc. 96-3 sets forth those areas under extensive study in which rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure, regulations or otherwise. Section 355(a) of the Internal Revenue Code applies to distributions to a shareholder with respect to stock, or to a security holder in exchange for securities, of stock or securities of a corporation controlled by the distributing corporation immediately

before the distribution. In cases in which there have been negotiations, agreements or arrangements with respect to transactions or events which, if consummated before the distribution, would result in the distribution of stock or securities of a corporation which is not controlled by the distributing corporation, the Service intends to study further the proper evaluation of the facts and circumstances to determine whether the requirements of § 355 are satisfied.

## SECTION 3. PROCEDURE

Rev. Proc. 96-3 is amplified by adding to Section 5 the following:

Section 355.—Distribution of Stock or Securities of a Controlled Corporation.—Whether a distribution of stock or securities is described in § 355(a)(1) if there have been negotiations, agreements or arrangements with respect to transactions or events which, if treated as

consummated before the distribution, would result in the distribution of stock or securities of a corporation which is not controlled by the distributing corporation (or, if stock is retained by the distributing corporation, in a distribution of an amount of stock not constituting control).

## SECTION 4. EFFECTIVE DATE

This revenue procedure will apply to all ruling requests postmarked or, if not mailed, received on or after July 23, 1996.

## FURTHER INFORMATION

For further information regarding this Revenue Procedure contact Bonnie O'Brien of the Office of Assistant Chief Counsel (Corporate) at (202) 622-7790 (not a toll-free call).

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## Part IV. Items of General Interest

### Notice of Proposed Rulemaking

#### Sale of Seized Property

##### GL-7-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the sale of seized property. The proposed regulations reflect changes concerning the setting of a minimum price for seized property by the Tax Reform Act of 1986. The proposed regulations affect all sales of seized property.

DATES: Written comments and requests for a public hearing must be received by September 11, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (GL-007-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:R (GL-007-96), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### *Background*

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the sale of seized property under section 6335 of the Internal Revenue Code (Code). The Tax Reform Act of 1986 amended section 6335(e), relating to the manner and conditions of sale, to authorize the Secretary to determine whether it would be in the best interest of the United States to buy seized property at the minimum price set by the Secretary. These proposed regulations reflect this change.

##### *Explanation of provisions*

Section 1570 of the Tax Reform Act of 1986 amended section 6335(e) of the Code to require the Secretary to determine before the sale of seized property

whether it would be in the best interest of the United States to purchase such property at the minimum price set by the Secretary. The best interest determination is to be based on criteria prescribed by the Secretary. If, at the sale, one or more persons offer at least the minimum price, the property shall be sold to the highest bidder. If no one offers at least the minimum price and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property will be declared sold to the United States for the minimum price. If no one offers the minimum price and the Secretary has not determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

The proposed regulations reflect the changes made by the Tax Reform Act of 1986. The regulations propose to authorize district directors to make the required determination whether it would be in the best interest of the United States to purchase seized property for the minimum price. In addition, the regulations propose to set forth factors the district director may consider when determining the best interest of the United States. The district director may consider all relevant facts and circumstances including for example: (1) marketability of the property; (2) cost of maintaining the property; (3) cost of repairing or restoring the property; (4) cost of transporting the property; (5) cost of safeguarding the property; (6) cost of potential toxic waste cleanup; and (7) other factors pertinent to the type of property.

##### *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 regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, 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 Requests for a Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

##### *Drafting Information*

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6335-1 is amended as follows:

1. Paragraph (c)(3) is revised.
  2. Paragraphs (c)(4) through (c)(9) are redesignated as paragraphs (c)(5) through (c)(10).
  3. New paragraph (c)(4) is added.
- The additions and revision read as follows:

301.6335-1 Sale of seized property.

\* \* \* \* \*

(c) \* \* \*

(3) *Determinations relating to minimum price*—(i) *Minimum price*. Before the sale of property seized by levy, the district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. The internal revenue officer conducting the sale may either announce the minimum price before the sale begins, or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(ii) *Purchase by the United States*. Before the sale of property seized by levy, the district director shall determine whether the purchase of property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of property would be in the best interest of the United States, the district director may consider all relevant facts and circumstances including for example—

- (a) Marketability of the property;
- (b) Cost of maintaining the property;
- (c) Cost of repairing or restoring the property;
- (d) Cost of transporting the property;
- (e) Cost of safeguarding the property;
- (f) Cost of potential toxic waste cleanup; and
- (g) Other factors pertinent to the type of property.

(iii) *Effective date*. This paragraph (c)(3) applies to determinations relating to minimum price made on or after [date final regulations are published in the **Federal Register**].

(4) *Disposition of property at sale*—(i) *Sale to highest bidder at or above minimum price*. If one or more persons offer to buy the property for at least the amount of the minimum price, the property shall be sold to the highest bidder.

(ii) *Property deemed sold to United States at minimum price*. If no one offers at least the amount of the minimum price for the property and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be declared to be sold to the United States for the minimum price.

(iii) *Release to owner*. If the property is not declared to be sold under para-

graph (c)(4)(i) or (ii) of this section, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (c)(4)(iii) shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Internal Revenue Code.

(iv) *Effective date*. This paragraph (c)(4) applies to dispositions of property at sale made on or after [date final regulations are published in the **Federal Register**].

\* \* \* \* \*

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on June 12, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 13, 1996, 61 F.R. 30012)

**Notice of Proposed Rulemaking and Notice of Public Hearing**

**Extensions of Time to Make Elections**

**IA-29-96**

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In TD 8680, on page 5 of this issue of the Bulletin, the IRS is issuing temporary regulations relating to extensions of time for making certain elections under the Internal Revenue Code (Code). The regulations provide the standards that the Commissioner will use to grant taxpayers extensions of time for making these elections. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 25, 1996. Outlines of oral comments to be presented at the public hearing scheduled for Wednesday, October 30, 1996, at 10 a.m. must be received by October 9, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA-29-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington,

DC 20044. In the alternative, submissions may be delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (IA-29-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. The public hearing will be held in the IRS Classroom (room 2617), Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Robert A. Testoff of the Office of Assistant Chief Counsel (Income Tax & Accounting) at (202) 622-4960; concerning submissions and the hearing, Christina Vasquez of the Regulations Unit, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

*Paperwork Reduction Act*

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

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by August 26, 1996.

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

The collection of information is in §§ 301.9100-2T and 301.9100-3T. This information is required for a taxpayer to obtain an extension of time to make an election. This information will be used by the IRS to determine whether to grant an extension of time to make an election. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, nonprofit institutions, individuals or households, and farms.

Books or records relating to the 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.

Estimated total annual reporting burden: 5,000 hours  
Estimated annual burden per respondent: 10 hours.  
Estimated number of respondents: 500  
Estimated annual frequency of responses: Occasional

#### *Background*

Temporary regulations in TD 8680, on page 5 of this issue of the Bulletin amend 26 CFR part 301. The temporary regulations contain rules relating to extensions of time for making certain elections.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, 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 businesses.

#### *Comments and Public Hearing*

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

A public hearing has been scheduled for Wednesday, October 30, 1996, at 10 a.m. in the IRS Classroom (room 2617), Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that have submitted written comments by September 25, 1996, and want to present oral comments at the hearing must submit, by October 9, 1996, an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies). 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 the temporary regulations is Robert A. Testoff of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### *Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### **PART 301—PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by removing the entries for §§ 301.9100-1T through 301.9100-3T and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 301.9100-1 also issued under 26 U.S.C. 6081;  
Section 301.9100-2 also issued under 26 U.S.C. 6081;  
Section 301.9100-3 also issued under 26 U.S.C. 6081; \* \* \*

Par. 2. Sections 301.9100-1 and 301.9100-1T through 301.9100-3T are removed.

Par. 3. Sections 301.9100-1 through 301.9100-3 are added to read as follows:

§ 301.9100-1 *Extensions of time to make elections.*

§ 301.9100-2 *Automatic extensions.*

§ 301.9100-3 *Other extensions.*

[The text of these above proposed sections are the same as the text of

§§ 301.9100-1T through 301.9100-3T published in TD 8680, on page 5 in this issue of the Bulletin.]

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on June 26, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 27, 1996, 61 F.R. 33408)

#### **Notice of Proposed Rulemaking**

#### **Generation-Skipping Transfer Tax**

#### **PS-22-96**

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the final generation-skipping transfer (GST) tax regulations under chapter 13 of the Internal Revenue Code (Code). This document proposes a change to the final regulations and is necessary to provide guidance to taxpayers so that they may comply with chapter 13 of the Code.

DATES: Written comments and requests for a public hearing must be received by September 10, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS-22-96), 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 (PS-22-96), Courier's Desk, Internal Revenue Service, 1111 Constitution NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, James F. Hogan, (202) 622-3090 (not a toll-free number); concerning submissions, Christina Vasquez, (202) 622-7180, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### *Background*

On December 24, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 61356) containing proposed regulations under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. On December 27, 1995, the IRS published final regulations in the **Federal Register**

(60 FR 66898) under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. This proposed regulation will delete § 26.2652-1(a)(4) and two related examples.

#### *Explanation of Provision*

Section 2652(a)(1) provides generally, that the term *transferor* means—(A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual is treated as transferring any property with respect to which the individual is the transferor. Under § 26.2652-1(a)(2), a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a) and is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate determined under section 2031 or section 2103. Under § 26.2652-1(a)(4), the exercise of a power of appointment that is not a general power of appointment is also treated as a transfer subject to Federal estate or gift tax by the holder of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of the creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation.

The purpose of the rule in § 26.2652-1(a)(4) was to apply the GST tax when it may not otherwise have applied. It was never intended to (nor could it) prevent the application of the tax pursuant to the statutory provisions that apply based on the original taxable transfer. To eliminate any uncertainty concerning the proper application of the GST tax, the regulations under section 2652(a) will be clarified by eliminating § 26.2652-1(a)(4) and *Example 9* and *Example 10* in § 26.2652-1(a)(6) from the final regulations.

#### *Proposed Effective Date*

These amendments apply to transfers to trusts on or after June 12, 1996.

#### *Special Analysis*

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 has also been

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

#### *Comments and Requests for a Public Hearing*

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### *Drafting Information*

The principal author of this proposed regulation is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in its development.

\* \* \* \* \*

#### *Proposed Amendments to the Regulations*

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

#### PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 2 Section 26.2652-1 is amended as follows:

1. Paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

2. In newly designated paragraph (a)(5), *Examples 9* and *10* are removed

and *Example 11* is redesignated as *Example 9*.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on June 11, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 12, 1996, 61 F.R. 29714)

#### **Announcement 96-71**

Assistant Commissioner (International) John T. Lyons has announced the Ninth Annual Institute on Current Issues in International Taxation, co-sponsored with The George Washington University, to be held December 12 and 13 at the J.W. Marriott Hotel in Washington, DC.

Designed for professionals in international tax law, the Institute will cover on the first day sessions with the U.S., Mexican, and Canadian Competent Authorities, treaty issues, collateral consequences of check-the-box, and a U.S. multinational update. The second day will include an "Ask the IRS" session, and sessions on regulatory guidance, intellectual property, and withholding regulations. IRS Commissioner Margaret Milner Richardson will be a featured luncheon speaker.

Those interested in attending may obtain more information from The George Washington University, Office of Conferences and Institutes, by calling (202) 973-1110.

#### **Generation-Skipping Transfer Tax; Correction**

#### **Announcement 96-72**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8644 [1996-7 I.R.B. 16]) which were published in the **Federal Register** for Wednesday, December 27, 1995 (60 FR 66898). The final regulations relate to generation-skipping transfer tax.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Hogan (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under chapter 13 of the Internal Revenue Code.

Need for Correction

As published, the final regulations [TD 8644] contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations which are the subject of FR Doc. 95-30873 is corrected as follows:

1. On page 66899, column 1, in the preamble under the paragraph heading "Uniform Statutory Rule Against Perpetuities", line 13, the language "alienation of a interest in property for a" is corrected to read "alienation of an interest in property for a".

2. On page 66902, column 1, in the preamble under the paragraph heading "Division of a Single Trust Into Separate Trusts", paragraph 3, line 3 from the bottom, the language "for under the original trusts. Thus, a" is corrected to read "for under the original trust. Thus, a".

§ 26.2601-1 [Corrected]

2a. On page 66907, column 2, § 26.2601-1, paragraph (b)(1)(v)(D), Example 2, eighth line from the bottom of the paragraph, the language, "of the first addition), \$200,000 (.2÷" is corrected to read "of the first addition), \$200,000 (.2x".

3. On page 66907, column 2, § 26.2601-1, paragraph (b)(1)(v)(D), Example 4, eighth line from the bottom of the column, the language "GGC, for life. Upon GGC's death the" is corrected to read "GGC, for life. Upon GGC's death, the".

4. On page 66907, column 3, § 26.2601-1, paragraph (b)(1)(v)(D), Example 5, line 3, the language "Assume the same facts as in Example 3," is corrected to read "Assume the same facts as in Example 4,".

5. On page 66909, column 2, § 26.2601-1, paragraphs (b)(3)(iii) introductory text, (b)(3)(iii)(A), (b)(3)(iii)(A)(1), (b)(3)(iii)(A)(2), (b)(3)(iii)(B), (b)(3)(iii)(C) are correctly designated (b)(3)(iii)(A) introductory text, (b)(3)(iii)(A)(1), (b)(3)(iii)(A)(1)(i), (b)(3)(iii)(A)(1)(ii), (b)(3)(iii)(A)(2), and (b)(3)(iii)(A)(3), respectively.

6. On page 66909, column 2, § 26.2601-1, newly designated paragraph (b)(3)(iii)(A)(3) is corrected and paragraph (b)(3)(iii)(B) is added to read as follows:

§ 26.2601-1 Effective dates.

\* \* \* \* \*

- (b) \* \* \*
(3) \* \* \*
(iii) \* \* \*
(A) \* \* \*

(3) Any judgement or decree relating to the decedent's incompetency that was made after October 22, 1986.

(B) Such items in paragraphs (b)(3)(iii)(A), (B), and (C) of this section will be considered relevant, but not determinative, in establishing the decedent's state of competency.

7. On page 66909, column 3, § 26.2601-1, paragraph (b)(4)(i), line 5, the language "rules in paragraph (b)(2) or (3) of this" is corrected to read "rules in paragraph (b)(1), (2) or (3) of this".

8. On page 66910, column 2, § 26.2601-1, paragraph (c), line 5 from the top of the column, the language "on or after [December 27, 1995]." is corrected to read "on or after December 27, 1995.".

§ 26.2612-1 [Corrected]

9. On page 66910, column 3, § 26.2612-1, paragraph (a)(2)(ii), lines 5 and 6, the language "the transferor would be assigned to a lower generation by reason of that" is corrected to read "the lineal descendant would be assigned to a higher generation by reason of that".

10. On page 66910, column 3, § 26.2612-1, paragraph (b)(1)(i), last 3 lines are corrected by removing the language "(i.e., a new transferor is determined with respect to the property)".

§ 26.2632-1 [Corrected]

11. On page 66914, column 3, § 26.2632-1, paragraph (d)(1), line 3 from the top of the column, the language "706 or Form 706NA and is effective as" is corrected to read "706, Form 706NA or Form 709 (filed on or before the due date of the transferor's estate tax return) and is effective as".

§ 26.2642-2 [Corrected]

12. On page 66916, column 2, § 26.2642-2, paragraph (b)(3)(ii)(B),

line 6, the language "date of death and the date of" is corrected to read "valuation date and the date of".

§ 26.2642-4 [Corrected]

13. On page 66917, column 3, § 26.2642-4, paragraph (a)(3), lines 5 through 9 from the top of the column, the language "not allocated to the trust, the applicable fraction immediately before death is not changed, if the trust was not subject to an ETIP at the time GST exemption was allocated to the trust. The denominator" is corrected to read "not allocated to the trust, then, except as provided in this paragraph (a)(3), the applicable fraction immediately before death is not changed, if the trust was not subject to an ETIP at the time GST exemption was allocated to the trust. In any event, the denominator".

14. On page 66918, column 2, § 26.2642-4, paragraph (b), paragraph (i) of Example 5, the last line, the language "is .50 (1 - (\$100,000/\$200,000 = .50))" is corrected to read "is .50 (1 - (\$100,000/\$200,000))".

§ 26.2652-1 [Corrected]

15. On page 66918, column 3, § 26.2652-1, paragraph (a)(2), line 2, the language "or gift tax. For purposes of this section," is corrected to read "or gift tax. For purposes of this chapter,".

16. On page 66919, column 1, § 26.2652-1, paragraph (a)(2), line 3 from the top of the column, the language "2501(a). A transfer is subject to Federal" is corrected to read "2501(a) (without regard to exemptions, exclusions, deductions, and credits). A transfer is subject to Federal".

17. On page 66919, columns 1 and 2, § 26.2652-1, paragraph (a)(6) Example 1, last two lines in column 1 and first line in column 2, the language "benefit of T's grandchild. The transfer is a completed gift under § 25.2511-2 of this chapter. Thus, for purposes of chapter 13, T" is corrected to read "benefit of T's grandchild. The transfer is subject to Federal gift tax because a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits). Thus, for purposes of chapter 13, T".

18. On page 66919, column 2, § 26.2652-1, paragraph (a)(6), Example 5, lines 13 and 14, the language "transfer by T is a completed transfer within the meaning of § 25.2511-2 of this chapter" is corrected to read "transfer

by T is subject to Federal gift tax because a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits)".

#### § 26.2654-1 [Corrected]

19. On page 66921, column 2, § 26.2654-1, paragraph (a)(1)(ii)(A), last line, the language "person; or" is corrected to read "person; and".

20. On page 66922, column 2, § 26.2654-1, paragraph (a)(5), *Example 6*, line 10 from the top of the column, the language "contribution is  $3/4$  ( $(2/3 \times \$180,000) +$ " is corrected to read "contribution is  $3/4$  ( $((2/3 \times \$180,000) +$ ".

21. On page 66922, column 2, § 26.2654-1, paragraph (a)(5), *Example 8*, line 4 from the bottom of the paragraph, the language "same if, the trust instrument provided that" is corrected to read "same if the trust instrument provided that".

22. On page 66922, column 2, § 26.2654-1, paragraph (b)(1)(ii)(A), lines 1 and 2, the language "(A) The terms of each of the new trusts provide for the same succession of" is corrected to read "(A) The terms of the new trusts provide in the aggregate for the same succession of".

23. On page 66922, column 3, § 26.2654-1, paragraph (b)(1)(ii)(C)(1), line 2 from the bottom of the paragraph, the language "measured from the date of death to the" is corrected to read "measured from the valuation date to the".

#### § 26.2662-1 [Corrected]

24. On page 66923, column 3, § 26.2662-1, paragraph (c)(2)(vi), *Example 1*, line 6, the language "T's grandchild GC, was named the sole" is corrected to read "T's grandchild, GC, was named the sole".

#### § 26.2663-2 [Corrected]

25. On page 66925, column 1, § 26.2663-2, paragraph (c)(2), the last line, the language "the trust)." is corrected to read "the trust)).".

26. On page 66925, column 2, § 26.2663-2, paragraph (d), *Example 3*, line 8 from the bottom of the paragraph, the language "Generation-Skipping Transfer) Tax return" is corrected to read "Generation-Skipping Transfer) Tax Return".

27. On page 66925, column 3, § 26.2663-2, paragraph (e), line 11, the

language "prescribed in section 2632(c). Thus, an" is corrected to read "prescribed in section 2632(c). Thus, a".

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

(Filed by the Office of the Federal Register on June 11, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 12, 1996, 61 F.R. 29653)

### Foundations Status of Certain Organizations

#### Announcement 96-73

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

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

American Research Center Inc.,  
Aberdeen, MD  
Arundel Singers Inc., Baltimore, MD  
Assisting Dads & Moms Inc., West  
Long Branch, NJ  
Association for a Better Environment,  
McMurray, PA  
Association for Innovative Education  
Inc., Philadelphia, PA  
Association for Puerto Ricans in Science  
and Engineering, Washington, DC  
Association of Pharmaceutical  
Technologists Incorporated, Union, NJ  
Atlantic City Urban Beautification  
Committee Inc., Atlantic City, NJ  
Autumn Place Inc., Frederick, MD  
Aware Safety Group Inc., Richmond,  
VA  
Bangladesh Society of NJ Inc.,  
Lawrenceville, NJ  
Bergmans Butterflies Parents  
Association, Mays Landing, NJ  
Bernardino Coutinho Foundation Inc.,  
Newark, NJ  
Bill Gold Drive for Life Inc.,  
Ridgewood, NJ  
Biosphere Resources Group Inc.,  
Takoma Park, MD  
Birmingham Football Foundation, Inc.,  
Birmingham, AL  
Black College AIDS Awareness  
Foundation, Washington, DC  
Blacks Networking for Progress Inc.,  
Philadelphia, PA  
Black Teenage World Educational Fund  
Inc., Washington, DC  
Blue Mountain Community Library Inc.,  
Pen Argyl, PA  
Bon Aqua Volunteer Fire Dept, Bon  
Aqua Volunteer, TN  
Bulgarian-American Charitable &  
Educational Center, Potomac, MD  
Caesar Rodney High School Cheerleader  
Booster Club, Dover, DE  
Cambodia Development International,  
Washington, DC  
Capella Productions Inc., Merion, PA  
Capital Hill Tollgate Association,  
Washington, DC  
Captain Thomas Clifford Bland Jr  
Memorial & Scholarship Fund,  
Gaithersburg, MD  
Care Group Inc., Calhoun, GA  
Cecil Soccer League Inc., Elkton, MD  
Central and Southern Africa Legal  
Assistance Foundation, Harrisburg,  
PA  
Christians United in Business—CUBE,  
Detroit, MI  
C Incorporated Support for Visions in  
Action, Hopewell, NJ  
Ellis Swim Team, Philadelphia, PA  
Goldstone-Trust Press and Educational  
Division, Great Barrington, MA  
Harold E. Byrd Educational Foundation,  
Inc., East Bradenton, FL  
Isadora Duncan International, New York,  
NY  
KOP Art, Inc., Brooklyn, NY  
Lebanon Opera House Improvement  
Corporation, Lebanon, NY  
Manhattan International Cultural  
Studios, Inc., New York, NY  
Massachusetts Association of Women  
Lawyers Scholarship Trust, Boston,  
MA  
Massachusetts Vigil Society  
Corporation, Ipswich, MA  
Mayors Youth Leadership Corps, Inc.,  
Boston, MA  
Medius Corporation, New York, NY  
Melrose Launch, Inc., Melrose, MA  
Merrimack County Mental Health  
Consumers Association, Concord, NH  
Minnesota Decoy Foundation, St. Paul,  
MN

Monadnock Area Foster Parent Support Group, Keene, NH  
 Music Mobile International, Inc., New York, NY  
 Nash County Foundation to Reduce the Use of Drugs, Nashville, TN  
 National Cancer Research Center, Inc., Aberdeen, MD  
 Northwest Community and Business Council, Inc., Lake Wales, FL  
 Paralysis Research Organization, Littleton, MA  
 Parents Teachers Advisory Group, Fitchburg, MA  
 Pasos Bailandos Therapeutic Riding Center, Bridgeton, ME  
 Planet Well Incorporated, Tallahassee, FL  
 Precious Jewels Day Care Center, Inc., Buffalo, NY  
 P.S. 234 Parents and Teachers Association, Inc., New York, NY  
 Quidditas, Inc., Salem, NY  
 Recreational Association for Deaf Youth, Inc., Avon, MA  
 Relapse Preventions Therapy and Preventive Measure, Inc., Providence, RI  
 Serving Our Selves, Inc., Bronx, NY  
 Shaw Memorial Ame Zion Church Gathering, Providence, RI  
 Shelter Works, Inc., Bloomfield, CT  
 Spiritual Vision, Inc., Tallahassee, FL  
 Sugarloaf Foundation, Gray, ME  
 Take-One Theatre Arts, Inc., St. James, NY  
 Tilton-Northfield Baseball Organization, Tilton, NH  
 Turnpike Camerata, Inc., New York, NY

Valley Grove School District Scholarship Fund, Franklin, PA  
 Whitfield Education Foundation, Inc., Dalton, GA  
 Youth Hi Tech ZK Inc., Silver Spring, MD

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

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

**Announcement 96-74**

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are 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 August 12, 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.

Fellowship Outreach Ministries, Inc.  
 Jacksonville, FL  
 Fund for the Duluth Clinic  
 Duluth, MN

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

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96–40, 1996–32 I.R.B. 8  
96–41, 1996–32 I.R.B. 9  
96–42, 1996–32 I.R.B. 14

### Revenue Rulings:

96–33, 1996–27 I.R.B. 4  
96–34, 1996–28 I.R.B. 4  
96–35, 1996–31 I.R.B. 4  
96–36, 1996–30 I.R.B. 6  
96–37, 1996–32 I.R.B. 4

### Tax Conventions:

1996–28 I.R.B. 36

### Treasury Decisions:

8673, 1996–27 I.R.B. 4  
8674, 1996–28 I.R.B. 7  
8675, 1996–29 I.R.B. 5  
8676, 1996–30 I.R.B. 4  
8677, 1996–30 I.R.B. 7  
8678, 1996–31 I.R.B. 11  
8679, 1996–31 I.R.B. 4

<sup>1</sup>A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

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

Bulletins 1996-27 through 1996-32

\*Denotes entry since last publication

### Revenue Procedures:

#### 80-27

Modified by  
96-40, 1996-32 I.R.B. 8

#### 95-29

Superseded by  
96-36, 1996-27 I.R.B. 11

#### 95-29A

Superseded by  
96-36, 1996-27 I.R.B. 11

#### 95-30

Superseded by  
96-42, 1996-32 I.R.B. 4

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<sup>1</sup>A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996-1 through 1996-26 will be found in Internal Revenue Bulletin 1996-27, dated July 1, 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.