

# Internal Revenue bulletin

Bulletin No. 1998-5  
February 2, 1998

## HIGHLIGHTS OF THIS ISSUE

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

### INCOME TAX

T.D. 8742, page 4.

Final regulations under section 7805 of the Code provide procedures for requesting an extension of time to make certain elections under the Code.

### EMPLOYEE PLANS

Notice 98-12, page 12.

Group health plans; COBRA continuation coverage; HIPAA portability. Information is provided on how the HIPAA portability provisions may affect an individual's decision whether to elect COBRA continuation coverage.

### EXEMPT ORGANIZATIONS

Announcement 98-7, page 26.

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

### EMPLOYMENT TAXES

Rev. Proc. 98-16, page 19.

General standards for student FICA exception under section 3121(b)(10) of the Code. This procedure sets

forth generally applicable standards for determining whether services performed by students in the employ of certain institutions of higher education qualify for the exception from FICA tax provided under section 3121(b)(10) of the Code.

### ADMINISTRATIVE

Rev. Proc. 98-17, page 21.

Environmental cleanup costs; letter rulings. Special procedures are provided for requesting written guidance from the Service on the tax treatment under sections 162, 165, 198, and 263 of the Code of environmental cleanup costs incurred in projects that span several years.

Announcement 98-5, page 25.

This announcement informs the public of the Information Reporting Program's Year 2000 date compliance changes for tax year 1998 reporting.

Announcement 98-6, page 25.

This announcement clarifies Part B, Section 8 of Rev. Proc. 97-34, 1997-30, I.R.B. 14, regarding the use of the Form 5498, IRA, SEP, and SIMPLE Indicators to be used in the magnetic or electronic filing of rollovers and fair market value.

Finding Lists begin on page 29.

Index for January on page 31.



Department of the Treasury  
Internal Revenue Service

# 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 prod-

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

## Statement of Principles of Internal Revenue Tax Administration

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

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

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

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

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

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures 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 a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis and are published in the first Bulletin of the succeeding semiannual 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.

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

## Section 162.—Trade or Business Expenses

26 CFR 1.162-1: Trade or business expenses.

What are the procedures for taxpayers to obtain written guidance from the Service on the tax treatment under § 162 of the Code of environmental cleanup costs incurred in projects that span several years? See Rev. Proc. 98-17, page 21.

## Section 165.—Losses

26 CFR 1.165-1: Losses.

What are the procedures for taxpayers to obtain written guidance from the Service on the tax treatment under § 165 of the Code of environmental cleanup costs incurred in projects that span several years? See Rev. Proc. 98-17, page 21.

## Section 198.—Expensing of Environmental Remediation Costs

What are the procedures for taxpayers to obtain written guidance from the Service on the tax treatment under § 198 of the Code of environmental cleanup costs incurred in projects that span several years? See Rev. Proc. 98-17, page 21.

## Section 263.—Capital Expenditures

26 CFR 1.263(a)-1: Capital expenditures; in general.

What are the procedures for taxpayers to obtain written guidance from the Service on the tax treatment under § 263 of the Code of environmental cleanup costs incurred in projects that span several years? See Rev. Proc. 98-17, page 21.

## Section 7805.—Rules and Regulations

26 CFR 301.9100-1: Extensions of time to make elections.

T.D. 8742

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Parts 1, 301, 601, and 602

## Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing the procedures for requesting an extension of time to make certain elections under the Internal Revenue Code. In addition, the regulations provide the standards that the Commissioner will use in determining whether to grant taxpayers extensions of time to make certain elections including changes in accounting method and accounting period. The regulations also set forth the time for filing a Form 3115, Application for Change in Accounting Method, with the Commissioner. The regulations affect taxpayers requesting an extension of time to make certain elections and taxpayers requesting to change their method of accounting for federal income tax purposes.

EFFECTIVE DATE: These regulations are effective December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Cheryl Lynn Oseekey, (202) 622-4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### *Paperwork Reduction Act*

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1488. Responses to this collection of information are required to obtain an extension of time to make 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.

The estimated annual burden per respondent is 10 hours.

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

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

### *Background*

On June 27, 1996, temporary regulations relating to the standards the Commissioner will use to grant taxpayers extensions of time to make certain elections were published in the **Federal Register** (TD 8680, 61 FR 33365 [1996-2 C.B. 194]), and cross-referenced to a notice of proposed rulemaking published in the **Federal Register** on the same date (61 FR 33408 [IA-29-96 C.B. 483]). The regulations, §§301.9100-1T through 301.9100-3T, provide an automatic 6-month extension from the due date of the return excluding extensions to make statutory and regulatory elections whose due dates are the due date of the return or the due date of the return including extensions. The regulations also provide an automatic 12-month extension of time to make certain regulatory elections. For regulatory elections not eligible for the automatic extensions of time, the regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. A public hearing on the regulations was held on October 30, 1996.

On May 15, 1997, temporary regulations setting forth the time for requesting a change in accounting method and the standards the Commissioner will use to grant an extension of time to request a

change in accounting method were published in the **Federal Register** (TD 8719, 62 FR 26740), and cross-referenced to a notice of proposed rulemaking published in the **Federal Register** on the same date (62 FR 26755). On May 27, 1997, corrections to TD 8719 were published in the **Federal Register** (62 FR 28630). The regulations extend the time for filing a Form 3115, Application for Change in Accounting Method, pursuant to §§1.446-1(e)(3)(i) and 601.204(b) by allowing a taxpayer to file its Form 3115 with the Commissioner anytime during the taxable year in which the taxpayer desires to make the change in method of accounting. The regulations also revised §§301.9100-1T and 301.9100-3T to provide that an extension of time to file a Form 3115 beyond the year provided in the regulations will be granted only in unusual and compelling circumstances. No public hearing on the regulations was requested or held.

One comment responding to the notice of proposed rulemaking published in the **Federal Register** on June 27, 1996 (61 FR 33408) was received. No comments responding to the notice of proposed rulemaking published in the **Federal Register** on May 15, 1997 (62 FR 26755) were received. After consideration of the comment received, the regulations are adopted as modified by this Treasury decision.

#### *Public Comment*

The commentator recommended several modifications to the regulations prior to their adoption as final regulations.

The commentator suggested that a request for extension of time to make an election should not be denied on the basis that the taxpayer fails to qualify for the underlying election. The commentator noted that the regulations provide that the granting of §301.9100 relief is not a determination that the taxpayer is otherwise eligible to make the election. This suggested modification has not been adopted. The IRS and the Treasury Department believe it is in the interest of sound tax administration to deny §301.9100 relief when it becomes apparent in considering the request for an extension of time that the taxpayer is not otherwise eligible to make the election. This ensures that the

resources of the IRS are brought to bear in the resolution of the issue regarding eligibility at the earliest stage of the administrative process.

The commentator recommended that an extension of time to make an election be made available even when 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. This suggested modification has not been adopted. The IRS and the Treasury Department want to retain the ability to tailor relief for specific elections.

The commentator recommended measuring the 12-month automatic extension for eligible regulatory elections whose deadlines are the due date of the return or the due date of the return including extensions from the extended due date when the taxpayer has obtained an extension. This suggested modification has been adopted. The commentator also recommended that the automatic 6-month extension for statutory and regulatory elections be available even when the return for the year of the election was not timely filed. This suggested modification has not been adopted.

The commentator recommended that the regulations not provide that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any affected taxable years are closed by the period of limitations on assessment. This suggested modification was not adopted. There are two policies that must be balanced in formulating the standards for §301.9100 relief. The first is the policy of promoting efficient tax administration by providing limited time periods for taxpayers to choose among alternative tax treatments and encouraging prompt tax reporting. The second is the policy of permitting taxpayers that are in reasonable compliance with the tax laws to minimize their tax liability by collecting from them only the amount of tax they would have paid if they had been fully informed and well advised. The IRS and the Treasury Department believe that the regulation achieves an appropriate balance between these policies. Furthermore, the language of the regulation does not foreclose in all circumstances consid-

eration of whether the interests of the Government will not be prejudiced.

The commentator questioned the special rules for accounting method and accounting period regulatory elections. The regulations provide limited relief for accounting methods or periods subject to advance written consent from the Commissioner ordinarily not to exceed 90 days from the deadline for filing the Form 3115, Application for Change in Accounting Method, or the Form 1128, Application to Adopt, Change, or Retain a Tax Year. The commentator suggested that the 90-day period be extended. The regulations published in the **Federal Register** on May 15, 1997 (TD 8719, 62 FR 26740) and corrected on May 27, 1997 (62 FR 28630) effectively extended the 90-day period for accounting methods by allowing the Form 3115 to be filed anytime during the taxable year in which the taxpayer desires to make the change in method of accounting. This rule is incorporated into the final regulations. However, a similar amendment was not made in regard to accounting period elections because extending the 90-day period would delay the filing of the short period return and result in less efficient tax administration.

The commentator recommended that the special rules for other accounting method regulatory elections be modified by eliminating the rule that, ordinarily, the interests of the Government are deemed to be prejudiced when the election requires an adjustment under section 481(a). This suggested modification was not adopted. The IRS and the Treasury Department believe it is in the interest of sound tax administration to generally preclude taxpayers from requesting, or otherwise making, a retroactive change in an adopted method of accounting, whether the change is from a permissible or impermissible method. See generally, Rev. Rul. 90-38 (1990-1 C.B. 57). In considering an exception, the IRS and the Treasury Department believe that §301.9100 relief is most appropriate for accounting method elections that relate to nonrecurring transactions. These elections are generally made on a cut-off basis and a missed election would preclude accounting for a transaction in the year of the missed election under the elective method. In contrast, accounting method

elections subject to section 481(a) generally will provide the benefit of the elective method for a transaction in the year of the missed election through an adjustment under section 481(a).

The commentator suggested that the regulations clarify when taxpayers may obtain an extension of time to file a request to change an accounting method or an accounting period under an unusual and compelling circumstances standard. This suggested modification was not adopted. What are unusual and compelling circumstances must be decided on a case-by-case basis in light of all applicable facts and circumstances.

#### *Effective Date*

The rules relating to the time for filing an application for change in accounting method apply to Forms 3115 submitted on or after December 31, 1997.

The rules relating to requests for an extension of time apply to requests submitted to the IRS on or after December 31, 1997. The rules relating to automatic extensions apply to elections for which corrective action is taken on or after December 31, 1997.

#### *Special Analyses*

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

Sections 1.446-1(e)(3)(i) and 601.204(b) in this regulation, originally published in the **Federal Register** for May 15, 1997 as a temporary regulation and cross-reference notice of proposed rulemaking, merely extend the time for filing a Form 3115, Application for Change in Accounting Method, with the Commissioner and, therefore, do not contain a new collection of information. Sections 301.9100-2 and 301.9100-3 of this regulation, originally published in the **Federal Register** for June 27, 1996 as a temporary regulation and cross-reference notice of proposed rulemaking, contain a collection of information. However, an initial regulatory flexibility analysis was not required because the regulations were

published within 90 days of the enactment of Subtitle D of the Contract with America Advancement Act of 1996 (Public Law 104-21, 110 Stat. 847, 868 (1996)). With respect to these final regulations, it is hereby certified that the collection of information in those sections will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, on average, no more than 500 requests for an extension of time to make an election are received on an annual basis. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Small Business Administration for comment on their impact on small business.

#### *Drafting Information*

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

\* \* \* \* \*

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

Accordingly, 26 CFR parts 1, 301, 601, and 602 are amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805. \* \* \*

#### **§1.446-1 [Amended]**

Par. 2. Section 1.446-1 is amended as follows:

1. The first sentence of paragraph (e)(3)(i) is amended by removing the language “within 180 days after the beginning of” and adding “during” in its place.

2. Paragraph (e)(3)(iii) is revised to read as follows:

#### *§1.446-1 General rule for methods of accounting.*

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) This paragraph (e)(3) applies to Forms 3115 filed on or after December 31, 1997. For other Forms 3115, see §1.446-1(e)(3) in effect prior to December 31, 1997 (§1.446-1(e)(3) as contained in the 26 CFR part 1 edition revised as of April 1, 1997).

#### **§1.446-1T [Removed]**

Par. 3. Section 1.446-1T is removed.

#### PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 5. Section 301.9100-0 is added to read as follows:

#### *§301.9100-0 Outline of regulations.*

This section lists the paragraphs in §§301.9100-1 through 301.9100-3.

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

- (a) Introduction.
- (b) Terms.
- (c) General standards for relief.
- (d) Exceptions.
- (e) Effective dates.

#### *§301.9100-2 Automatic extensions.*

- (a) Automatic 12-month extension.
  - (1) In general.
  - (2) Elections eligible for automatic 12-month extension.
- (b) Automatic 6-month extension.
- (c) Corrective action.
- (d) Procedural requirements.
- (e) Examples.

#### *§301.9100-3 Other extensions.*

- (a) In general.
- (b) Reasonable action and good faith.
  - (1) In general.
  - (2) Reasonable reliance on a qualified tax professional.
  - (3) Taxpayer deemed to have not acted reasonably or in good faith.
- (c) Prejudice to the interests of the Government.
  - (1) In general.
  - (i) Lower tax liability.
  - (ii) Closed years.

- (2) Special rules for accounting method regulatory elections.
- (3) Special rules for accounting period regulatory elections.
- (d) Effect of amended returns.
- (1) Second examination under section 7605(b).
- (2) Suspension of the period of limitations under section 6501(a).
- (e) Procedural requirements.
- (1) In general.
- (2) Affidavit and declaration from taxpayer.
- (3) Affidavits and declarations from other parties.
- (4) Other information.
- (5) Filing instructions.
- (f) Examples.

Par. 6. Section 301.9100-1 is revised to read as follows:

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

(a) *Introduction.* The regulations under this section and §§301.9100-2 and 301.9100-3 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 §301.9100-2 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. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. Section 301.9100-2 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 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of §301.9100-2.

(b) *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 due date 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 (see §601.601(d)-(2) of this chapter).

*Statutory election* means an election whose due date is prescribed by statute.

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

(c) *General standards for relief.* The Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 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.

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

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

(2) 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 (see §601.601(d)-(2) of this chapter).

(e) *Effective dates.* In general, this section and §§301.9100-2 and 301.9100-3 apply to all requests for an extension of time submitted to the Internal Revenue Service (IRS) on or after December 31, 1997. However, the automatic 12-month and 6-month extensions provided in §301.9100-2 apply to elections for which corrective action is taken on or after December 31, 1997. For other requests for an extension of time, see §§301.9100-1T through 301.9100-3T in effect prior to December 31, 1997 (§§301.9100-1T through 301.9100-3T as contained in the 26 CFR part 1 edition revised as of April 1, 1997).

Par. 7. Sections 301.9100-2 and 301.9100-3 are added to read as follows:

*§301.9100-2 Automatic extensions.*

(a) *Automatic 12-month extension—*

(1) *In general.* An automatic extension of 12 months from the due date for making a regulatory election is granted to make elections described in paragraph (a)(2) of this section provided the tax-

payer takes corrective action as defined in paragraph (c) of this section within that 12-month extension period. For purposes of this paragraph (a), the due date for making a regulatory election is the extended due date of the return if the due date of the election is the due date of the return or the due date of the return including extensions and the taxpayer has obtained an extension of time to file the return. This extension is available regardless of whether the taxpayer timely filed its return for the year the election should have been made.

(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 Internal Revenue Service (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 due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and

the taxpayer takes corrective action as defined in paragraph (c) of this section within that 6-month extension period. This paragraph (b) does not apply 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 taking the steps required to file the election in accordance with the statute or the regulation published in the **Federal Register**, or the revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). For those elections required to be filed with a return, corrective action includes 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. Taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must file their return 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 IRS 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 § 301.9100-2." 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) *Examples.* The following examples illustrate the provisions of this section:

*Example 1. Automatic 12-month extension.* Taxpayer A fails to make an election described in paragraph (a)(2) of this section when filing A's 1997 income tax return on March 16, 1998, 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 (a) and (c) of this section, A may make the regulatory elec-

tion by taking the corrective action of filing an amended return with the appropriate form by March 15, 1999 (12 months from the March 16, 1998 due date of the return). If A obtained a 6-month extension to file its 1997 income tax return, A may make the regulatory election by taking the corrective action of filing an amended return with the appropriate form by September 15, 1999 (12 months from the September 15, 1998 extended due date of the return).

*Example 2. Automatic 6-month extension.* Taxpayer B fails to make an election not described in paragraph (a)(2) of this section when filing B's 1997 income tax return on March 16, 1998, 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, B may make the regulatory election by taking the corrective action of filing an amended return with the appropriate form by September 15, 1998 (6 months from the March 16, 1998 due date of the return).

### §301.9100-3 Other extensions.

(a) *In general.* Requests for extensions of time for regulatory elections that do not meet the requirements of §301.9100-2 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 to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of 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 Internal Revenue Service (IRS);

(ii) 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 Internal Revenue Service (IRS); or

(v) Reasonably relied on a qualified tax professional, including a tax profes-

sional 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 informed in all material respects 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 due date 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.* The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. This paragraph (c) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

(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 taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into ac-



count 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 taxable year in which the regulatory election should have been made or any taxable 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 interests of the Government are not prejudiced under the standards set forth in paragraph (c)(1)(i) of this section.

(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 for which relief is requested—

(i) Is subject to the procedure described in §1.446-1(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner);

(ii) 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) Would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or

(iv) 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 due date 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 taxable year in which the regulatory election should have been made and any taxable 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 I have examined this request, including accompanying docu-

ments, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts 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 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 I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts 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 taxable year in which the regulatory election should have been made or any taxable 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 return for any taxable year for which the taxpayer requests an extension of time to make the election and any return affected by the election; and

(v) When applicable, the taxpayer must submit a copy of the 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 1997 income tax return. A is unaware that a particular regulatory election is available to report a transaction in a particular manner. A files the 1997 return without making the election and reporting the transaction in a different manner. In 1999, A hires a qualified tax professional to prepare A's 1999 return. The professional discovers that A did not make the election. A promptly files for relief in accordance with this section. Assume paragraphs (b)(3)(i) through (iii) of this section do not apply. Under paragraph (b)(1)(i) of this section, A is deemed to have acted reasonably and in good faith because A requested relief before the failure to make the regulatory election was discovered by the IRS.

*Example 2. Reliance on qualified tax professional.* Taxpayer B hires a qualified tax professional to advise B on preparing B's 1997 income tax return. The professional was competent to render advice on the election and B provided the professional with all the relevant facts. The professional fails to advise B that a regulatory election is necessary in order for B to report income on B's 1997 return in a particular manner. Nevertheless, B reports this income in a manner that is consistent with having made the election. In 2000, during the examination of the 1997 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. Assume paragraphs (b)(3)(i) through (iii) of this section do not apply. Under paragraph (b)(1)(v) of this section, B is deemed to have acted reasonably and in good faith because B reasonably relied on a qualified tax professional and the tax professional failed to advise B to make the election.

*Example 3. Accuracy-related penalty.* Taxpayer C reports income on its 1997 income tax return in a manner that is contrary to a regulatory provision. In 2000, during the examination of the 1997 return, the IRS raises an issue regarding the reporting of this income on C's return and asserts the accuracy-related penalty under section 6662. C requests relief under this section to elect an alternative method of report-

ing 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 1997 income tax return. D is unaware that a particular accounting method regulatory election is available. D files D's 1997 return without making the election and uses another permissible method of accounting. The applicable regulation provides that the election is made on a cut-off basis (without an adjustment under section 481(a)). In 1998, D requests relief under this section to make the election under the regulation. 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. Assume that paragraphs (c)(2)(i), (iii), and (iv) of this section do not apply. Under paragraph (c)(2)(ii) of this section, the interests of the Government are not deemed to be prejudiced because the election does not require an adjustment under section 481(a).

*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 by the IRS.* A regulation permits an automatic change in method of accounting for an item on a cut-off basis. Taxpayer E reports income on E's 1997 income tax return using an impermissible method of accounting for the item. In 2000, during the examination of the 1997 return by the IRS, the examining agent notifies E in writing that its method of accounting for the item is an issue under consideration. Any change from the impermissible method made as part of an examination is made with an adjustment under section 481(a). E requests relief under this section to make the change pursuant to the regulation for 1997. The change on a cut-off basis under the regulation would be more favorable than if the change were made with an adjustment under section 481(a) as part of an examination. Under paragraph (c)(2)(iii) of this section, the interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances because E seeks to change from an impermissible method of accounting that is an issue under consideration in the examination on a basis that is more favorable than if the change were made as part of an examination.

**§§301.9100-1T, 301.9100-2T, and 301.9100-3T [Removed]**

Par. 8. Sections 301.9100-1T, 301.9100-2T, and 301.9100-3T are removed.

**PART 601—STATEMENT OF PROCEDURAL RULES**

Par. 9. The authority citation for part 601 continues to read as follows:

Authority: 26 U.S.C. 301 and 552, unless otherwise noted.

**§601.204 [Amended]**

Par. 10. Section 601.204 is amended as follows:

1. In paragraph (b), the fourth sentence is amended by removing the language "within 180 days after the beginning of" and adding "during" in its place.

2. In paragraph (b), the last sentence is removed.

**§601.204T [Removed]**

Par. 11. Section 601.204T is removed.

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

Par. 12. The authority citation for part 602 continues to read as follows:

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

Par. 13. Section 602.101(c) is amended by removing the entries for §§301.9001-2T and 301.9001-3T, and adding the following entry in numerical order to the table to read as follows:

*§602.101 OMB Control numbers*

	* * * *
(c) * * *	
CFR part or section where identified and described	Current OMB control No.
	* * * *
301.9100-1 . . . . .	1545-1488
	* * * *

(2) Removing the following entries from the table:

CFR part or section where identified and described	Current OMB control No.
	* * * *
§301.9100-1T . . . . .	1545-1488
§301.9100-2T . . . . .	1545-1488
§301.9100-3T . . . . .	1545-1488
	* * * *

Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

Approved December 10, 1997.

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

(Filed by the Office of the Federal Register on  
December 30, 1997, 8:45 a.m., and published in the  
issue of the Federal Register for December 31, 1997,  
62 F.R. 68167)

# Part III. Administrative, Procedural, and Miscellaneous

## Deciding Whether to Elect COBRA Health Care Continuation Coverage After Enactment of HIPAA

Notice 98-12

### INTRODUCTION

A key decision that millions of Americans face each year is whether to elect “COBRA<sup>1</sup>” health care continuation coverage. The purpose of this notice is to help people decide whether to elect COBRA coverage. In order to make that decision, they need to know about two laws, COBRA and HIPAA.<sup>2</sup> This notice provides information — in the form of questions and answers — about some factors that employees and their families should take into account in deciding whether to elect COBRA continuation coverage.

An employer maintaining a group health plan is not required to provide this notice. The information in this notice may be used by employers and plan administrators who want to supplement the information they are required to give to covered employees and beneficiaries. The notice may be modified to provide information specific to a plan. The information in this notice is not a substitute for any of the notices required to be furnished under COBRA or for any other information required by law to be furnished to participants or beneficiaries in employer group health plans.

### SHOULD I ELECT COBRA HEALTH CARE CONTINUATION COVERAGE?

#### Questions and Answers

If you lose or leave your job, or if another event occurs that would cause you to lose coverage under an employer’s group health plan, you may have the right to elect COBRA health care continuation coverage under the plan. In making this important decision, there are a number of considerations you should take into account, including:

- whether other group health coverage — such as coverage under another employer’s plan — is available;
- whether any other available health coverage would exclude benefits for a medical condition that you or a family member has;
- when you will have the right to enroll in the other coverage;
- the cost, scope, and level of COBRA coverage compared with that of any other available group coverage or individual health coverage; and
- whether a guaranteed right to buy individual health coverage is important to you.

The following questions and answers are divided into three parts. Read Part I for background information about COBRA coverage and an important recent law, HIPAA, that might affect your COBRA decision. Read Part II if group health coverage other than COBRA coverage is available to you. Read Part III if you do not have other group health coverage available. These questions and answers reflect the law as in effect in January 1998.<sup>3</sup>

These questions and answers are available at the IRS Internet site at:

<http://www.irs.ustreas.gov>

These questions and answers are also available at the Department of Labor (DOL) Internet site at:

<http://www.dol.gov/dol/pwba>

and at the Health Care Financing Administration (HCFA) Internet site at:

<http://www.hcfa.gov>

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<sup>1</sup>COBRA is the Consolidated Omnibus Budget Reconciliation Act of 1985, the law that added the health care continuation coverage requirements.

<sup>2</sup>HIPAA is the Health Insurance Portability and Accountability Act of 1996.

<sup>3</sup>In most cases, HIPAA is effective by January 1998. However, a later effective date applies to certain employer group health plans and certain health coverage. The questions and answers below assume that HIPAA is in effect.

## PART I: Overview of COBRA and HIPAA

### COBRA

#### What rights to health care continuation coverage does COBRA provide?

If you are covered by an employer's group health plan, COBRA may give you the right to stay covered even if something happens, like losing your job, that would otherwise cause you to lose coverage. This continuation coverage under an employer's plan is called "COBRA coverage." COBRA coverage usually lasts only for a limited time, and you usually have to pay for it.

If you are covered by an employer's group health plan, and an event occurs that would otherwise cause you to lose that group health coverage, you need to understand whether COBRA applies to your specific situation and, if so, what your rights are under COBRA.

#### Which employer plans are subject to COBRA?

COBRA applies to most employer group health plans but not to all of them. For example, it does not apply to plans of employers with fewer than 20 employees or to church plans. Many plans of small employers, though, are subject to State laws similar to COBRA. If you are covered under a plan of an employer with fewer than 20 employees, you can contact the department or commission of insurance in your State to find out if you have rights to continuation coverage under your State's insurance laws. (Federal employees, while not protected by COBRA, have similar continuation coverage rights under another federal law.)

#### What events result in COBRA rights and for how long is COBRA coverage available?

Even if COBRA applies to your group health plan, it gives rights only to certain people who would be losing health coverage for certain specific reasons. Some of the most common situations that give people COBRA rights are:

- **Loss of job.** If you are covered by your employer's group health plan and you lose or leave your job, COBRA generally gives you the right to stay in the employer's plan for up to 18 months. The same rights apply if you are the spouse or dependent child of an employee who loses his or her job. (The 18-month period can be increased to 29 months if someone in the family is disabled.)
- **Reduced hours.** If you are covered by your employer's group health plan and your hours are reduced, the employer's plan may provide that you lose coverage unless you elect COBRA. In this case, COBRA generally gives you the right to stay in the employer's plan for up to 18 months. The same rights apply if you are the spouse or dependent child of an employee whose hours are reduced. (The 18-month period can be increased to 29 months if someone in the family is disabled.)
- **Death or divorce of spouse.** You have the right to COBRA coverage if you are covered by a group health plan of your spouse's employer and you would lose coverage because your spouse dies or you and your spouse divorce or legally separate. In these cases, COBRA gives you the right to stay in the plan for up to 36 months.
- **Death or divorce of parent.** You have the right to COBRA coverage if you are a dependent child covered by a group health plan of your parent's employer and you would lose coverage because your parent dies or your parents divorce or legally separate. In these cases, COBRA gives you the right to stay in the plan for up to 36 months.
- **Change of Status as Dependent.** COBRA also gives you rights if you are a dependent child covered by a group health plan of your parent's employer and you would lose coverage because you reach an age or condition that causes you to no longer be covered as a dependent under the plan. In these cases, COBRA gives you the right to stay in the plan for up to 36 months.

If you become covered by another group health plan or by Medicare before your COBRA coverage would otherwise end, you usually lose the right to COBRA coverage. However, you do not lose the right to COBRA coverage if the new group health plan does not cover illnesses or conditions because you had them before you became covered under the plan.

#### What are the requirements for obtaining COBRA coverage?

If you want COBRA coverage, you can be required to elect it within 60 days after your coverage would otherwise end. If you elect COBRA coverage, the plan is required to continue the same coverage for you but can charge you for it.

- **Cost of COBRA coverage.** If you elect COBRA coverage, the plan can require you to pay for the entire cost of coverage, plus a small (2%) additional charge for administration. (If you are getting a longer period of coverage because of disability, you may have to pay more.) The cost of COBRA coverage will probably be more than what you were paying for coverage before. You can pay for COBRA coverage in monthly installments.

### **How can I get more information about COBRA ?**

COBRA has a number of special rules, and the information above covers only basic points. The plan administrator of your group health plan is required to give you information about your COBRA rights. You should read that information carefully. If you have any questions about your COBRA rights or would like additional information about COBRA and your group health plan, contact your plan administrator.

If you want to know more, the Department of Labor has a booklet called “Health Benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA).” You can request this booklet free of charge by calling 1-800-998-7542. The booklet is also available on the Internet at:

<http://www.dol.gov/dol/pwba>

## **HIPAA**

### **What is HIPAA and why is it important in deciding whether to elect COBRA coverage?**

HIPAA is a federal law that regulates employer group health plans and health insurance companies. HIPAA is important to your decision whether to elect COBRA coverage because HIPAA may affect when other coverage is available to you and the types of other coverage available to you, including the extent to which coverage can be restricted under a “preexisting condition exclusion.”

### **What is a preexisting condition exclusion?**

Some employer group health plans do not provide coverage for an illness or condition you had before you became covered under the plan. These illnesses or conditions are commonly called “preexisting conditions.” A special limit on coverage for a preexisting condition is called a “preexisting condition exclusion.”

### **How are preexisting condition exclusions limited by HIPAA?**

HIPAA imposes the following limits on the situations in which employer group health plans may have preexisting condition exclusions and the length of time that such exclusions can apply:

- **Treatment or advice received in 6 months before enrollment.** An employer group health plan cannot exclude coverage for a preexisting condition you have unless medical advice, diagnosis, care, or treatment was received by you (or recommended to you) for the condition during a 6-month period. If there is a waiting period to get into the plan, the 6-month period is the 6 months before the start of the waiting period. If the plan has no waiting period, the 6-month period is the 6 months before you enter the plan.
- **Preexisting condition exclusion cannot last for more than 12 (or 18) months.** An employer group health plan cannot exclude coverage for a preexisting condition for more than 12 months after the start of the waiting period for coverage. If there is no waiting period, the plan cannot exclude coverage for a preexisting condition for more than 12 months after you enter the plan. However, if you do not enroll when you are first eligible and do not enroll when you have “special enrollment rights” (as described below), the plan can refuse to cover preexisting conditions for up to 18 months after you enter the plan.
- **Previous coverage reduces length of exclusion.** If you had other health coverage — for example, under another group health plan (including COBRA coverage) or under an individual insurance policy, Medicare, or Medicaid — your new plan’s preexisting condition exclusion period generally must be reduced by the period of your other coverage. For example, if you were covered by your old employer’s plan for 4 months and your new employer’s plan has a 12-month preexisting condition exclusion, your new employer’s plan cannot exclude coverage for you for any preexisting condition for more than 8 months. However, your new employer’s plan does not have to count coverage before a 63-day break in coverage.
- **63-day break in coverage.** If there has been a break of 63 days or more during which you had no health coverage, then the plan can disregard your old coverage that preceded this break. Thus, if you had no coverage for at least 63 days just before you began working for your new employer, the new employer’s plan can refuse to cover any preexisting conditions for up to 12 months (or

18 months, depending on when you enroll in the new plan). Time spent in any waiting period for coverage does not count toward the 63-day break.

- **No preexisting condition exclusion permitted for pregnancy, or for newborn and adopted children.** A plan cannot impose a preexisting condition exclusion relating to pregnancy. In addition, a plan cannot impose a preexisting condition exclusion on newborn children, adopted children, and children placed for adoption who are covered under a plan on the 30th day after their birth, adoption, or placement for adoption.
- **State insurance laws.** State insurance laws may further limit the extent to which insurance under an employer's plan can exclude coverage for preexisting conditions.

#### **How does HIPAA affect my ability to enroll in an employer's plan?**

- **Special enrollment rights.** HIPAA gives you and your family a special opportunity to enroll in your employer's plan in two situations: (1) if you lose other coverage (including COBRA coverage) or (2) if you have a new spouse or dependent. In these two situations, you (or your spouse or dependent) can be enrolled in your employer's plan even if the plan normally would not allow enrollment at that time.
  - **Special enrollment because of loss of other coverage.** You (and your spouse and dependents) might have been eligible to enroll in your employer's plan at an earlier time but you decided not to because at that time you (or your family members) had other coverage (say, under the plan of your spouse's employer). In that case, if you (or your family members) later lose the other coverage, your employer's plan generally must allow you (and your family members) to enroll. The plan has to give you at least 30 days after that other coverage is lost to request enrollment, and must allow enrollment by the first day of the month after the plan receives your completed request.
    - This special enrollment right generally is available only if the coverage is lost because it is no longer available (and not lost because of failure to pay for it or for cause, such as making a fraudulent claim). You are not required to elect COBRA coverage in order to have a special enrollment right; however, if you do elect COBRA coverage, you must continue it for the entire period it is available to you in order to preserve this special enrollment right.
  - **Special enrollment because of a new spouse or dependent.** If you marry, then you, your spouse, and any new dependents you get as a result of the marriage have special rights to enroll. If a new child is born, you adopt a child, or a child is placed for adoption with you, then you, your spouse, and the new child also get special rights to enroll.
    - To be entitled to special enrollment on account of a new spouse or dependent, you must either be covered under the plan or be eligible to be covered under the plan. The plan has to give you at least 30 days after the marriage, birth, adoption, or placement for adoption to request enrollment.
    - If you get married, the plan must cover you, your spouse, and any new dependent by the first day of the month after the plan receives your completed request.
    - If you have a new child, the plan must cover you and your spouse and the child from the date of birth, adoption, or placement for adoption.
- **The plan cannot exclude you (or make you pay more) based on health status.** HIPAA prohibits employer group health plans from discriminating in their eligibility rules on the basis of your health.
  - For example, a plan cannot require you to pass a physical examination before you can enroll in the plan, or prevent you from enrolling because of your medical claims experience, medical history, genetic information, evidence of insurability, or disability.

In addition, a plan generally cannot require you to pay a higher contribution than similarly situated people covered under the plan due to your health or any of these other factors.

#### **Which Employer Plans Are Subject to HIPAA?**

HIPAA's limits on preexisting condition exclusions, special enrollment rights, and restrictions on discrimination based on health status apply to most but not all employer group health plans. For example, HIPAA generally does not apply to plans where fewer than 2 of the participants are current employees. In addition, special exceptions apply to certain plans maintained by State or local governments and certain plans maintained by church organizations. Further, the HIPAA rules generally do not apply to coverage for certain types of excepted benefits.

### **Where can I get more information about HIPAA?**

HIPAA has a number of special rules, and the information above covers only basic points. If you want to know more about how HIPAA applies to group health plans, the Department of Labor has a booklet called “Questions and Answers: Recent Changes in Health Care Law.” You may request this booklet free of charge by calling 1-800-998-7542. The booklet is also available on the Internet at:

<http://www.dol.gov/dol/pwba>

More information about HIPAA is also available at the Health Care Financing Administration (HCFA) Internet site at:

<http://www.hcfa.gov>

## **PART II: Should I Elect COBRA Coverage If I Have Other Group Health Coverage Available?**

The questions and answers in this Part are designed to assist you if you have group health coverage available in addition to COBRA coverage. In deciding whether to elect COBRA coverage, an important factor is whether the other group health coverage has a preexisting condition exclusion that applies to you.

### **How do I know if an employer group health plan has a preexisting condition exclusion that applies to me?**

You should first determine whether you received medical advice, diagnosis, care, or treatment (or they were recommended to you) for a medical condition during the 6-month period before the start of the plan’s waiting period (or before you enter the plan, if there is no waiting period). For this purpose, only medical advice, diagnosis, care, or treatment from a physician or other licensed or authorized person counts.

- If not, the employer’s group health plan cannot apply a preexisting condition exclusion to you.
- If so, contact the plan administrator to find out whether and for how long the plan excludes your condition. Then, determine whether and to what extent your prior health coverage will reduce any preexisting condition exclusion period.
- While you must be notified if the plan has a preexisting condition exclusion before the exclusion can be applied to you, the plan is not required to give you this notice before your coverage begins. You have to ask for the information if you need it earlier.

### **How do I know how long I will be subject to the plan’s preexisting condition exclusion?**

A plan with a preexisting condition exclusion should specify the maximum period that the exclusion can apply. That period is reduced by your prior health coverage, so you will need to determine how much prior health coverage you had. Remember that if there has been a break of 63 days or more during which you had no health coverage, then the plan may be able to disregard your old coverage. Time spent in any waiting period for coverage does not count toward the 63-day break.

- ***Proof of Previous Health Coverage.*** Your old plan must give you a certificate showing how much coverage you had under that plan. The plan must give you the certificate shortly after you become eligible for COBRA coverage, shortly after your coverage ends, and at any other time you request it while you are covered or up to 24 months after your coverage ends. If you become covered by a plan that has a preexisting condition exclusion, you may use the certificate to show your new plan how long you had coverage under your old plan.
  - If you do not have a certificate, you can prove your prior coverage by producing documentation or other evidence.
  - The new plan must notify you of any length of time that a preexisting condition exclusion may apply to you after counting your previous coverage.

### **What should I consider in deciding whether to elect COBRA coverage if I have other group health coverage available with a preexisting condition exclusion that applies to me?**

If you have other group health coverage available, and that coverage has a preexisting condition exclusion that applies to you, your choices are to have (1) COBRA coverage instead of that other group coverage, (2) the other coverage instead of COBRA coverage (despite the preexisting condition exclusion), or (3) both COBRA coverage and the other coverage.



Your decision may depend on several factors, such as:

- how long your new coverage will be subject to the preexisting condition exclusion;
- how likely you are to need treatment for the preexisting condition before it is covered;
- the seriousness of your preexisting condition, how much the treatment would cost you in the absence of coverage, and the risks to you if treatment is delayed;
- the cost, level and scope of benefits of the COBRA coverage compared to the other coverage; and
- the HIPAA rules that require plans to offer special enrollment rights in certain cases and prohibit enrollment restrictions based on your health status (as discussed in Part I and below in this Part II).

**What should I consider in deciding whether to elect COBRA coverage if I have other group health coverage available with no preexisting condition exclusion that applies to me?**

If you have other group health coverage available that does not exclude coverage for a preexisting medical condition you have, your decision whether to elect COBRA coverage may be influenced by a variety of factors, including —

- ***COBRA cut-off due to other coverage.*** In general, if you get coverage from another employer's group health plan that is not subject to a preexisting condition exclusion, or from Medicare, your COBRA coverage can be cut off. This means that in most situations you would have to decline the other coverage if you decide you prefer the COBRA coverage. (Note that if you have been receiving disability payments from Social Security, you should not decline Medicare coverage without first consulting your Social Security office or the Medicare program.)
- ***Cost, scope, and level of coverage.*** Plans differ in their cost, and in the level and scope of benefits (such as particular medical services) they cover. You should take these differences into account in comparing the COBRA coverage with the other available coverage.
  - Employers often pay for a large portion of the cost of group health coverage for employees, while people on COBRA coverage typically have to pay for the entire cost of the coverage. This means it usually is cheaper to pay for the employee share of the cost of the other coverage than to pay for COBRA coverage. However, you might prefer more costly coverage if it provides more comprehensive benefits for treatment you may need.
- ***Waiting period before other coverage begins.*** If you (or your spouse or parent) get a new job that offers health coverage after some waiting period, you might want to elect to have COBRA coverage for that waiting period.
- ***Special enrollment rights.*** If you elect COBRA coverage instead of taking other available group health plan coverage, HIPAA generally gives you the right to enroll in the new plan within 30 days after the COBRA coverage ends, or within 30 days after you get married or have a new dependent child — even if the plan would not otherwise allow you to enroll at that time.
  - But, once you have elected COBRA coverage, your special enrollment right for the loss of the coverage applies only if you keep the COBRA coverage for the entire period it is available to you. (Thus, this special enrollment right does not apply if the COBRA coverage ends because you stop paying for it.)
- ***HIPAA Limits on Enrollment Restrictions Based on Health Status.*** If you elect COBRA coverage instead of taking other group health plan coverage, but you later decide you want to enroll in the new plan, your new plan cannot exclude you (or charge you more) on the basis of your health.

**PART III: Should I Elect COBRA Coverage If I Do Not Have Other Group Health Coverage Available?**

The questions and answers in this Part are designed to assist you if you do not have other group health coverage available.

**Why do I need health coverage?**

You need health coverage to help pay for medical services for any health problems you might have after your current plan coverage ends.

### **Does HIPAA give me the right to buy individual health coverage?**

If you meet certain requirements, HIPAA gives you the right to buy individual health coverage with no preexisting condition exclusion, without having to give evidence of good health. Depending on the State, the individual health coverage may be a policy issued by an insurance company, or coverage through a State high-risk pool or other governmental program. You must meet all of the following requirements to have this right:

- Your most recent period of health coverage must have been under an employer group health plan.
- If you were eligible for COBRA coverage (or coverage due to a similar State provision) under that plan, you must have elected and continued that coverage for the entire period it was available to you.
  - You would not have to continue COBRA coverage for the entire period to maintain these rights if the only COBRA coverage available was in an HMO and you ceased to reside, live, or work in the HMO service area.
- You must have at least 18 months of prior health coverage, disregarding coverage before a break of 63 days or more during which you had no health coverage.
- You must not have lost your most recent health coverage because you failed to pay the premiums or because you committed fraud.
- You must not now be eligible for coverage under any employer group health plan, Medicare, or Medicaid.
- You must not now have any other health insurance coverage.

For more information on your right to buy individual health coverage, contact your State's department or commission of insurance.

### **What should I consider in deciding whether to elect COBRA coverage?**

- ***COBRA coverage compared to individual health coverage.*** In comparing COBRA coverage with any individual coverage you have available, consider differences in cost and in the level and scope of benefits (such as particular medical services) covered.
- ***COBRA coverage compared to no health coverage.*** You may want to elect COBRA coverage to make sure you are covered for any medical services you need. Many people consider the benefits from having the protection that COBRA coverage provides to be well worth the cost of COBRA coverage.
  - You might also want to elect COBRA coverage because, in the future, you could become covered under an employer group health plan that has a preexisting condition exclusion. If you have a 63-day break in coverage, then your existing coverage may be disregarded. COBRA coverage can help you avoid having a 63-day break in coverage and also counts toward reducing any preexisting condition exclusion. See Part I for more information on these rules.
- ***COBRA coverage to protect your right to buy individual health coverage with no preexisting condition exclusion.*** As described above, if certain requirements are met, you and your family may have the right to buy individual health coverage with no preexisting condition exclusion, without having to give evidence of good health. These requirements include electing COBRA coverage as long as it is available to you. **THUS, FAILURE TO ELECT COBRA COVERAGE MAY CAUSE YOU TO LOSE YOUR GUARANTEED RIGHTS TO PURCHASE INDIVIDUAL HEALTH COVERAGE.**

### **Is there any State-sponsored coverage available to me?**

Individuals in a family whose income is temporarily reduced (for example, due to loss of a job) may be eligible for low-cost or no-cost health insurance through public programs. Children are especially likely to be eligible for low-cost coverage. Eligibility for these programs varies by State and sometimes within a State. You can contact State government officials to find out if you are eligible.

## **CONCLUSION**

There are many factors to consider in making the important decision whether to elect COBRA continuation coverage for you and each of the members of your family. The information above highlights factors that people in typical circumstances may want to take into account in deciding whether to elect COBRA coverage. You will need to consider your own family's circumstances in making your decision.

## Rev. Proc. 98–16

### SECTION 1. PURPOSE

This revenue procedure sets forth generally applicable standards for determining whether service in the employ of certain public or private nonprofit schools, colleges, universities, or affiliated organizations described in § 509(a)(3) of the Internal Revenue Code (the Code) performed by a student qualifies for the exception from Federal Insurance Contributions Act (FICA) tax provided under § 3121(b)(10) of the Code (Student FICA exception). These standards are intended to provide objective and administrable guidelines for determining employment tax liability. The Student FICA exception standards were developed in response to requests for guidance by many public and private nonprofit institutions of higher education.

### SECTION 2. SCOPE

.01 Institutions of higher education typically distinguish between career employees and student employees. Sections 5 and 6 of this revenue procedure contain generally applicable standards for determining whether or not services performed by career employees and student employees are eligible for the Student FICA exception.

.02 The standards contained in this revenue procedure do not apply to employees who are postdoctoral students, postdoctoral fellows, medical residents, or medical interns because the services performed by these employees cannot be assumed to be incidental to and for the purpose of pursuing a course of study.

.03 The standards contained in this revenue procedure do not constitute the exclusive method for determining whether the Student FICA exception applies. Thus, for example, if the standard for qualifying for the exclusion described in section 6 of this revenue procedure is not met, whether or not service in the employ of a school, college, university, or affiliated organization described in § 509(a)(3) of the Code will qualify for the Student FICA exception will depend on consideration of all the facts and circumstances.

### SECTION 3. BACKGROUND

.01 Sections 3101 and 3111 of the Code impose social security and Medicare taxes (FICA taxes) on employees and employers, respectively, equal to a percentage of the wages received by an individual with respect to employment.

.02 Section 3121(a) of the Code defines “wages” for purposes of FICA taxes as all remuneration for employment, with certain exceptions. Section 3121(b) of the Code defines “employment” as services performed by an employee for an employer, with certain exceptions.

.03 Section 3121(b)(10) of the Code excepts from the definition of employment services performed in the employ of a school, college, or university (whether or not that organization is exempt from income tax), or an affiliated organization described in § 509(a)(3) of the Code, if the service is performed by a student who is enrolled and regularly attending classes at that school, college or university. Remuneration for services excluded from the definition of employment under § 3121(b)(10) of the Code is not subject to FICA taxes.

.04 Section 31.3121(b)(10)–2 of the Employment Tax Regulations provides that whether an employee has the status of a student is determined on the basis of the employee’s relationship with the school, college, or university for which the services are being performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at the school, college, or university has the status of a student in the performance of those services. Employment that is not incident to and for the purpose of pursuing a course of study does not qualify for the exception. If the employee does perform services as an incident to and for the purpose of pursuing a course of study and, therefore, has the status of a student, the amount of remuneration for services performed by the employee, the type of services performed by the employee, and the place where the services are performed are immaterial for purposes of the Student FICA exception.

.05 Section 218 of the Social Security Act (the Act), 42 U.S.C. section 418, allows states to provide Social Security coverage for services performed by stu-

dents for the public school the student is attending under agreements established with the Social Security Administration. If a state has exercised its option under § 218 of the Act to provide for coverage of student services, § 3121(b)(10) of the Code provides that those services will not qualify for the Student FICA exception.

### SECTION 4. INSTITUTIONS OF HIGHER EDUCATION

.01 The standards contained in this revenue procedure apply to institutions of higher education. For purposes of this revenue procedure, the term “institution of higher education” includes any public or private nonprofit school, college, university, or affiliated organization described in § 509(a)(3) of the Code that meets the requirements set forth in Department of Education regulations at 34 C.F.R. § 600.4 (1997), as amended from time to time, and that is accredited or preaccredited by a nationally recognized accrediting agency as defined in the Department of Education regulations at 34 C.F.R. § 600.2 (1997).

.02 Services for other institutions may also be eligible for the Student FICA exception. Thus, for example, services performed by a student for a secondary school may be eligible for the Student FICA exception. Whether or not services for other institutions, such as secondary schools, qualify for the Student FICA exception is determined based on the facts and circumstances of each case.

### SECTION 5. STANDARDS APPLICABLE TO CAREER EMPLOYEES

.01 Services performed by career employees are not eligible for the Student FICA exception under the standard in section 6 of this revenue procedure because their employment cannot generally be considered to be incidental to and for the purpose of pursuing a course of study. However, a career employee may be eligible for the Student FICA exception, based on consideration of all the facts and circumstances.

.02 For purposes of this revenue procedure, the term “career employee” is defined as any individual performing services for an institution of higher education who—

(1) is eligible to participate in any retirement plan described in § 401(a) of the Code that is established or maintained by the institution, or would be eligible to participate if age and service requirements were met;

(2) is eligible to receive an allocation of employer contributions other than contributions described in § 402(g) of the Code under an arrangement described in § 403(b) of the Code, or would be eligible to receive such allocations if age and service requirements were met, or if contributions described in § 402(g) of the Code were made by the employer;

(3) is eligible for reduced tuition (other than qualified tuition reduction under § 117(d)(5) of the Code provided to a teaching or research assistant who is a graduate student as described in section 7.03 of this revenue procedure) because of the individual's employment relationship with the institution; or

(4) is classified by the institution of higher education as a career employee.

.03 If an individual performs services in multiple job positions, the individual will be deemed a career employee with respect to all of the positions if the individual is a career employee in any one or more of the job positions.

## SECTION 6. STANDARDS APPLICABLE TO UNDERGRADUATE AND GRADUATE STUDENTS

.01 An individual who is a half-time undergraduate student or a half-time graduate or professional student and who is not a career employee will qualify for the Student FICA exception under this revenue procedure with respect to services performed at or for institutions of higher education in which they are enrolled or at affiliated organizations described in § 509(a)(3) of the Code. Services performed by a student for any other employer do not qualify for this exception.

.02 An individual is deemed to be a half-time undergraduate or half-time graduate or professional student if the individual is not a career employee and is an undergraduate or graduate student who is in the last semester, trimester, or quarter of a course of study requiring at least two semesters, trimesters, or quarters to complete and is enrolled in the number of credit or unit hours needed to complete

the requirements for obtaining a degree, certificate, or other recognized educational credential offered by that institution of higher education even if enrolled in less than half the number required of full-time students.

.03 The determination of student status should be made at the end of the drop-add period and may be adjusted thereafter at the institution of higher education's option. The determination of student status for payroll periods ending before the end of the drop-add period may be based on the number of semester, trimester, or quarter hours being taken at the end of the registration period for that semester, trimester, or quarter.

.04 If an individual is described in section 6.01 or 6.02 of this revenue procedure, services performed by the individual are eligible for the Student FICA exception with respect to all services performed during all payroll periods of a month or less that fall wholly or partially within the academic term.

.05 The Student FICA exception does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks (including summer breaks of more than five weeks), other than services described in section 6.04. *See* Rev. Rul. 72-142, 1972-1 C.B. 317, and Rev. Rul. 74-109, 1974-1 C.B. 288. However, the Student FICA exception applies to employment which continues during normal school breaks of 5 weeks or less during which the individual is not eligible for the Student FICA exception pursuant to section 6.01 of this revenue procedure provided that the individual qualifies for the Student FICA exception pursuant to section 6.01 of this revenue procedure on the last day of classes or examinations preceding the break and is eligible to enroll in classes for the first academic period following the break.

.06 If the standards of this revenue procedure are met (and section 8 does not apply), the amount of remuneration for services performed by the employee, the type of services performed by the employee, the place where the services are performed, and the number of hours worked by the employee are immaterial. If the services performed by a student otherwise described in section 6.01 or 6.02 are covered under an agreement pursuant

to § 218 of the Act, the Student FICA exception does not apply.

.07 For provisions relating to domestic service performed by a student in a local college club, or local chapter of a college fraternity or sorority, see § 31.3121(b)2-1.

## SECTION 7. DEFINITIONS

For purposes of the standard contained in section 6 of this revenue procedure, the following definitions must be used.

.01 *Undergraduate student.* The term "undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. § 674.2 (1997).

.02 *Half-time undergraduate student.* The term "half-time undergraduate student" has the meaning attributed to that term in the Department of Education regulations at 34 C.F.R. § 674.2 (1997).

.03 *Graduate or professional student.* The term "graduate or professional student" means a student who—

(1) is enrolled at an institution of higher education for the purpose of obtaining a degree, certificate, or other recognized educational credential above the baccalaureate level or is enrolled in a program leading to a professional degree;

(2) has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) is not a postdoctoral student, postdoctoral fellow, medical resident, or medical intern.

.04 *Half-time graduate or professional student.* The term "half-time graduate or professional student" means an enrolled graduate or professional student, as defined in section 7.03 of this revenue procedure, who is carrying at least a half-time academic workload at an institution of higher education as determined by that institution according to its own standards and practices.

## SECTION 8. ANTI-ABUSE RULE

The standards in this revenue procedure must be applied in a reasonable manner, consistent with the purpose of excluding from employment only services that are performed as an incident to and for the purpose of pursuing a course of study at a school, college or university.

See § 31.3121(b)(10)–2(c). If the standards are inappropriately applied in a manner that conflicts with this underlying purpose so as to manipulate or mischaracterize the nature of the relationship between an employee and an institution of higher education, resulting in the improper avoidance of payment of FICA taxes, then whether the Student FICA exception applies will be determined on the basis of all the facts and circumstances, rather than on the basis of the specific standards set forth in sections 5 and 6 of this revenue procedure. For example, the standards would be inappropriately applied through the manipulation of the relationship between employees and the institution of higher education if a university claimed that the Student FICA exception applied to research laboratory workers, who had been career employees, but were converted to non-career status and required to enroll in a certificate program granting six credit hours per semester for work experience in the laboratory. As another example, if an individual who was not a student worked for a university on a full-time basis for many years, in a job generally performed by non-students (but nonetheless failed to meet the literal definition of career employee), and then enrolled at the university for six credit hours of course work per semester while continuing the full-time work in the same job, it may not be appropriate to apply the standards of this revenue procedure to conclude that the individual's work has become incident to and for the purpose of pursuing a course of study solely because the individual enrolled for this course work. In both of these examples, whether the work is performed incident to and for the purpose of pursuing a course of study must be determined on the basis of all the relevant facts and circumstances.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Neil D. Shepherd of the Office of Assistant Chief Counsel (Employee Benefits & Exempt Organizations). For further information regarding this revenue procedure, please contact Mr. Shepherd at (202) 622-4606 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters. (Also Part I, §§ 162, 165, 198, 263.)

## Rev. Proc. 98–17

### SECTION 1. PURPOSE

This revenue procedure provides special procedures for requesting written guidance from the Internal Revenue Service on the tax treatment under §§ 162, 165, 198, and 263 of the Internal Revenue Code of environmental cleanup costs incurred in projects that span several years, including future years and prior years (whether or not under examination). These special procedures are available for letter ruling requests submitted during the two-year period beginning on February 2, 1998. The purpose of this revenue procedure is to facilitate the resolution of issues involving the capitalization or deduction of environmental cleanup costs for both prior and future years of an environmental cleanup project.

### SECTION 2. BACKGROUND

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

.02 Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated by insurance or otherwise.

.03 Section 198 permits a taxpayer to elect to treat any qualified environmental remediation expenditure that is paid or incurred by the taxpayer as an expense that is not chargeable to capital account. Section 198(b) provides that the term “qualified environmental remediation expenditure” means any expenditure that is otherwise chargeable to capital account and that is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

.04 Section 263 generally prohibits deductions for capital expenditures. Section 263(a)(1) provides that no deduction is generally allowed for any amount paid out for permanent improvements or betterments made to increase the value of any property or estate. Under § 263(a)(2), no deduction is allowed for any amount expended in restoring property or in mak-

ing good the exhaustion thereof for which an allowance is or has been made.

.05 Rev. Proc. 98–1, 1998–1 I.R.B. 7 (Jan. 5, 1998), provides procedures under which the Service issues letter rulings, determination letters, and information letters on specific issues. Section 2.01 of Rev. Proc. 98–1 defines a “letter ruling” as a written statement issued to a taxpayer by the national office that interprets and applies the tax laws to the taxpayer's specific set of facts. Ordinarily, the national office issues letter rulings on income tax issues only on prospective transactions or completed transactions if the letter ruling request is submitted before the return is filed for the year in which the transaction was completed. All references to Rev. Proc. 98–1 in this revenue procedure shall include Rev. Proc. 98–1's successors.

.06 Rev. Proc. 98–2, 1998–1 I.R.B. 74 (Jan. 5, 1998), provides procedures under which the national office issues technical advice to a district director or a chief, appeals office. Section 2 of Rev. Proc. 98–2 defines “technical advice” as advice or guidance in the form of a memorandum furnished by the national office upon the request of a district director or a chief, appeals office, submitted in accordance with Rev. Proc. 98–2 in response to any technical or procedural question that develops during any proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other precedents published by the national office to a specific set of facts. All references to Rev. Proc. 98–2 in this revenue procedure shall include Rev. Proc. 98–2's successors.

### SECTION 3. SCOPE

.01 *In general.* Except as provided in section 3.06 below, this revenue procedure applies to a request for guidance on the deductibility (under §§ 162, 165, or 198) or capitalization (under § 263) of environmental cleanup costs incurred in a continuing project (*e.g.*, one that occurs over prior and future taxable years). Generally, a taxpayer may request a letter ruling under this revenue procedure that will cover all tax years in which the costs of the environmental cleanup project that are the subject of the request are taken into account for federal income tax purposes (“project years”). Thus, the letter ruling

may cover project years for which a return has been filed, even if such return is under examination or before an appeals office.

*.02 Environmental cleanup costs.* For purposes of this revenue procedure, environmental cleanup costs include, in general, any costs associated with the assessment, mitigation, removal or remediation of environmental hazards, whether latent or imminent, on the taxpayer's property or on the property of another.

*.03 Environmental cleanup project.* An environmental cleanup project may consist of one or more related environmental cleanup activities. For example, a taxpayer may request a letter ruling under this procedure on the tax treatment of costs paid or incurred over several years:

(1) to study, remediate, and monitor soil and groundwater at a former manufacturing site;

(2) to remove and replace asbestos in manufacturing equipment located at several of the taxpayer's operating plants; or

(3) to remove underground storage tanks, treat contaminated soil and groundwater, and remove asbestos from a retail facility where the taxpayer intends to begin operations.

A letter ruling issued under this revenue procedure will cover only the costs of activities described in the taxpayer's request.

*.04 Factual nature of question.* Section 7.01 of Rev. Proc. 98-1 provides that the national office ordinarily will not issue letter rulings in certain areas because of the factual nature of the problem. Although the question of whether amounts are deductible or must be capitalized is generally dependent upon the taxpayer's specific facts, only in rare or unusual circumstances will the national office decline to issue a letter ruling under this revenue procedure solely because of the factual nature of the question.

*.05 Alternative plans and hypothetical situations.* Section 7.02 of Rev. Proc. 98-1 provides that the national office ordinarily will not issue a letter ruling on alternative plans of proposed transactions or on hypothetical situations. Thus, the taxpayer must have a proposed environmental cleanup plan on which to base the ruling request. However, the Service recognizes that all aspects of any environmental cleanup project may not be defi-

nite at the time of the request, particularly if the assessment of the contamination is not yet complete. Ordinarily, this will not preclude issuance of a letter ruling, provided that the Service is given sufficient facts to reach a determination. If the taxpayer's environmental cleanup project changes after the letter ruling is issued, the taxpayer may request that the national office modify or supplement its letter ruling to address the changes to the project. See section 8 of this revenue procedure.

*.06 Identical issue in litigation.* Taxpayers may not request guidance under this revenue procedure if the identical environmental cleanup issue is in the taxpayer's return for an earlier period and that issue is pending in litigation in a case involving the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

*.07 Requests more appropriately made under Rev. Proc. 98-1 or 98-2.* The national office may determine that a request for written guidance under this revenue procedure would be more appropriately made under Rev. Proc. 98-1 or 98-2. In such a case, the taxpayer will be notified and given an opportunity to explain why the request is more appropriately made under this revenue procedure.

#### SECTION 4. REQUESTING A LETTER RULING

*.01 Taxpayers not under examination or before appeals office.* A taxpayer requesting a letter ruling on the tax treatment of environmental cleanup costs may do so under this section 4.01 if no return for any project year is under examination or before an appeals office. Except as provided by this revenue procedure, a request under this section 4.01 must meet the requirements of Rev. Proc. 98-1 for a letter ruling request. In addition, if a taxpayer submits a letter ruling request under this section 4.01 covering a project year for which a return has already been filed, a copy of the letter ruling request must also be submitted to the district office having jurisdiction over the taxpayer's return.

*.02 Taxpayers under examination or before appeals office.* A taxpayer requesting a letter ruling on the tax treatment of environmental cleanup costs incurred under a continuing project must do so

under this section 4.02 if any project year is under examination or before an appeals office. Except as provided in this revenue procedure, a letter ruling request made under this subsection must meet the general requirements of Rev. Proc. 98-2 for a taxpayer-initiated request for technical advice. Once an environmental cleanup issue is identified, all requests for letter rulings should be made at the earliest possible stage in any proceeding. The taxpayer must submit its request (and the applicable user fee) for each letter ruling under this section 4.02 to the district or appeals office having jurisdiction over its return. The district or appeals office will, in all cases, forward the original request, and any additional statements of the taxpayer and the district or appeals office, to the national office using Form 4463 (Request for Technical Advice), with the following statement typed or printed at the top of the form: "REQUESTED UNDER REV. PROC. 98-17."

#### SECTION 5. PROCESSING THE RULING REQUEST

*.01 Taxpayers not under examination or before appeals office.* A letter ruling request submitted under section 4.01 of this revenue procedure generally will be processed under the procedures set forth in Rev. Proc. 98-1. Thus, the procedures for requesting additional information, conferences, withdrawal of requests, etc. are the same as those provided in Rev. Proc. 98-1. The original letter ruling will be issued to the taxpayer that requested it, and a copy of the letter ruling, whether favorable or adverse, will be sent to the district director that has jurisdiction over the taxpayer's return.

*.02 Taxpayers under examination or before appeals office.* A letter ruling request submitted under section 4.02 of this revenue procedure generally will be processed under the procedures set forth in Rev. Proc. 98-2 for a taxpayer-initiated request for technical advice, except as provided in this section.

(1) *Contacting the taxpayer.* Usually, within 21 calendar days after the national office receives a taxpayer's letter ruling request, a Service representative will contact both the taxpayer (or the taxpayer's authorized representative) and the examining or appeals officer to discuss the substantive or procedural issues in the letter

ruling request and to ask for any additional information necessary in order to process the request.

(2) *Coordination with district and appeals office.* During the processing of a taxpayer's letter ruling request, the national office will continuously coordinate the evaluation of the request with the district or appeals office having jurisdiction over the case. If the district or appeals office either determines that the national office should not consider the taxpayer's request or disagrees with the taxpayer's statement of facts and issues, then the district or appeals office will notify the taxpayer in writing. For these purposes, the Service will follow the procedures set forth in section 10.04 of Rev. Proc. 98-2, except that the district or appeals office will, in all cases, forward the taxpayer's request, with any additional statements, to the national office as provided in section 4.02 of this revenue procedure.

(3) *Withdrawing the ruling request.* The district director or chief, appeals office, may not withdraw a request for a letter ruling submitted under section 4.02 of this revenue procedure. However, a taxpayer may withdraw such a request at any time before the letter ruling is signed by the national office, provided that the district director or the chief, appeals office, consents to the withdrawal. If the district director or the chief, appeals office, consents to this withdrawal, the national office will send its views to the district director or the chief, appeals office. If the district director or the chief, appeals office, does not consent to the withdrawal, then the letter ruling request will be processed as a request for technical advice under Rev. Proc. 98-2 and the scope of the technical advice memorandum will be limited to years under examination. Pursuant to the principles of Rev. Proc. 98-1, including but not limited to section 15.10 thereof, the user fee generally will not be refunded if the taxpayer withdraws its request for a letter ruling under this section.

(4) *Reply by national office.* Replies to letter ruling requests issued under section 4.02 are made in two parts. Each part identifies the taxpayer by name, address, taxpayer identification number, and the years under examination by the district director or under consideration by an appeals office. The first part is a transmittal

memorandum addressed to the district or appeals office. The second part is a letter ruling as defined in section 2.01 of Rev. Proc. 98-1 that covers the project years addressed in the taxpayer's request. The national office will forward the transmittal memorandum and a copy of the letter ruling to the district director or the chief, appeals office, having jurisdiction over the taxpayer's return. At the same time, the national office will issue the original letter ruling to the taxpayer that requested it.

.03 *Coordination with industry specialization program.* Prior to issuance of a letter ruling to a taxpayer under this revenue procedure, the national office will coordinate review of the proposed letter ruling with a representative of the environmental cleanup costs issue specialization team.

.04 *Disclosure.* The text of a letter ruling issued under this revenue procedure is open to public inspection under § 6110. The Service will make appropriate deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110, a request made under this revenue procedure must be accompanied by the statement described in section 8.01(9) of Rev. Proc. 98-1.

## SECTION 6. EFFECT OF THE LETTER RULING

.01 *General rule.* A taxpayer ordinarily may rely on a letter ruling issued by the Service pursuant to this revenue procedure subject to the conditions and limitations described in section 12 of Rev. Proc. 98-1. A letter ruling issued on a specific environmental cleanup project represents a holding by the Service on that project only. It will not apply to any project not specifically addressed in the letter ruling.

.02 *Return previously filed.* The conclusion in the letter ruling, whether adverse or favorable to the taxpayer, will generally be applied prospectively to all future project years. In addition, if a letter ruling involves tax years for which a return has already been filed, it will generally apply retroactively to all open years unless the Service exercises discretionary authority under § 7805(b) to limit the retroactive effect of the conclusion.

.03 *Use in examining the taxpayer's return.* If a taxpayer is under examination

or is later selected for examination, the letter ruling will be used by the district director in examining the taxpayer's returns for prior and future project years in the manner described in section 12.03 of Rev. Proc. 98-1.

.04 *Prior settlement or closing agreement.* A letter ruling issued under this revenue procedure will not affect any taxable year(s) that are the subject of a prior settlement or closing agreement entered into with a district director or an appeals office.

## SECTION 7. REVOCATION OR MODIFICATION

A letter ruling found to be in error or not in accord with the current views of the Service may be revoked or modified. If a letter ruling under this revenue procedure is revoked or modified, the revocation or modification applies to all open years under the statute of limitations unless the Service uses its discretionary authority under § 7805(b) to limit the retroactive effect of the revocation or modification. The criteria and procedures for revoking or modifying a letter ruling issued under this revenue procedure are the same as those provided in section 12 of Rev. Proc. 98-1. In addition, the procedures for requesting § 7805(b) relief, and the criteria for granting it, are the same as those provided in section 12.11 of Rev. Proc. 98-1.

## SECTION 8. REQUESTING SUPPLEMENTAL LETTER RULINGS

If the material facts underlying a letter ruling issued under this revenue procedure change after the letter ruling is issued, the taxpayer may request that the Service modify or supplement the letter ruling. The request must comply with the requirements of sections 4.01 or 4.02 of this revenue procedure, whichever applies.

## SECTION 9. CHANGE IN ACCOUNTING METHOD

Under § 446(e), a taxpayer receiving a letter ruling under this revenue procedure may be required to seek the Commissioner's consent to change its method of accounting, and § 481 may be applicable. In these cases, the national office will inform the taxpayer of the procedures for obtaining this consent.

## SECTION 10. USER FEE REQUIREMENTS

Except as provided in sections 15.03 and 15.04 of Rev. Proc. 98-1, all requests submitted under this revenue procedure (including supplemental letter ruling requests under section 8 of this revenue procedure) must be accompanied by a user fee. The appropriate user fee is determined from the fee schedule provided in Appendix A of Rev. Proc. 98-1.

## SECTION 11. ADDRESS FOR SUBMISSION

.01 *Taxpayers not under examination or before an appeals office.* All requests for letter rulings submitted under section 4.01 of this revenue procedure (including

the applicable user fee) should be sent to the Associate Chief Counsel (Domestic) at the addresses provided in section 8.03(1) of Rev. Proc. 98-1.

.02 *Taxpayers under examination or before appeals office.* All requests for letter rulings submitted under section 4.02 of this revenue procedure (including the applicable user fee) should be sent to the examining or appeals officer, who must forward the request to the national office using the same address provided in section 9.03 of Rev. Proc. 98-2.

## SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98-1 is amplified. Rev. Proc. 98-2 is amplified and modified.

## SECTION 13. EFFECTIVE DATE

This revenue procedure is effective for requests for letter rulings submitted during the two-year period from February 2, 1998 to February 2, 2000.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Merrill D. Feldstein of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Feldstein on (202) 622-4950 (not a toll-free call).



## Part IV. Items of General Interest

### Year 2000 Changes

#### Announcement 98-5

The purpose of this announcement is to identify forms and date fields that will be affected by the impending expansion of the date field to accommodate the Year 2000.

The Information Reporting Program has date fields within the information return records filed magnetically/electronically to the Martinsburg Computing Center. Currently we allow a two-position field for the year (YY) which appears in both the Payer "A" Record and Payee "B" Record. All other dates within the Payee Records are currently six-digit fields in the format of MMDDYY.

For Tax Year 1998, the information returns date fields will be expanded and reformatted by changing the two-digit tax year field to four-digits in preparation for the Year 2000. To accommodate the change, the four-digit tax year field in the Payer "A" Record will be in positions 2-5. The sequence number field will be eliminated due to the date expansion. The tax year will be dropped in the Payee "B" record since the tax year of the return can be determined by the tax year provided in the Payer "A" Record. By expanding the tax year field to four-positions, the Information Reporting Program will be consistent with the industry standard.

The record format for information returns filed magnetically/electronically will have the following changes:

- Two-digit date fields (YY) will be expanded to four-digits (YYYY)
- Six-digit date fields (MMDDYY) will be changed to eight-digits (YYYYMMDD)

In addition to the necessary Year 2000 changes, there are changes that will be made as a result of legislative requirements. The current 420 position record will be expanded to accommodate this new information. It is our intention to make the Publication 1220, which will identify these changes, available as soon as possible.

This announcement refers specifically to the information returns designated below that are received and processed magnetically/electronically at the Internal Revenue Service, Martinsburg Computing Center. The related publications will be revised accordingly.

1098	Mortgage Interest Statement
1099-A	Acquisition and Abandonment of Secured Property
1099-B	Proceeds From Broker and Barter Exchange Transactions
1099-C	Cancellation of Debt
1099-DIV	Dividends and Distributions
1099-G	Certain Government Payments
1099-INT	Interest Income
1099-LTC	Long Term Care and Accelerated Death Benefits
1099-MISC	Miscellaneous Income
1099-MSA	Distributions from Medical Savings Accounts
1099-OID	Original Issue Discount
1099-PATR	Taxable Distributions Received from Cooperatives
1099-R	Distributions From Pension, Annuities, Retirement or Profit-Sharing

1099-S	Plans, IRAs, Insurance Contracts, Etc.
5498	Proceeds From Real Estate Transactions
5498MSA	Individual Retirement Arrangement Information
W-2G	Medical Savings Account Information
1042S	Certain Gambling Winnings
W-4	Foreign Person's U.S. Source Income Subject to Withholding
	Employee's Withholding Allowance Certificate

The date field expansion will be effective for Tax Year 1998 data filed in Calendar Year 1999.

#### Announcement 98-6

The Form 5498 IRA/SEP/SIMPLE Indicator instructions on page 42 of the TY97 Publication 1220 are causing confusion to both filers and to the Internal Revenue Bulletin (I.R.B.). In your publication, please cross out the phrase "and not reporting contributions in Amount Codes 1, 6, or 7". (See below.)

The TY97 paper instructions advise filers to use the IRA/SEP/SIMPLE Indicators with Payment Amount Fields 2 and 4 only if there is no money reported in Payment Amount Fields 1, 6, or 7. Our program **requires** an indicator if there is money in Payment Amount Fields 2 and 4. For filing information returns magnetically or electronically, the Publication 1220 instructions take precedent over the paper instructions.

An I.R.B. will be issued to clarify the problem.

Please notify ISS if there are any other areas of concern with the new pub.

141	<i>Form 5498 IRA Indicator (Individual Retirement Arrangement)</i>	1	<b>Required. Form 5498 only.</b> Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for an IRA. Otherwise, <b>enter a blank.</b>
142	<i>Form 5498 SEP Indicator (Simplified Employee Pension)</i>	1	<b>Required. Form 5498 only.</b> Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for a SEP. Otherwise, <b>enter a blank.</b>
143	<i>Form 5498 SIMPLE Indicator (Savings Incentive Match Plan for Employees of Small employers)</i>	1	<b>Required. Form 5498 only.</b> Enter '1' if reporting a rollover (Amount Code 2) or Fair Market Value (Amount Code 4) for a SIMPLE. Otherwise, <b>enter a blank.</b>

## Foundations Status of Certain Organizations

### Announcement 98-7

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:

Anchorage Education Community  
Winning With Stronger Education,  
Anchorage, AK  
Armenian Film Society, Northridge, CA  
Association of Alpha Development  
Corporations, Los Angeles, CA  
Association of Black Families for  
Cultural and Educational  
Development, Oakland, CA  
Auburn Resident Council, Auburn, CA  
Ayuda Homes, Walnut, CA  
Bakersfield Korean Academy,  
Bakersfield, CA  
Bardia Foundation Inc., Westlake, CA  
Bay Area Black Professionals, Oakland,  
CA  
Believers Quartet Inc., Sacramento, CA  
Berkeley Community Homes, Oakland,  
CA  
Big Blue Foundation Inc., Los Angeles,  
CA  
Big Rock Productions Inc., Malibu, CA  
Black Eyes Productions Inc., San Jose,  
CA  
Boise Blue Society, Inc., Boise, ID  
Borinquen Culture Through Agriculture  
Learning Center, Holualoa, HI  
Broader Horizon Inc., Cupertino, CA  
Business and Employment Training  
Foundation of Napa County Inc.,  
Napa, CA  
The California Citizenship Foundation,  
Sacramento, CA

Calistoga Music Ministries, Angwin, CA  
Caring Friends Foundation Incorporated,  
Rialto, CA  
Carson Community Emergency Shelter,  
Carson, CA  
Celebrity AIDS Benefit, Wrightwood,  
CA  
Center for A New Generation, East Palo  
Alto, CA  
Central Area Business Development  
Center, Seattle, WA  
Central Recovery & Development  
Project, Los Angeles, CA  
Champions Foundation Inc., Athens, GA  
Chandler Parents Club Inc., Chandler, OK  
Change Masters Inc., Greeley, CO  
Channel Housing Ministries Inc., New  
Era, MI  
Channel Vision Inc., Los Angeles, CA  
Chapel Foundation, Nashville, TN  
Chapel Perilous Theater Ensemble,  
Chicago, IL  
Charity of the Three Fishermen, Houston,  
TX  
Charleston Stage Company, Charleston,  
WV  
Chase Homeless Assistance Fund Inc.,  
Montpelier, OH  
Chassidic Center Nusach Ari of the West  
Inc., Denver, CO  
Chattanooga Hamilton Area Community  
Development Corporation,  
Chattanooga, TN  
Circus Earth Foundation, San Diego, CA  
Council for Safer Communities, Chicago,  
IL  
Farish Street Historic District  
Neighborhood Foundation Inc.,  
Jackson, MS  
Farm Plan Advocates Inc., Charlotte, NC  
Farmers Harvest Inc., Philadelphia, PA  
Farragut Dugout Club Inc., Knoxville,  
TN  
Fast Food Inc., Tulsa, OK  
Father & Son Mission Housing  
Corporation, Memphis, TN  
Fauquier County Soccer Clubs,  
Gainesville, VA  
Fawn Ridge Wildlife Refuge Inc., Cream  
Ridge, NJ  
Halifax County HIV AIDS Task Force,  
Inc., Halifax, NC  
Harrison County Drug and Alcohol  
Council Inc., Clarksburg, WV  
Highlands Forum Inc., Highlands, NC  
Highview Resident Council Inc.,  
Maryland Heights, MO

Highways and Hedges Inc., Onalaska, WI  
Hill Country Childrens Advocacy Center,  
Llano, TX  
Hill Country Social Services Inc., Sachse,  
TX  
Hill Country Victims Inc., Burnett, TX  
Hillcrest Community Development Inc.,  
Benton, MS  
Hillsborough County Law Enforcement  
Charity Inc., Tampa, FL  
Hillsdale County Celebration of Christ,  
Hillsdale, MI  
Hilton Head Island Soccer Club, Hilton  
Head Island, SC  
Hilton Head Wildlife Rescue Service  
Inc., Hilton Head Island, SC  
His House Ministries Inc., Warner  
Robins, GA  
Hispanic American Association of SA  
Rasota Manatee Counties Inc.,  
Sarasota, FL  
Hispanic American Construction Industry  
Ed & Civic Awareness Org., Chicago,  
IL  
Hispanic American Foundation  
Corporation, Miami, FL  
Hispanic Sports Hall of Fame and  
Hispanic Oldtimers All-Star Base,  
Chicago, IL  
Hispanic Veterans Project of Kansas Inc.,  
Olathe, KS  
I N K Investing N Kids, Hilmar, CA  
Institution of Housing and Community  
Development, Maywood, IL  
NAIOP Charities Inc., McLean, VA  
Nasau Volunteer Dive Rescue Team,  
Fernandina Beach, FL  
National Arthrogyposis Foundation Inc.,  
Birmingham, AL  
National Association for Grass Roots  
Program, Chicago, IL  
National Association of African  
American Entrepreneurs, Inc.,  
Indianapolis, IN  
North American Institute for International  
Communications, Washington, DC  
Northern Virginia Interdenominational  
Mass Choir, Alexandria, VA  
Northland Homes and Properties Inc.,  
Fostoria, OH  
Northland Partners in Progress, Duluth,  
MN  
Northside Athletes Foundation  
Corporation, Atlanta, GA  
Northside Community Development  
Corporation, Houston, TX

Northside Rotary Foundation Inc.,  
Fayetteville, AR  
Northwest Athletic Association, Houston,  
TX  
Northwest Education Coalition, Houston,  
TX  
Northwest Houston Education  
Foundation, Inc., Houston, TX  
Northwest Independent Living Group  
Inc., Schaumburg, IL  
Northwest Nutritional Center, Houston,  
TX  
Northwest Ohio Youth Soccer League,  
Maumee, OH  
Northwest Striders Track and Field,  
Towson, MD  
Northwoods Wilderness Recovery Inc.,  
Houghton, MI

Nosotros Unidos Multicultural Gang, Ft.  
Worth, TX  
Novice Volunteer Fire Department Inc.,  
Paris, TX  
Novus Foundation Incorporated,  
Mountainside, NJ  
Nowata's Historical Main Street Inc.,  
Nowata, OK  
NTID Alumni Chapter of Greater  
Houston, Houston, TX  
Nueva Esperanza Childrens Home Inc.,  
Plano, TX  
Nursing Health Center, Cleveland, OH  
Salem Elementary Academic Foundation  
Inc., Salem, IL  
Stop Up the Cracks and Let Them Learn,  
Houston, TX  
Stretch for Greatness Inc., Richardson, TX

Texas Neurosciences Foundation, San  
Antonio, TX

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

## Definition of Terms

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

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

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

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

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

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

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### Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

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