

Internal Revenue bulletin

Bulletin No. 1998-29
July 20, 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. 8773, page 4.

REG-116608-97, page 12.

Temporary and proposed regulations under section 32 of the Code provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. A public hearing on the proposed regulations will be held on October 21, 1998.

EMPLOYEE PLANS

Announcement 98-62, page 13.

This announcement requests public comments relating to section 1510 of the Taxpayer Relief Act of 1997, which provides that the Secretary of the Treasury shall issue guidance no later than December 31, 1998, regarding the use of new technologies by sponsors and administrators of retirement plans while maintaining the protection of the rights of participants and beneficiaries.

EXEMPT ORGANIZATIONS

Announcement 98-68, page 14.

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

EMPLOYMENT TAX

T.D. 8771, page 6.

REG-110403-98, page 11.

Final, temporary, and proposed regulations under section 6302 of the Code relate to the deposit of federal employment taxes.

EXCISE TAX

Notice 98-36, page 8.

T.D. 8685, 1996-2 C.B. 174, relating to the deposit of excise taxes, is amended.

ADMINISTRATIVE

Rev. Proc. 98-43, page 8.

Disclosure Authorization List, Rev. Proc. 80-46, 1980-2 C.B. 779, is obsolete. The Service advises a business entity to use Form 8821, Tax Information Authorization, to designate its employees to receive its tax information.

REG-104641-97, page 9.

Proposed regulations under section 1092 of the Code provides guidance on the application of the rules governing qualified covered calls. A public hearing will be held on November 4, 1998.

Finding Lists begin on page 18.



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.

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

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

Section 32.—Earned Income

26 CFR 1.32-3T: Eligibility requirements (temporary).

T.D. 8773

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

EIC Eligibility Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The temporary regulations apply to taxpayers claiming the EIC for taxable years beginning after December 31, 1997, where the taxpayer's EIC claim was denied for a taxable year beginning after December 31, 1996. The text of these temporary regulations also serves as the text of proposed regulations set forth in REG-116608-97, page 12 of this Bulletin.

DATES: *Effective date:* June 25, 1998.

Applicability dates: For dates of applicability, see §1.32-3T(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202-622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1575. Responses to this

collection of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in REG-116608-97.

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) providing guidance relating to the requirement that taxpayers who are denied the EIC for a taxable year demonstrate their eligibility to claim the EIC in a subsequent taxable year. This requirement is described in section 32(k)(2), which was added by section 1085(a)(1) of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788).

Section 32(k)(2) pertains to taxpayers who are denied the EIC as a result of the deficiency procedures under subchapter B of chapter 63 (the deficiency procedures). A taxpayer who has been denied the EIC for any taxable year as a result of the deficiency procedures is ineligible to claim the EIC for a subsequent taxable year unless the taxpayer provides information required by the Secretary demonstrating eligibility for the EIC. If the taxpayer demonstrates eligibility for the EIC, the taxpayer is not required to provide this information in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

If the taxpayer fails to provide the required information or the information provided does not demonstrate eligibility for the EIC, the requirements of section

32(k)(2) are not satisfied. In such circumstances, the IRS can treat the failure to meet these requirements as a mathematical or clerical error.

In the case of deficiencies attributable to certain mathematical and clerical errors, enumerated in section 6213(g), the IRS is authorized to make a summary assessment, without following the normal deficiency procedures. In the case of EIC claims, mathematical and clerical errors can include both errors that apply generally to all returns and certain errors specific to the EIC. For example, mathematical and clerical errors include situations in which (1) a taxpayer fails to provide a correct taxpayer identification number required under section 32, or (2) a taxpayer who claims the EIC with respect to net earnings from self-employment fails to pay the proper amount of self-employment tax on the net earnings. As noted above, the IRS is now authorized to treat failure to meet the requirements of section 32(k)(2) as a mathematical or clerical error.

Ineligibility for the EIC under these new rules is subject to review by the courts.

The new provision applies to taxpayers who are denied the EIC on their return for any taxable year beginning after 1996.

Explanation of Provisions

A taxpayer who has been denied the EIC, in whole or in part, as a result of deficiency procedures is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer provides evidence of eligibility for the EIC. Deficiency procedures include administrative procedures (other than procedures related to mathematical or clerical errors) that result in an assessment of a deficiency in tax, whether or not a notice of deficiency is issued. To demonstrate current eligibility, the regulations require the taxpayer to complete Form 8862, *Information To Claim Earned Income Credit After Disallowance*. Form 8862 contains a series of questions designed to assist the IRS in determining whether the taxpayer is eligible to claim the EIC under section 32 for the subsequent taxable year. A taxpayer fails to demonstrate eligibility if, for example,

the form is incomplete or any item of information on the form is incorrect or inconsistent with any item on the return. If the taxpayer properly demonstrates eligibility for the EIC, the taxpayer is not required to submit Form 8862 in the future unless the IRS again denies the EIC as a result of the deficiency procedures.

The regulations require the taxpayer to attach Form 8862 to the first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures. The EIC is denied as a result of the deficiency procedures when an assessment of a deficiency is made (other than as a mathematical or clerical error under section 6213(b)(1)).

The Treasury Department and the IRS anticipate that the Commissioner of Internal Revenue may require taxpayers to provide documentary evidence in addition to Form 8862. Whether or not the Commissioner requires taxpayers to provide documentary evidence in addition to Form 8862, the Commissioner may choose to examine any return claiming the EIC for which Form 8862 is required.

The regulations provide that if the taxpayer fails to properly complete Form 8862 or does not demonstrate eligibility for the EIC, the provisions of section 32(k)(2) are not satisfied. In such circumstances, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)] (relating to the omission of information required by section 32(k)(2)). If a taxpayer's claim for the EIC is denied under section 6213(g)(2)(J) [(K)], the taxpayer must attach Form 8862 to the next return for which the EIC is claimed.

The regulations provide that if two individuals marry after one has been denied the EIC as a result of the deficiency procedures, the eligibility requirements apply when they file a joint return and claim the EIC. For example, two unmarried taxpayers have qualifying children and claim the EIC. The taxpayers subsequently marry. For a taxable year preceding the marriage, one of the taxpayers was denied the EIC under the deficiency procedures and has not established eligibility for a subsequent year. In this situation, if they claim the EIC for the taxable year in which they marry, the demonstration of eligibility rules will apply.

Special Analyses

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

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f), these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.32–3T is added to read as follows:

§1.32–3T Eligibility Requirements (temporary).

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until

the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures.* For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility.* In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner, no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, *Information To Claim Earned Income Credit After Disallowance*, demonstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must attach Form 8862 to the taxpayer's first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures.

(d) *Failure to demonstrate eligibility.* If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(J) [(K)].

(e) *Special rule where one spouse denied EIC.* The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date.* This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (c) is amended by adding an entry in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
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1.32-3T	1545-1575
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Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Approved May 18, 1998.

Donald C. Lubick,
Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on June 24, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 25, 1998, 63 F.R. 34594)

Section 6302.—Mode or Time of Collection

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

T.D. 8771

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 31

Federal Employment Tax Deposits—De Minimis Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the deposit of Federal employment taxes. The regulations change the de minimis deposit rule for quarterly and annual return periods. The regulations affect taxpayers required to make deposits of Federal employment taxes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in REG-110403-98, page 11 of this Bulletin.

DATES: *Effective date:* These regulations are effective June 16, 1998.

Applicability date: For dates of applicability, see §31.6302-1T(f)(4).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian (202) 622-4940 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 31, Employment Taxes and Collection of Income Tax at Source. Section 31.6302-1(f)(4) provides that if the total amount of accumulated employment taxes for the quarter is less than \$500 and the amount is fully deposited or remitted with a timely filed return for the quarter, the amount deposited or remitted will be deemed to be timely deposited.

The temporary regulations change the \$500 threshold to \$1,000. In addition, the regulations replace the term “quarter” with the term “return period” since some employment taxes are reported on an annual basis (Forms 943, 945, and CT-1) rather than quarterly (Form 941). Thus, a taxpayer that has accumulated employment taxes of less than \$1,000 for a return period (quarterly or annual, as the case may be) does not have to make deposits but may remit its full liability with a timely filed return for the return period.

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, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

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

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read as follows:

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

§31.6302-1T also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. In §31.6302-1, a new sentence is added at the end of paragraph (f)(4) to read as follows:

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

* * * * *

(4) *De Minimis rule.* * * * For guidance regarding *de minimis* amounts for quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, see §31.6302-1T(f)(4).

* * * * *

Par. 3. Section 31.6302-1T is added to read as follows:

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

(a) through (f)(3). [Reserved] For further guidance, see §31.6302-1(a) through (f)(3).

(f)(4) *De Minimis rule.* For quarterly return periods beginning on or after July 1, 1998, and annual return periods beginning on or after January 1, 1999, if the total amount of accumulated employment taxes for the return period is less than \$1,000 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(f)(5) through (m). [Reserved] For further guidance, see §31.6302-1(g) through (m).

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

Approved June 1, 1998.

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

(Filed by the Office of the Federal Register on June 15, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 16, 1998, 63 F.R. 32735)

Part III. Administrative, Procedural, and Miscellaneous

Deposit of Excise Taxes

Notice 98-36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Technical amendment.

SUMMARY: This document contains technical amendments to final regulations (T.D. 8685 [1996-2, C.B. 174]), which were published in the **Federal Register** for November 12, 1996, at 61 F.R. 58004, relating to deposit of excise taxes.

EFFECTIVE DATE: March 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dale Goode (202) 622-6795 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this technical amendment provide guidance under section 6302 relating to deposit of excise taxes.

Need for Correction

This amendment serves to correct references found in §40.6302(c)-3. Currently, a number of incorrect references appear in §40.6302(c)-3(g) of the Code of Federal Regulations (26 CFR part 40). As published in the **Federal Register** on November 12, 1996 (61 F.R. 58004), paragraph (f) of §40.6302(c)-3 was redesignated as paragraph (g), and the internal references were not changed to reflect this.

* * * * *

Accordingly, 26 CFR part 40 is amended by making the following correcting amendments:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

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

§40.6302(c)-3(g) [Amended]

Par. 2. Section 40.6302(c)-3 is amended by removing the reference “(f)” and adding “(g)” in its place in the following locations:

1. Paragraph (g)(1) introductory text.
2. Paragraphs (g)(2)(i) and (g)(2)(ii).
3. Paragraph (g)(3) introductory text.
4. Paragraph (g)(3), paragraph (b) of the Example.

Dale D. Goode,
*Federal Register Liaison Officer,
Assistant Chief Counsel (Corporate).*

(Filed by the Office of the Federal Register on March 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for March 31, 1998, 63 F.R. 15292)

*26 CFR 601.502: Requirement for conference—
recognition to practice and, in certain cases, power
of attorney or tax information authorization.
(Also, Part I, section 6103; 301.6103(c)-1.)*

Rev. Proc. 98-43

The Internal Revenue Service is continuing its program of reviewing and identifying those revenue procedures that, although not specifically revoked or superseded, are no longer considered de-

terminative. The revenue procedure listed below relates to the Disclosure Authorization Lists submitted by business entities to the district office(s) with which telephone contact is expected and maintained only by those district offices. These lists provide the names and social security numbers of employees who are authorized to receive confidential tax information of the business entities. The revenue procedure is made obsolete by a change in the Service's telephone environment. Presently, if a Disclosure Authorization List is in effect, an authorized employee who contacts the Service by telephone to resolve a business tax matter may be talking to a customer service representative from a district or service center that does not have access to the Disclosure Authorization List. In this situation, the customer service representative would not be able to determine if the employee on the telephone has authorization to receive confidential tax information of the business.

In the present environment, the Service advises a business entity to use Form 8821, Tax Information Authorization, to designate its employees to receive its tax information. The designated employees' names are recorded on the Centralized Authorization File so that the employees' authorizations would be available in any district or service center. See Statement of Procedural Rules, 1991-1 C.B. 717 for more information.

Accordingly, the revenue procedure listed below is obsolete.

Rev. Proc. No.
80-46

C.B. Citation
1980-2, 779

Part IV. Items of General Interest

Notice of Proposed Rulemaking
and Notice of Public Hearing

Equity Options Without Standard
Terms; Special Rules and
Definitions

REG-104641-97

AGENCY: Internal Revenue Service
(IRS), Treasury

ACTION: Notice of proposed rulemak-
ing and notice of public hearing.

SUMMARY: This document contains
proposed regulations providing guidance
on the application of the rules governing
qualified covered calls. The new rules ad-
dress concerns that were created by the
introduction of new financial instruments
after the enactment of the qualified cov-
ered call rules. The proposed regulations
will provide guidance to taxpayers hold-
ing qualified covered calls. This docu-
ment also provides notice of public hear-
ing on these proposed regulations.

DATES: Written comments must be re-
ceived by September 23, 1998. Requests
to speak (with outlines of oral comments)
at the public hearing scheduled for No-
vember 4, 1998, must be submitted by
October 14, 1998.

ADDRESSES: Send submissions to:
CC:DOM:CORP:R (REG-104641-97),
room 5228, Internal Revenue Service,
POB 7604, Ben Franklin Station, Wash-
ington, DC 20044. Submissions may be
hand delivered between the hours of 8
a.m. and 5 p.m. to: CC:DOM:CORP:R
(REG-104641-97), Courier's Desk, In-
ternal Revenue Service, 1111 Constitution
Avenue, NW, Washington, DC. Alterna-
tively, taxpayers may submit comments
electronically via the Internet by selecting
the "Tax Regs" option on the IRS Home
Page, or by submitting comments directly
to the IRS Internet site at [http://www.irs.
ustreas.gov/prod/tax_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html)
. The public hearing will be held in room
2615, Internal Revenue Building, 1111
Constitution Avenue, NW, Washington,
DC.

FOR FURTHER INFORMATION CON-
TACT: Concerning the regulations,

Pamela Lew, (202) 622-3950; concerning
submissions and the hearing, Michael L.
Slaughter, Jr., (202) 622-7190, (not toll-
free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 1092(c) defines a straddle as
offsetting positions with respect to per-
sonal property. Under section 1092(d)(3),
stock is personal property if the stock is
part of a straddle that involves an option
on that stock or substantially identical
stock or securities. Under section
1092(c)(4), however, writing a qualified
covered call option and owning the op-
tioned stock is not treated as a straddle for
purposes of section 1092.

The special treatment for qualified cov-
ered calls was created because Congress
believed that, in certain limited circum-
stances, a taxpayer who grants a call option
does not substantially reduce his or her risk
of loss with respect to the optioned stock.
Congress established a mechanical test to
determine whether a written call option
could substantially reduce a taxpayer's risk
of loss and, therefore, should be subject to
treatment as one leg of a straddle. In order
to be classified as a qualified covered call
under this test, a call option must, among
other things, be exchange-traded and not
be deep in the money.

Section 1092(c)(4)(C) defines a deep-
in-the-money option as an option whose
strike price is lower than an allowed bench-
mark. Under section 1092(c)(4)(D), this
bench mark is generally the highest avail-
able strike price for an option that is less
than the applicable stock price, as defined
in section 1092(c)(4)(G). The Internal
Revenue Code provides other bench-
marks under specified circumstances.

At the time the qualified covered call
definition was written, listed options were
available only at standardized maturity
dates and strike price intervals. This
fixed-interval system was a basic assump-
tion of the Congressional plan for quali-
fied covered calls and, more specifically,
was the foundation for the definition of a
deep-in-the-money option.

Certain options exchanges have begun
to trade put and call equity options with
flexible terms. The terms that are flexible

include strike price, expiration date, and
exercise style (that is, American, Euro-
pean, or capped). Except as noted below,
the strike price is denominated in the
smallest interval available on the options
exchanges, which is currently 1/8 of one
dollar. To minimize the market impact of
options contract expirations, equity op-
tions with flexible terms may not expire
within 2 business days of equity options
with standardized terms. Equity options
with flexible terms are generally intended
for institutional and other large investors.

Questions have been raised as to
whether the strike prices established by
equity options with flexible terms might
establish the lowest qualified benchmark
under section 1092(c)(4)(D) for all equity
options, including those with standard-
ized terms. The following example illus-
trates this concern. If a stock is currently
selling for \$62, equity options with flexi-
ble terms and option periods of not more
than 90 days could have a strike price of
\$61 7/8. If the strike prices from equity
options with flexible terms were taken
into account in determining if a 90-day
equity option with standardized terms is
deep in the money, any option being sold
for less than \$61 7/8 would be deep in the
money. Because the strike prices for an
equity option with standardized terms are
set in \$5 intervals, the highest strike price
less than the current selling price for an
equity option with standardized terms
would be \$60. Thus, any in-the-money
equity option on the stock that had stan-
dardized terms would be deep in the
money (for purposes of section
1092(c)(4)).

Explanation of Provisions

The proposed regulations provide that
the strike prices established by equity op-
tions with flexible terms are not taken into
account in determining whether equity
options that are not equity options with
flexible terms are deep in the money.
Thus, the existence of strike prices estab-
lished for equity options with flexible
terms does not affect the lowest qualified
bench mark, as determined under section
1092(c)(4)(D), for an equity option with
standardized terms. The proposed regula-
tions define equity options with flexible

terms as those equity options described in certain specified SEC releases, including any changes approved by the SEC to these releases.

The regulations will allow some taxpayers, primarily institutional and other large investors, to engage in certain exchange-based transactions that are currently unavailable to them and will permit other investors to continue doing business under section 1092 without regard to the existence of the institutional product.

The proposed regulations do not address whether an equity option with flexible terms is eligible for qualified covered call treatment under section 1092(c)(4). Comments are requested on the following issues: (1) whether equity options with flexible terms should be eligible for qualified covered call treatment under section 1092(c)(4); (2) whether there should be uniform rules governing the benchmarks for equity options with flexible terms and standardized options; and (3) if uniform rules are not appropriate, what benchmarks should apply to equity options with flexible terms.

Proposed Effective Date

These regulations apply to equity options with flexible terms entered into on or after the date that the Treasury Decision adopting these rules as final regulations is published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, considera-

tion will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, November 4, 1998, beginning at 10:00 a.m. The hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons who wish to present oral comments at the hearing must submit written comments by September 23, 1998, and submit an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 14, 1998.

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

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

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.1092(c)–1 also issued under 26 U.S.C. 1092(c)(4)(H). * * *

Par. 2. Section 1.1092(c)–1 is added to read as follows:

§1.1092(c)–1 Equity options with flexible terms.

(a) *Effect on lowest qualified benchmark for other options.* The existence of

strike prices established by equity options with flexible terms does not affect the determination of the lowest qualified benchmark, as defined in section 1092(c)(4)(D), for any option that is not an equity option with flexible terms.

(b) *Definitions.* For purposes of this section—

(1) *Equity option with flexible terms* means an equity option—

(i) That is described in the following Securities Exchange Act Releases—

(A) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34–36841 (Feb. 21, 1996); or

(B) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34–37336 (June 27, 1996); or

(C) Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options, Securities Exchange Act Release No. 34–39549 (Jan. 23, 1998); or

(D) Any changes to the SEC releases described in paragraphs (b)(1)(i)(A) through (C) of this section that are approved by the Securities and Exchange Commission; or

(ii) That is traded on any national securities exchange which is registered with the Securities and Exchange Commission (other than those described in the SEC Releases set forth in paragraph (b)(1)(i) of this section) or other market which the Secretary determines has rules adequate to carry out the purposes of section 1092 and is—

(A) Substantially identical to the equity options described in paragraph (b)(1)(i) of this section; and

(B) Approved by the Securities and Exchange Commission in a Securities Exchange Act Release.

(2) *Securities Exchange Act Release* means a release issued by the Securities and Exchange Commission. To determine identifying information for releases referenced in paragraph (b)(1) of this section, including release titles, identification numbers, and issue dates, contact the Office of the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. To obtain a copy of a Securities Exchange Act Release, submit a written request, including the specific release identification number, title, and issue date, to Securities and Exchange Commission, Attention Public Reference, 450 5th Street, NW., Washington, DC 20549.

(c) *Effective date.* These regulations apply to equity options with flexible terms entered into on or after the date that the Treasury Decision adopting these regulations is published in the **Federal Register**.

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on June 24, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 25, 1998, 63 F.R. 34616)

Notice of Proposed Rulemaking

Federal Employment Tax Deposits—*De Minimis* Rule

REG-110403-98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8771, page 6 of this Bulletin, the IRS is issuing temporary regulations relating to the deposits of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by September 14, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-110403-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8:00 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-110403-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reggs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the submissions, Michael Slaughter, (202) 622-7180; concerning the regulations, Vincent Surabian, (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in T.D. 8771 amend the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to section 6302. The temporary regulations change the *de minimis* rule for the deposit of Federal employment taxes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explain the amendments.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its

impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. In §31.6302-1, paragraph (f)(4) is revised to read as follows:

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

* * * * *

(f) * * *

(4) [The text of proposed §31.6302-1(f)(4) is the same as the text of §31.6302-1T(f)(4)].

* * * * *

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Notice of Proposed Rulemaking and Notice of Public Hearing

EIC Eligibility Requirements

REG-116608-97

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8773, page 4 of this Bulletin, the IRS is issuing temporary regulations pertaining to the eligibility requirements for certain taxpayers denied the earned income credit (EIC) as a result of the deficiency procedures. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by September 23, 1998. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, October 21, 1998, must be received by September 30, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-116608-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-116608-97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Karin

Loverud, 202-622-6060; concerning submissions or the hearing, LaNita VanDyke, 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by August 24, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §1.32-3. This information is required to conform with the statute and to permit the taxpayer to claim the EIC. This information will be used by the IRS to determine whether the taxpayer is entitled to claim the EIC. The collection of information is mandatory. The likely respondents are individuals.

The burden is reflected in the burden of Form 8862.

An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

The temporary regulations published in T.D. 8773 add §1.32-3T to the Income Tax Regulations.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It 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.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and public hearing

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

A public hearing has been scheduled for Wednesday, October 21, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

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

Persons that have submitted written comments by September 23, 1998, and want to present oral comments at the hearing must submit, not later than September 30, 1998, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

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

Drafting Information

The principal author of these proposed regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.32-3 is added to read as follows:

§1.32-3 Eligibility Requirements.

[The text of this proposed section is the same as the text of §1.32-3T published in T.D. 8773.]

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

(Filed by the Office of the Federal Register on June

25, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 25, 1998, 63 F.R. 34615)

Request for Information—New Technologies in Retirement Plans

Announcement 98-62

The Internal Revenue Service and the Department of the Treasury request comments from the public relating to the use of new technologies (sometimes referred to as “paperless” technologies) in the administration of retirement plans. The Service and Treasury are in the process of developing guidance relating to the use of new technologies in communications between retirement plans and their participants. This announcement solicits comments on a number of specific issues. However, comments and suggestions from interested parties concerning other issues pertinent to these technologies are also requested.

BACKGROUND

Section 1510 of the Taxpayer Relief Act of 1997 (“TRA ’97”), Pub. L. 105-34, provides that the Secretary of the Treasury and the Secretary of Labor each shall issue guidance designed to interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators. Section 1510 requires the guidance to maintain the protection of the rights of participants and beneficiaries. Section 1510 further provides that the guidance shall clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

SPECIFIC ISSUES FOR COMMENT

The Service invites interested parties to submit information concerning the application of new or paperless technologies in the administration of retirement plans and concerning any issues that such technologies have presented for plan sponsors, ad-

ministrators, participants or beneficiaries. Specifically, interested members of the public are invited to describe new technologies that are commonly used in plan administration, and to indicate the extent to which these technologies, and the manner in which they are used, adequately protect the rights of participants and beneficiaries. Commentators also are invited to contrast characteristics and applications of technologies that adequately protect the rights of participants and beneficiaries with characteristics and applications that may not provide such protection. The Service is particularly interested in receiving specific comments regarding the paperless administration of participant elections and consents, plan notices, plan loans, and distributions.

In addition to the information requested above, comments are specifically invited on the following questions:

- Would it be preferable for guidance to focus on specific uses of existing technologies or to take the form of generally applicable principles or standards? If commentators recommend that guidance take the form of generally applicable principles or standards, it is requested that the comments identify suggested principles or standards as specifically as possible (including any variations appropriate for different technologies).
- To what extent, if any, do the terms “election” and “consent” imply a writing or signature requirement?
- To what extent should paperless identification mechanisms (for example, a Personal Identification Number (“PIN”) or password) be treated as satisfying a legal requirement of a “writing” or a signature?
- Should the requirement to provide a notice during a specified period (such as the requirement to provide a § 402(f) notice no less than 30 and no more than 90 days before the date of an eligible rollover distribution) be deemed to be satisfied by providing a written copy of a full notice on a less frequent basis (for example, once a year) if participants or beneficiaries, when initiating a transaction to which the notice relates (such as requesting a distribution), are given an oral or recorded summary of the notice and told how to obtain a copy of the full notice?

- What are the appropriate standards for authentication, substantiation, and security in paperless plan administration and record-keeping? For example, how can it be established with a reasonable level of confidence that a plan notice has actually been received by a plan participant or beneficiary to whom the notice has been transmitted in a paperless form? Similarly, how can it be established that a particular paperless transaction was entered into by a particular participant? Also, how should records of paperless transactions be maintained by plan sponsors or administrators?

- What are the appropriate standards for ensuring that participants and beneficiaries have sufficient time and opportunity to consider (and, if desired, obtain advice on) all relevant options when making significant decisions about retirement savings? For example, should participants and beneficiaries have the right to review and change the content of any communication or instructions transmitted in a paperless form before completion of the transaction, and should they always have the right to receive communications on paper as an alternative to paperless communications?

- What types of new or paperless technologies do plan sponsors and administrators foresee using in the future? What practical and legal issues might arise from the use of those technologies, and how might systems using those technologies be designed to protect the rights of participants and beneficiaries?

- Which issues raised by the use of new technologies in retirement plans are most in need of administrative guidance?

Comments received to date indicate that the possible use of electronic technologies in the administration of the spousal consent requirements of §§ 401(a)(11) and 417 of the Code raises a number of significant legal and practical issues relating to adequate protection of persons who are not plan participants or current or former employees. Consequently, initial guidance on new technologies is unlikely to address issues involving spousal consent. The public is nevertheless invited to submit comments on this topic.

ADDRESS

Written comments should be submitted

with a signed original and eight (8) copies. All comments will be available for public inspection and copying in their entirety. Comments should be sent to CC:DOM:CORP:R (OGI-106555-98), Room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or may be submitted electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. To ensure that comments are given full consideration, they should be submitted by October 5, 1998.

DRAFTING INFORMATION

The principal authors of this announcement are Catherine Livingston Fernandez of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Daniel S. Evans of the Employee Plans Division. For further information regarding this announcement, contact the Employee Plans Division's telephone assistance service between 1:30 and 4:00 p.m., Eastern Time, Monday through Thursday at (202) 622-6074/75, or Ms. Fernandez at (202) 622-6030. (These telephone numbers are not toll-free).

Foundations Status of Certain Organizations

Announcement 98-68

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:

- Golden Generations Inc., Philadelphia, PA
- Good Shepherd of Colorado I, Littleton, CO
- Gower Foundation for Excellence in Education, Burr Ridge, IL
- Granada East Parent Teacher Organization, Phoenix, AZ
- Grand Rapids Emergency Assistance Team G R E A T, Grant Rapids, MI
- Grass Roots Initiative for Planning & Progress Inc., Conway, SC
- Grayson County Community Housing Resource Board Inc., Sherman, TX
- Great Independence Housing Coalition, Independence, MO
- Greater Albuquerque Housing Partnership, Albuquerque, NM
- Greater Cleveland Soccer Association, Cleveland, TN
- Greater Birmingham Alabama Nawic Scholarship Fund, Birmingham, AL
- Greater First Social Ministries Incorporated GFSMI, Beaumont, TX
- Greater Kankakee Development Foundation, Kankakee, IL
- Greater Orleans Club of the National Association of Negro, New Orleans, LA
- Greater Works Outreach Ministries Inc., Philadelphia, PA
- Grey Wolves Rugby Club Inc., Thornton, CO
- Grief of the Washington Metropolitan Area Inc., Alexandria, VA
- Griffin Group International Inc., Mesa, AZ
- Group Inc., Stuart, FL
- Gunn Junior High School Band Booster Club, Arlington, TX
- Gurnee Rotary Club Charitable Foundation, Gurnee, IL
- Haddington Townhouses Resident Association Inc., Philadelphia, PA
- Halifax-Northampton Opportunity Industrialization Center Inc., Roanoke Rapids, NC
- Hannibal Area Rapid Express Inc., Hannibal, MO
- Harold Key Scholarship Endowment Fund, Arlington, TX
- Harvest Time Crusades Inc., Waco, TX
- Haven Enterprises Inc., Wonsocket, RI
- Health Education and Scholarship Foundation, St. Louis, MO

Health Fair of Greater Kansas City Inc., Independence, MO

Health Opportunity Protection and Encouragement Center Inc., Athens, TN

Heart Body & Soul Inc., Baltimore, MD

Hearth, Chapel Hill, NC

Hellenic American National Council Inc., Washington, DC

Henry County Council on Child Abuse, Stockbridge, GA

Heritage Arts Inc., Raleigh, NC

Heritage Festival, Brooklyn Center, MN

Hiram G. Andrews Parents Association Incorporated, Johnstown, PA

Hispanic Society of Central Ohio Inc., Columbus, OH

Hospital Art Project Network, Inc., Dallas, TX

Hooves for Happiness Inc., Frostburg, MD

Horner Association of Men, Chicago, IL

Hospice of the VNA of Greater Philadelphia, Philadelphia, PA

Housecalls-Hospice Volunteer Association Inc., Parkersburg, WV

Housing Applications to Social Training Evolutions Inc., Arlington, TX

Housing Opportunity Center, Phoenix, AZ

Howard County Hospital Foundation, Cresco, IA

Humanitarian Aid Relief Team, Provo, UT

IGBO Foundation USA, Chicago, IL

Illinois Ethnic Coalition, Chicago, IL

Illinois Pirg Education Fund, Chicago, IL

In the Best Interest Children of Divorce, Salt Lake City, UT

India Outreach, Elgin, IL

Indian Cultural Center Inc., Marlton, NJ

Inner-City Growth Corporation, Chicago, IL

Institute for Innovative Interventions II Inc., Miami Beach, FL

Interagency Council for Youth of Wake County, Raleigh, NC

Intercounty Teach a Trade Inc., King of Prussia, PA

International Falls Education Fund, International Falls, MN

International Learning Center Inc., Bellaire, TX

International Trade Finance Society, Inc., Santa Rosa, CA

International Trade & Management Institute, Philadelphia, PA

IO Association, Middletown, OH

Iowa Young Farmers National Institute 1992 Inc., Mt. Union, IA

Iowans Against the Death Penalty Fund, West Des Moines, IA

Iowans for Safer Cities, Des Moines, IA

Irish Alliances Foundation, St. Paul, MN

Isshin Ryu Club Inc., Albuquerque, NM

J R Tucker High School Athletic Booster Club Inc., Richmond, VA

Jane Addams Delta Development Corporation, Chicago, IL

James D Evans & Pauline Palmer Evans Memorial Scholarship Trust, Stoutland, MO

Japan-America Jamboree Adventure, Rapid City, SD

Jefferson Housing Opportunities Inc., Metairie, LA

Jenkins Apartments Inc., Baltimore, MD

Jennings Rotary Scholastic Fund Inc., Jennings, LA

Jesus Christ Prison Ministries Inc., Saginaw, MI

Jewish Repertory Theatre Company, Bethesda, MD

Johnny Gray Jones Youth Shelter, Boosier City, LA

Johnson City Historic Preservation Society Inc., Johnson City, TN

Just In Time Builders, Inc., Pepper Pike, OH

Just Us for Youth, Chicago, IL

Juvenile Justice Center Inc., Tallahassee, FL

Kansas Association of Directors of Plant Facilities Scholarship, Leavenworth, KS

Kansas Multi-Cultural Arts Alliance Inc., Wichita, KS

KDK Private Industry Council Inc., Batavia, IL

Kelly Home of Iredell County Inc., Raleigh, NC

Kemper Hall Alumnae Association Inc., Gurnee, IL

Kensington Academy Foundation, Birmingham, MI

Kentucky Experimental Program to Simulate Competitive Research, Lexington, KY

Keroglu Association Inc., Boonton, NJ

Keshet of Michigan-Jewish Families of Children With Special Needs, Oak Park, MI

Kidsburgh Press, Pittsburgh, PA

Kidslife Resources, Mount Laurel, NJ

Kittrell School Scholarship Fund Inc., Readyville, TN

Knox Co Task Force Against Violence Inc. Harbor House, Vincennes, IN

Koo-Koo News Foundation, Strasburg, VA

KPMG Peat Marwick Disaster Relief Fund, Montvale, NJ

Kyrene de la Colina School P T O, Phoenix, AZ

La Palomas, Inc., Loveland, CO

Laikos Ministries Inc., Hague, VA

Lamar County Activity Center Inc., Barnesville, GA

Lancaster Heart Foundation, Lancaster, PA

Landmark Court Inc., Pittsburgh, PA

Leavenworth County Youth Soccer Association, Leavenworth, KS

Leora Brown School Inc., Corydon, IN

Liberty High School Alumni Scholarship Fund Inc., Williamson, WV

Life Directions USA, Chicago, IL

Lifeskills Education to Empower People Inc., Paducah, KY

Lillian Holliday Residence, Philadelphia, PA

Lincoln High School Band Boosters, Des Moines, IA

Literacy Alliance Memphis-Shelby County, Memphis, TN

Louisiana-Mississippi Infectious Diseases Society, New Orleans, LA

Love and Care Center Inc., San Antonio, TX

Luce County Non-Profit Housing Commission, Newberry, MI

Ludlow Youth Community Center, Philadelphia, PA

M Span, St. Paul, MN

MacArthur Avenue Players, Dillon, SC

Madison Basketball Association, Phoenix, AZ

Mahlon and Millcreek Corporation, Philadelphia, PA

Mainstreet Springfield—Robertson County, Springfield, TN

Mapleview Inc., Carmel, IN

Marianna High School Foundation Inc., Marianna, FL

Marshall Junior Olympic Volleyball, Marshall, MN

Mattawan Public Education Foundation, Mattawan, MI

Matter of Life Consortium Inc., Pinehurst, NC

Mature Resources Foundation, Clearfield, PA

Maxwell Parent Teacher Organization, Greensburg, PA

Mayors Literacy Commission Stark County Dist Library, Canton, OH

McDowell County Citizens Conservation Corps Inc., Welch, WV

Medford Educational Institute Inc., Medford, OR

Mediation Center for Central Virginia Incorporated, Lynchburg, VA

Memorial Hospital Southeast Auxiliary, Houston, TX

Memorial Hospital Southwest Auxiliary, Houston, TX

Memphis and Shelby County Adolescent Pregnancy Council, Memphis, TN

Memphis State Swimming Inc., Memphis, TN

Menasha Wisconsin Rotary Foundation Inc., Menasha, WI

Metanoia Mentor Group, Blue Springs, MO

Metro East Area Project Board, E. St. Louis, IL

Metroplex Association of Teachers of Elementary Science, Arlington, TX

Michigan Pharmacists Association, Lansing, MI

Mid-County Educational Foundation, Varna, IL

Midnet Inc., Lincoln, NE

Midpark High School Foundation, Middleburg Heights, OH

Midwest Safety and Health Association, St. Paul, MN

Mike Begeny Memorial Scholarship Fund, Westerville, OH

Mindmenders Foundation Inc., Naples, FL

Ministers Training Center, Richmond, VA

Minnesota Project for Contemporary Language Arts, St. Paul, MN

Minnesota Safety and Health Foundation, St. Paul, MN

Minority Health Coalition of Vanderburgh County, Evansville, IN

Monte Carlo Outreach Facility Vaughn Green, New Orleans, LA

Morehouse College Alumni Chapter of Palm Beach County Florida Inc., West Palm Beach, FL

Morgan County Academic Booster Club, Madison, GA

Morningstars Development Company, Inc., Kansas City, MO

Mountain College Library Network Inc., Swannanoa, NC

Mri Mobile Services of West Michigan, Grand Rapids, MI

Multiple Sclerosis Fight Against Demyelinating Diseases, Inc., San Antonio, TX

Museo Chicano Inc., Phoenix, AZ

Music in Common Inc., Columbia, MD

Mustangs Athletic Booster Club Inc., Parker, CO

Nancy Davis Foundation for Multiple Sclerosis, Aspen, CO

Nannie Berry Elementary Parent Teacher Org PTO Hendersonville TN, Hendersonville, TN

Nashville Mens Chorus, Nashville, TN

National African-American Club, Philadelphia, PA

National Assoc. of Secretaries of State, Lexington, KY

National Association of Head Start Alumni Chapters Inc., Indianapolis, IN

National Association of State Personnel Executives Inc., Lexington, KY

National Douglass Alumni Corporation, Memphis, TN

Native American War Dead Memorial, Lander, WY

NDC Center for Affordable Solutions in Housing of Tampa Inc., Bethesda, MD

Nebraska Friends of Foster Children Foundation, Lincoln, NE

Neighborhood Educational Training Services, Toledo, OH

Neighbors Helping Neighbors, Canton, OH

Net Illinois Inc., Ann Arbor, MI

New Afrikan Writers Workshop, Omaha, NE

New Beginnings Youth Center Inc., Des Moines, IA

New Generations Youth Club Inc., Ann Arbor, MI

New Haven Band Boosters Inc., New Haven, IN

New Hope Ministries Inc., Falls Church, VA

New Jersey Dare Drug Abuse Resistance Education Officers, Totowa, NJ

Newton Community Center a New Jersey Non-Profit Corporation, Camden, NJ

NIH Recreation & Welfare Foundation Inc., Bethesda, MD

Ninth Judicial District Family and Childrens Court Services Inc., Clovis, NM

No Needles in the Trash Foundation Inc., Parkersburg, WV

North East Gifted and Talented Education Association, San Antonio, TX

North Eastern Community Services Inc., Las Vegas, NM

North Georgia Heritage Association Inc., Jasper, GA

North Museum Corporation, Lancaster, PA

North Suburban Parochial School League, Robbinsdale, MN

North Texas Estate and Financial Planning Council Inc., Wichita Falls, TX

North Texas Free-Net Incorporated, Dallas, TX

Northeastern Action Wildlife Club Inc., Roanoke Rapids, NC

Northeastern Network Inc., Wilkes Barre, PA

Northern Ireland Human Rights Commission Inc., Washington, DC

Northern Pocahontas Health Clinic Inc., Durbin, WV

Northside Athletic Association, Huber Heights, OH

Northwest Delta Choral and Arts Council Inc., Batesville, MS

Northwest Louisiana Youth Services, Shreveport, LA

Novel Stages Theater Company Inc., Philadelphia, PA

Nursing Center at Oak Summit, Winston-Salem, NC

Oakland Education Foundation, Oakland, NJ

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

Numerical Finding List¹

Bulletins 1998–1 through 1998–28

Announcements:

98–1, 1998–2 I.R.B. 38
98–2, 1998–2 I.R.B. 38
98–3, 1998–2 I.R.B. 38
98–4, 1998–4 I.R.B. 31
98–5, 1998–5 I.R.B. 25
98–6, 1998–5 I.R.B. 25
98–7, 1998–5 I.R.B. 26
98–8, 1998–6 I.R.B. 96
98–9, 1998–7 I.R.B. 35
98–10, 1998–7 I.R.B. 35
98–11, 1998–8 I.R.B. 42
98–12, 1998–8 I.R.B. 43
98–13, 1998–8 I.R.B. 43
98–14, 1998–8 I.R.B. 44
98–15, 1998–10 I.R.B. 36
98–16, 1998–9 I.R.B. 17
98–17, 1998–9 I.R.B. 16
98–18, 1998–10 I.R.B. 44
98–19, 1998–10 I.R.B. 44
98–20, 1998–11 I.R.B. 25
98–21, 1998–11 I.R.B. 26
98–22, 1998–12 I.R.B. 33
98–23, 1998–12 I.R.B. 34
98–24, 1998–12 I.R.B. 35
98–25, 1998–13 I.R.B. 43
98–26, 1998–14 I.R.B. 28
98–27, 1998–15 I.R.B. 30
98–28, 1998–15 I.R.B. 30
98–29, 1998–16 I.R.B. 48
98–30, 1998–17 I.R.B. 38
98–32, 1998–17 I.R.B. 39
98–33, 1998–17 I.R.B. 39
98–34, 1998–17 I.R.B. 39
98–35, 1998–17 I.R.B. 40
98–36, 1998–18 I.R.B. 18
98–37, 1998–19 I.R.B. 24
98–38, 1998–19 I.R.B. 26
98–39, 1998–20 I.R.B. 24
98–40, 1998–20 I.R.B. 24
98–41, 1998–20 I.R.B. 25
98–42, 1998–21 I.R.B. 26
98–43, 1998–21 I.R.B. 26
98–44, 1998–22 I.R.B. 24
98–45, 1998–23 I.R.B. 18
98–46, 1998–25 I.R.B. 11
98–47, 1998–23 I.R.B. 5
98–48, 1998–24 I.R.B. 6
98–49, 1998–23 I.R.B. 19
98–50, 1998–23 I.R.B. 20
98–51, 1998–24 I.R.B. 7
98–52, 1998–24 I.R.B. 37
98–53, 1998–24 I.R.B. 37
98–54, 1998–25 I.R.B. 11
98–55, 1998–26 I.R.B. 41
98–56, 1998–26 I.R.B. 44
98–57, 1998–28 I.R.B. 11
98–58, 1998–28 I.R.B. 12
98–59, 1998–28 I.R.B. 12
98–60, 1998–27 I.R.B. 39
98–61, 1998–27 I.R.B. 38
98–63, 1998–28 I.R.B. 12
98–64, 1998–28 I.R.B. 14
98–65, 1998–28 I.R.B. 14
98–66, 1998–28 I.R.B. 15
98–67, 1998–28 I.R.B. 15

Notices:

98–1, 1998–3 I.R.B. 42
98–2, 1998–2 I.R.B. 22

Notices—Continued

98–3, 1998–3 I.R.B. 48
98–4, 1998–2 I.R.B. 25
98–5, 1998–3 I.R.B. 49
98–6, 1998–3 I.R.B. 52
98–7, 1998–3 I.R.B. 54
98–8, 1998–4 I.R.B. 6
98–9, 1998–4 I.R.B. 8
98–10, 1998–6 I.R.B. 9
98–11, 1998–6 I.R.B. 18
98–12, 1998–5 I.R.B. 12
98–13, 1998–6 I.R.B. 19
98–14, 1998–8 I.R.B. 27
98–15, 1998–9 I.R.B. 8
98–16, 1998–15 I.R.B. 12
98–17, 1998–11 I.R.B. 6
98–18, 1998–12 I.R.B. 11
98–19, 1998–13 I.R.B. 24
98–20, 1998–13 I.R.B. 25
98–21, 1998–15 I.R.B. 14
98–22, 1998–17 I.R.B. 5
98–23, 1998–18 I.R.B. 9
98–24, 1998–17 I.R.B. 5
98–25, 1998–18 I.R.B. 11
98–26, 1998–18 I.R.B. 14
98–27, 1998–18 I.R.B. 14
98–28, 1998–19 I.R.B. 7
98–29, 1998–22 I.R.B. 8
98–30, 1998–22 I.R.B. 9
98–31, 1998–22 I.R.B. 10
98–32, 1998–22 I.R.B. 23
98–33, 1998–25 I.R.B. 10
98–34, 1998–27 I.R.B. 30
98–35, 1998–27 I.R.B. 35

Proposed Regulations:

PS–158–86, 1998–11 I.R.B. 13
REG–100841–97, 1998–8 I.R.B. 30
REG–102144–98, 1998–15 I.R.B. 25
REG–102894–97, 1998–3 I.R.B. 59
REG–104062–97, 1998–10 I.R.B. 34
REG–104537–97, 1998–16 I.R.B. 21
REG–104691–97, 1998–11 I.R.B. 13
REG–105163–97, 1998–8 I.R.B. 31
REG–106031–98, 1998–26 I.R.B. xx
REG–109333–97, 1998–9 I.R.B. 9
REG–109704–97, 1998–3 I.R.B. 60
REG–110965–97, 1998–13 I.R.B. 42
REG–115795–97, 1998–8 I.R.B. 33
REG–119449–97, 1998–10 I.R.B. 35
REG–120200–97, 1998–12 I.R.B. 32
REG–120882–97, 1998–14 I.R.B. 25
REG–121268–97, 1998–20 I.R.B. 12
REG–121755–97, 1998–9 I.R.B. 13
REG–208299–90, 1998–16 I.R.B. 26
REG–209276–87, 1998–11 I.R.B. 18
REG–209322–82, 1998–15 I.R.B. 26
REG–209373–81, 1998–14 I.R.B. 26
REG–209463–82, 1998–4 I.R.B. 27
REG–209476–82, 1998–8 I.R.B. 36
REG–209484–87, 1998–8 I.R.B. 40
REG–209485–86, 1998–11 I.R.B. 21
REG–209682–94, 1998–17 I.R.B. 20
REG–209807–95, 1998–8 I.R.B. 40
REG–243025–96, 1998–18 I.R.B. 18
REG–251502–96, 1998–9 I.R.B. 14
REG–251698–96, 1998–20 I.R.B. 14

Revenue Procedures:

98–1, 1998–1 I.R.B. 7
98–2, 1998–1 I.R.B. 74
98–3, 1998–1 I.R.B. 100

Revenue Procedures—Continued

98–4, 1998–1 I.R.B. 113
98–5, 1998–1 I.R.B. 155
98–6, 1998–1 I.R.B. 183
98–7, 1998–1 I.R.B. 222
98–8, 1998–1 I.R.B. 225
98–9, 1998–3 I.R.B. 56
98–10, 1998–2 I.R.B. 35
98–11, 1998–4 I.R.B. 9
98–12, 1998–4 I.R.B. 18
98–13, 1998–4 I.R.B. 21
98–14, 1998–4 I.R.B. 22
98–15, 1998–4 I.R.B. 25
98–16, 1998–5 I.R.B. 19
98–17, 1998–5 I.R.B. 21
98–18, 1998–6 I.R.B. 20
98–19, 1998–7 I.R.B. 30
98–20, 1998–7 I.R.B. 32
98–21, 1998–8 I.R.B. 27
98–22, 1998–12 I.R.B. 11
98–23, 1998–10 I.R.B. 30
98–24, 1998–10 I.R.B. 31
98–25, 1998–11 I.R.B. 7
98–26, 1998–13 I.R.B. 26
98–27, 1998–15 I.R.B. 15
98–28, 1998–15 I.R.B. 14
98–29, 1998–15 I.R.B. 22
98–30, 1998–17 I.R.B. 6
98–31, 1998–23 I.R.B. 9
98–32, 1998–17 I.R.B. 11
98–33, 1998–19 I.R.B. 7
98–34, 1998–18 I.R.B. 15
98–35, 1998–21 I.R.B. 6
98–36, 1998–23 I.R.B. 10
98–37, 1998–26 I.R.B. 6
98–38, 1998–27 I.R.B. 29
98–39, 1998–26 I.R.B. 36
98–42, 1998–28 I.R.B. 9

Revenue Rulings:

98–1, 1998–2 I.R.B. 5
98–2, 1998–2 I.R.B. 15
98–3, 1998–2 I.R.B. 4
98–4, 1998–2 I.R.B. 18
98–5, 1998–2 I.R.B. 20
98–6, 1998–4 I.R.B. 4
98–7, 1998–6 I.R.B. 6
98–8, 1998–7 I.R.B. 24
98–9, 1998–6 I.R.B. 5
98–10, 1998–10 I.R.B. 11
98–11, 1998–10 I.R.B. 13
98–12, 1998–10 I.R.B. 5
98–13, 1998–11 I.R.B. 4
98–14, 1998–11 I.R.B. 4
98–15, 1998–12 I.R.B. 6
98–16, 1998–13 I.R.B. 18
98–17, 1998–13 I.R.B. 21
98–18, 1998–14 I.R.B. 22
98–19, 1998–15 I.R.B. 5
98–20, 1998–15 I.R.B. 8
98–21, 1998–18 I.R.B. 7
98–22, 1998–19 I.R.B. 5
98–23, 1998–18 I.R.B. 5
98–24, 1998–19 I.R.B. 6
98–25, 1998–19 I.R.B. 4
98–26, 1998–21 I.R.B. 4
98–27, 1998–22 I.R.B. 4
98–28, 1998–22 I.R.B. 5
98–29, 1998–24 I.R.B. 4
98–30, 1998–25 I.R.B. 8
98–31, 1998–25 I.R.B. 4
98–32, 1998–25 I.R.B. 4

¹ See footnote at end of list.

Numerical Finding List—Continued

Bulletins 1998–1 through 1998–28

Revenue Rulings—Continued

98–33, 1998–27 I.R.B. 26

Treasury Decisions:

8740, 1998–3 I.R.B. 4
8741, 1998–3 I.R.B. 6
8742, 1998–5 I.R.B. 4
8743, 1998–7 I.R.B. 26
8744, 1998–7 I.R.B. 20
8745, 1998–7 I.R.B. 15
8746, 1998–7 I.R.B. 4
8747, 1998–7 I.R.B. 18
8748, 1998–8 I.R.B. 24
8749, 1998–7 I.R.B. 16
8750, 1998–8 I.R.B. 4
8751, 1998–10 I.R.B. 23
8752, 1998–9 I.R.B. 4
8753, 1998–9 I.R.B. 6
8754, 1998–10 I.R.B. 15
8755, 1998–10 I.R.B. 21
8756, 1998–12 I.R.B. 4
8757, 1998–13 I.R.B. 4
8758, 1998–13 I.R.B. 15
8759, 1998–13 I.R.B. 19
8760, 1998–14 I.R.B. 4
8761, 1998–14 I.R.B. 13
8762, 1998–14 I.R.B. 15
8763, 1998–15 I.R.B. 5
8764, 1998–15 I.R.B. 9
8765, 1998–16 I.R.B. 11
8766, 1998–16 I.R.B. 17
8767, 1998–16 I.R.B. 4
8768, 1998–20 I.R.B. 4
8769, 1998–28 I.R.B. 4
8770, 1998–27 I.R.B. 4

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–27 through 1997–52 will be found in Internal Revenue Bulletin 1998–1, dated January 5, 1998.

Finding List of Current Action on Previously Published Items¹

Bulletins 1998–1 through 1998–28

Revenue Procedures:

91–59

Updated and superseded by
98–25, 1998–11 I.R.B. 7

94–16

Modified and superseded by
98–22, 1998–12 I.R.B. 11

93–62

Modified and superseded by
98–22, 1998–12 I.R.B. 11

95–35

95–35A

Superseded by
98–19, 1998–7 I.R.B. 30

96–29

Modified and superseded by
98–22, 1998–12 I.R.B. 11

97–1

Superseded by
98–1, 1998–1 I.R.B. 7

97–2

Superseded by
98–2, 1998–1 I.R.B. 74

97–3

Superseded by
98–3, 1998–1 I.R.B. 100

97–4

Superseded by
98–4, 1998–1 I.R.B. 113

97–5

Superseded by
98–5, 1998–1 I.R.B. 155

97–6

Superseded by
98–6, 1998–1 I.R.B. 183

97–7

Superseded by
98–7, 1998–1 I.R.B. 222

97–8

Superseded by
98–8, 1998–1 I.R.B. 225

97–21

Superseded by
98–2, 1998–1 I.R.B. 74

97–24

97–24A

Superseded by
98–33, 1998–19 I.R.B. 7

97–26

Obsolated by
98–28, 1998–15 I.R.B. 14

97–28

Superseded by
98–36, 1998–23 I.R.B. 10

97–32

Superseded by
98–37, 1998–26 I.R.B. 6

Revenue Procedures—Continued

97–34

Superseded by
98–35, 1998–21 I.R.B. 6

97–35

Modified by
98–39, 1998–26 I.R.B. xx

97–53

Superseded by
98–3, 1998–1 I.R.B. 100

Revenue Rulings:

68–352

Obsolated by
98–24, 1998–19 I.R.B. 6

70–225

Modified by
98–27, 1998–22 I.R.B. 4

73–198

Modified by
98–24, 1998–19 I.R.B. 6

75–17

Supplemented and superseded by
98–5, 1998–2 I.R.B. 20

75–406

Obsolated by
98–27, 1998–22 I.R.B. 4

92–19

Supplemented in part by
98–2, 1998–2 I.R.B. 15

96–30

Obsolated by
98–27, 1998–22 I.R.B. 4

¹ A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–27 through 1997–52 will be found in Internal Revenue Bulletin 1998–1, dated January 5, 1998.

Notes

Notes

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The Introduction on page 3 describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

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