

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 98-34, page 12.

Below-market loans; exempted loans; second mortgage loans under the MAHRA Act. A below-market second mortgage loan made under the Multifamily Assisted Housing Reform and Affordability Act of 1997, by the Department of Housing and Urban Development (HUD) to the owner of a multifamily low-income rental property in connection with restructuring the existing first mortgage on the property, is exempted from section 7872 of the Code.

Rev. Rul. 98-36, page 6.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for August 1998.

T.D. 8775, page 4.

Final and temporary regulations under section 460 of the Code explain how a taxpayer elects not to apply the look-back method to long-term contracts in de minimis cases.

EXEMPT ORGANIZATIONS

Announcement 98-75, page 15.

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

EMPLOYMENT TAX

T.D. 8772, page 8.

Final and temporary regulations under section 6011 of the Code relate to the requirements for filing information returns on magnetic media or in other machine-readable form.

Page 7.

Railroad retirement; rate determination; quarterly. The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 35 cents for the quarter beginning April 1, 1998, and 35 cents for the quarter beginning July 1, 1998.

ADMINISTRATIVE

Announcement 98-72, page 14.

Rev. Proc. 98-35, 1998-21 I.R.B. 6, relating to specifications for the magnetic or electronic filing of 1998 Forms 1098, 1099, 5498, and W-2G, is corrected.

Announcement 98-73, page 14.

The Service will not assess penalties for missing or incorrect taxpayer identification numbers (TINs) on Form 1099-R for 1996 and 1997. Listings of missing and incorrect TINs will be sent to filers of this form in early August of this year.

Announcement 98-74, page 15.

REG-106031-98, 1998-26 I.R.B. 38, relating to the treatment of foreign taxpayers trading in derivative financial instruments for their own account, is corrected.

Finding Lists begin on page 18.
Index for January-July begins on page 20.



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. 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 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

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

The adjusted federal long-term rate is set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 460.—Special Rules for Long-Term Contracts

26 CFR 1.460–6: Look-back method.

T.D. 8775

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

Election Not to Apply Look-Back Method in De Minimis Cases

A G E N C Y: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

S U M M A R Y: This document contains regulations explaining how a taxpayer elects under section 460(b)(6) not to apply the look-back method to long-term contracts in *de minimis* cases. The regulations reflect changes to the law made by

the Taxpayer Relief Act of 1997 and affect manufacturers and construction contractors whose long-term contracts otherwise are subject to the look-back method.

D A T E S: *Effective date:* These regulations are effective July 2, 1998.

Applicability date: These regulations apply to long-term contracts completed in taxable years ending after August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Leo F. Nolan II or John M. Aramburu at (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1572. Responses to this collection of information are required for a taxpayer to elect not to apply the look-back method to long-term contracts in *de minimis* cases. 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 OMB control number. The estimated average burden per respondent is 0.2 hours.

Comments concerning the accuracy of this burden estimate should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS: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 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). Section 460(b)(6) of the Internal Revenue Code was added by section 1211 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 998, to provide an election not to apply the look-back method of section 460(b)(2) to long-term contracts in *de minimis* cases. These regulations provide guidance concerning this new election.

A notice of proposed rulemaking was published in REG–120200–97, 1998–12 I.R.B. 32 for January 13, 1998 (63 F. R. 1932). No written comments were received, and no public hearing was requested or held. The proposed regulations under section 460 are adopted by this Treasury decision with one revision. The final regulations provide that for long-term contracts completed in taxable years ending after August 5, 1997, an election not to apply the look-back method under section 460(b)(6) automatically revokes an election under §1.460–6(e) to use the delayed reapplication method.

Special Analyses

It has been determined that this final regulation 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. Moreover, it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to prepare and file an election statement is minimal and will not have a significant impact on those small entities that choose to make the election. In addition, the election need only be made once by a taxpayer. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for “§1.460–6T” to read in part as follows:

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

Par. 2. In §1.460–0, the entry for §1.460–6 is amended by adding entries for paragraphs (i) and (j) and the entry for §1.460–6T is removed to read as follows:

§1.460–0 Outline of regulations under section 460.

* * * * *

§1.460–6 Look-back method.

* * * * *

- (i) [Reserved].
- (j) Election not to apply look-back method in *de minimis* cases.

* * * * *

Par. 3. In §1.460–6, paragraph (i) is added and reserved and paragraph (j) is added to read as follows:

§1.460–6 Look-back method.

* * * * *

- (i) [Reserved].
- (j) *Election not to apply look-back method in de minimis cases.* Section 460(b)(6) provides taxpayers with an election not to apply the look-back method to long-term contracts in *de minimis* cases, effective for contracts completed in taxable years ending after August 5, 1997. To make an election, a taxpayer must attach a statement to its timely filed original federal income tax return (including extensions) for the taxable year the election is to become effective

or to an amended return for that year, provided the amended return is filed on or before March 31, 1998. This statement must have the legend “NOTIFICATION OF ELECTION UNDER SECTION 460(b)(6)”; provide the taxpayer’s name and identifying number and the effective date of the election; and identify the trades or businesses that involve long-term contracts. An election applies to all long-term contracts completed during and after the taxable year for which the election is effective. An election may not be revoked without the Commissioner’s consent. For taxpayers who elected to use the delayed reapplication method under paragraph (e) of this section, an election under this paragraph (j) automatically revokes the election to use the delayed reapplication method for contracts subject to section 460(b)(6). A consolidated group of corporations, as defined in §1.1502–1(h), is subject to consistency rules analogous to those in paragraph (e)(2) of this section and in paragraph (d)(4)(ii)(C) of this section (concerning election to use simplified marginal impact method).

§1.460–6T [Removed]

Par. 4. Section 1.460–6T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

Par. 6. In §602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.460–6T	1545–1572
* * * * *	

2. Revising the entry for §1.460–6 to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.460–6	1545–1031 1545–1572
* * * * *	

Michael P. Dolan,
Deputy Commissioner of Internal Revenue.

Approved June 12, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 1, 1998, 8:45 a.m., and published in the issue of the Federal Register for July 2, 1998, 63 F.R. 36180)

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98–36, page 6.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

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

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for August 1998.

Rev. Rul. 98-36

This revenue ruling provides various prescribed rates for federal income tax purposes for August 1998 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable fed-

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

REV. RUL. 98-36 TABLE 1

Applicable Federal Rates (AFR) for August 1998

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	5.48%	5.41%	5.37%	5.35%
110% AFR	6.04%	5.95%	5.91%	5.88%
120% AFR	6.60%	6.49%	6.44%	6.40%
130% AFR	7.15%	7.03%	6.97%	6.93%
<i>Mid-Term</i>				
AFR	5.57%	5.49%	5.45%	5.43%
110% AFR	6.13%	6.04%	6.00%	5.97%
120% AFR	6.70%	6.59%	6.54%	6.50%
130% AFR	7.27%	7.14%	7.08%	7.04%
150% AFR	8.41%	8.24%	8.16%	8.10%
175% AFR	9.84%	9.61%	9.50%	9.42%
<i>Long-Term</i>				
AFR	5.72%	5.64%	5.60%	5.57%
110% AFR	6.30%	6.20%	6.15%	6.12%
120% AFR	6.88%	6.77%	6.71%	6.68%
130% AFR	7.46%	7.33%	7.26%	7.22%

REV. RUL. 98-36 TABLE 2				
Adjusted AFR for August 1998				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.66%	3.63%	3.61%	3.60%
Mid-term adjusted AFR	4.25%	4.21%	4.19%	4.17%
Long-term adjusted AFR	5.01%	4.95%	4.92%	4.90%

REV. RUL. 98-36 TABLE 3	
Rates Under Section 382 for August 1998	
Adjusted federal long-term rate for the current month	5.01%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.15%

REV. RUL. 98-36 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for August 1998	
Appropriate percentage for the 70% present value low-income housing credit	8.32%
Appropriate percentage for the 30% present value low-income housing credit	3.57%

REV. RUL. 98-36 TABLE 5	
Rate Under Section 7520 for August 1998	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	6.8%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

Section 3221.—Rate of Tax Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Sec-

tion 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for

services rendered to him during the quarter beginning April 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1998, 30.3 percent of the taxes collected under Sections 3211 (b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 69.7 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 19, 1998.
By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

(Filed by the Office of the Federal Register on February 25, 1998, at 8:45 a.m., and published in the issue of the Federal Register for February 26, 1998, 63 F.R. 9876)

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1998, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1998, 29.7 percent of the taxes collected under Sections 3211 (b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 70.3 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 2, 1998.
By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

(Filed by the Office of the Federal Register on June 11, 1998, at 8:45 a.m., and published in the issue of the Federal Register for June 12, 1998, 63 F.R. 32259)

Section 6011.—General Requirement of Return, Statement or List

26 CFR 301.6011-2: Required use of magnetic media.

T.D. 8772

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

Magnetic Media Filing Requirements for Information Returns

A G E N C Y: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

S U M M A R Y: This document contains final and temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

D A T E S: *Effective date:* These regulations are effective June 30, 1998.

Applicability date: These regulations apply to information returns required to be filed on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Joy Welch, (202) 622-4910 (not a toll-free call), if the inquiry relates to provisions of these regulations.

For further information, see the telephone numbers listed at the beginning of SUPPLEMENTARY INFORMATION.

SUPPLEMENTARY INFORMATION: If the inquiry relates to magnetic media filing and magnetic media specifications for Form W-2, Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS, persons residing in the following locations should contact the corresponding Social Security Administration office (not a toll-free call):

Alabama (404) 562-1314 (Atlanta),
Alaska (206) 615-2125 (Seattle),
American Samoa (415) 744-4559 (San Francisco),
Arizona (415) 744-4559 (San Francisco),
Arkansas (501) 324-5466 (Little Rock),
California (415) 744-4559 (San Francisco),
Colorado (303) 844-2364 (Denver),
Connecticut (617) 565-2895 (Boston),
Delaware (215) 597-4632 (Philadelphia),
District of Columbia (215) 597-4632 (Philadelphia),
Florida (404) 562-1314 (Atlanta),
Georgia (404) 562-1314 (Atlanta),
Guam (415) 744-4559 (San Francisco),
Hawaii (415) 744-4559 (San Francisco),
Idaho (206) 615-2125 (Seattle),
Illinois (312) 575-4244 (Chicago),
Indiana (312) 575-4244 (Chicago),
Iowa (816) 936-5649 (Kansas City),
Kansas (816) 936-5649 (Kansas City),
Kentucky (404) 562-1314 (Atlanta),
Louisiana (504) 389-0426 (Baton Rouge),
Maine (617) 565-2895 (Boston),
Maryland (215) 597-4632 (Philadelphia),
Massachusetts (617) 565-2895 (Boston),
Michigan (312) 575-4244 (Chicago),
Minnesota (312) 575-4244 (Chicago),
Mississippi (404) 562-1314 (Atlanta),
Missouri (816) 936-5649 (Kansas City),
Montana (303) 844-2364 (Denver),
Nebraska (816) 936-5649 (Kansas City),
Nevada (415) 744-4559 (San Francisco),

New Hampshire (617) 565-2895 (Boston),
 New Jersey (212) 264-5643 (New York),
 New Mexico (505) 262-6048 (Albuquerque),
 New York (212) 264-5643 (New York),
 North Carolina (404) 562-1314 (Atlanta),
 North Dakota (303) 844-2364 (Denver),
 Ohio (312) 575-4244 (Chicago),
 Oklahoma (405) 951-3007 (Oklahoma City),
 Oregon (206) 615-2125 (Seattle),
 Pennsylvania (215) 597-4632 (Philadelphia),
 Puerto Rico (787) 766-5574 (San Juan),
 Rhode Island (617) 565-2895 (Boston),
 South Carolina (404) 562-1314 (Atlanta),
 South Dakota (303) 844-2364 (Denver),
 Tennessee (404) 562-1314 (Atlanta),
 Texas-Central/South (210) 229-6433 (San Antonio),
 Texas-Dallas County (214) 767-6777 (Dallas),
 Texas-North (817) 978-3123 (Forth Worth),
 Texas-Southeast (713) 718-3015 (Houston),
 Texas-West (505) 262-6048 (Albuquerque),
 Utah (303) 844-2364 (Denver),
 Vermont (617) 565-2895 (Boston),
 Virgin Islands (787) 766-5574 (San Juan),
 Virginia (215) 597-4632 (Philadelphia),
 Washington (206) 615-2125 (Seattle),
 West Virginia (215) 597-4632 (Philadelphia),
 Wisconsin (312) 575-4244 (Chicago),
 and
 Wyoming (303) 844-2364 (Denver).

If the inquiry relates to either the waiver procedure for all forms described in these regulations or the magnetic media specifications for Forms 1042-S, 1098, 1099 series, 5498, 8027, or W-2G, persons should contact the Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25402-1359; telephone (304) 263-8700 (not a toll-free call).

Background

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) was added to the Internal Revenue Code (Code) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Public Law 98-67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Public Law 101-239, 103 Stat. 2394. As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year.

On October 10, 1996, final and temporary regulations (T.D. 8683) amending the existing regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) were published in the **Federal Register** (61 F.R. 53058 [T.D. 8683, 1996-2 C.B. 169]). A notice of proposed rulemaking (REG-209803-95) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (61 F.R. 53161 [REG-209803-95, 1996-2 C.B. 497]). These regulations were issued at the request of the Social Security Administration (the SSA) that regulations be issued to require employers required to file 250 or more Forms 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Forms W-2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W-2GU (Guam Wage and Tax Statement), and Forms W-2AS (American Samoa Wage and Tax Statement) to file these forms with the SSA on magnetic media. Filing these forms on magnetic media will reduce administrative burdens and will increase accurate processing of information. These regulations also reflect the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

One written comment responding to this notice was received. No public hear-

ing was requested or held. After consideration of the comment, the proposed regulations are adopted as modified and the corresponding temporary regulations are removed. The comment is discussed below.

Summary of Comment

The commentator suggests that the definition of *magnetic media* is too restrictive and that it does not encompass the use of additional technology that would facilitate the underlying reporting requirements. The commentator suggests that the definition is not broad enough to include the use of digital filing, specifically 2D barcode. Neither the IRS nor the SSA utilize digital filing technology at this time. However, the IRS and the SSA are committed to utilizing available technology that would facilitate the purpose of information reporting. Therefore, the regulations make clear that the use of other media may be permitted in the future as provided in applicable regulations, revenue procedures, or publications.

Relationship to Treasury Decision 8734

Treasury Decision 8734 was published in the **Federal Register** on October 14, 1997 (62 F.R. 53387 [T.D. 8734, 1997-44 I.R.B. 5]) and removed §§1.6045-1T and 1.6045-2T effective January 1, 1999. This document removes §§1.6045-1T and 1.6045-2T effective June 30, 1998. Because this document removes these sections at an earlier date, a document will be published later to amend T. D. 8734 to take this into account.

Special Analyses

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and prescribe only the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the

Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further, the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

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.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 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 * * *

§§1.6045-1T and 1.6045-2T [Removed]

Par. 2. Sections 1.6045-1T and 1.6045-2T, currently in effect, are removed.

Par. 3. Section 1.6045-1, currently in effect, is amended by:

- 1. Revising paragraph (l).
- 2. Removing the language “§1.6045-1T(l)” and adding “paragraph (l) of this section” in its place in paragraph (q).

The revision reads as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see §301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

* * * * *

Par. 4. Section 1.6045-2, currently in effect, is amended by:

- 1. Revising paragraph (g)(2).
- 2. Removing the language “§1.6045-2T(g)(2)” and adding “paragraph (g)(2) of this section” in its place in paragraph (i).

The revision reads as follows:

§1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(g) * * *

(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see §301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when

required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6011-2 is amended by:

- 1. Revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) heading, (c)(1)(i), (c)(1)(iii), (c)(2), (d), (f), (g) heading, and (g)(2).
- 2. Adding paragraph (c)(1)(iv).
- 3. Removing paragraphs (c)(3) and (c)(4) and the last sentence of paragraph (e).

The revisions and addition read as follows:

§301.6011-2 Required use of magnetic media.

(a) * * *

(1) *Magnetic media.* The term *magnetic media* means any media permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Form 1042-S, 1098, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications (see §601.601(d)-(2)(ii)(b) of this chapter). Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the In-

ternal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), Form W-2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

* * * * *

(c) *Exceptions*—(1) *Low-volume filers/250-threshold*—(i) *In general.* No person is required to file information returns on magnetic media unless the person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

* * * * *

(iii) *No aggregation.* Each type of information return described in paragraphs (b)(1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

Example 1. For the calendar year ending December 31, 1998, Company X is required to file 200 returns on Form 1099-INT and 350 returns on Form 1099-MISC. Company X is not required to file Forms 1099-INT on magnetic media but is required to file Forms 1099-MISC on magnetic media.

Example 2. During the calendar year ending December 31, 1998, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R-2/W-2PR on magnetic media but is not required to file Forms W-2AS on magnetic media.

Example 3. For the calendar year ending December 31, 1998, Company Z files 300 original returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See §301.6721-1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, or Form W-2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship (see §31.6071(a)-1(a)(3)(ii) of this chapter). A request for waiver must be made in accordance with applicable revenue procedures or publications (see §601.601(d)(2)(ii)(b) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be in accordance with applicable Internal Revenue Service or Social Security Administration procedures.

* * * * *

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective dates.* * * *

(2) Paragraphs (a)(1), (b)(1), (b)(2), (c)(1)(i), (c)(1)(iii), (c)(1)(iv), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e).

§301.6011-2T [Removed].

Par. 7. Section 301.6011-2T is removed.

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

Approved May 22, 1998.

Donald C. Lubick,
Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on June 29, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 30, 1998, 63 F.R. 35517)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1998. See Rev. Rul. 98-36, page 6.

Below-market loans; exempted loans; second mortgage loans under the MAHRA Act. A below-market second mortgage loan made under the Multifamily Assisted Housing Reform and Affordability Act of 1997, by the Department of Housing and Urban Development (HUD) to the owner of a multifamily low-income rental property in connection with restructuring the existing first mortgage on the property, is exempted from section 7872 of the Code.

Rev. Rul. 98-34

ISSUE

If the Department of Housing and Urban Development (“HUD”) makes a below-market second mortgage loan in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997, 111 Stat. 1384 (“MAHRA Act”), is that loan exempt from § 7872 of the Internal Revenue Code?

FACTS

Limited partnership *PRS* owns a multifamily low-income rental property subject to a first mortgage that secures a nonrecourse first mortgage note with an outstanding principal balance of \$100x (the “Existing Mortgage loan”). The Existing Mortgage loan is insured by the Federal Housing Administration (“FHA”). *PRS*, as owner of the property, receives both rental payments from the property’s tenants and, under a project-based assistance contract, certain additional payments from HUD. (Collectively, the payments are referred to as “Contract Rents.”) The Contract Rents exceed the rents that would be received with respect to comparable unassisted rental properties in the same housing market (“Street Rents”). If the project-based assistance from HUD were reduced so that Contract Rents reflected Street Rents, *PRS* would not be able to satisfy its debt service obligation on the Existing Mortgage loan.

Congress enacted the MAHRA Act to reduce the federal government’s cost of rental subsidies, to minimize FHA mortgage insurance risks, and to ensure the continued viability of multifamily rental housing projects. See § 511(b) of the MAHRA Act; H.R. Conf. Rep. No. 297,

105th Cong., 1st Sess. 137-39 (1997). To achieve these goals, the MAHRA Act permits owners of eligible multifamily housing projects with expiring project-based assistance contracts to enter into mortgage restructuring and rental assistance sufficiency plans with HUD or a participating administrative entity acting on behalf of HUD.

In accordance with the MAHRA Act, the following actions occur:

(1) Project-based assistance payments to *PRS* are reduced so that the Contract Rents received by *PRS* reflect Street Rents.

(2) HUD makes a \$35x cash payment to the holder of the Existing Mortgage loan on behalf of *PRS* to reduce the outstanding principal balance of the Existing Mortgage loan to \$65x.

(3) The terms of the Existing Mortgage loan are modified, resulting in a new first mortgage loan with an outstanding principal balance of \$65x (“New First Mortgage loan”). The New First Mortgage loan provides for interest above the applicable Federal rate under § 1274(d) (“AFR”). Debt service on the New First Mortgage loan is supportable by the reduced Contract Rents.

(4) In consideration for the payment in step (2), *PRS* executes a nonrecourse note to HUD (the “Second Mortgage loan”) secured by a second mortgage. The Second Mortgage loan has a principal balance of \$35x, provides for interest below the AFR, and qualifies as indebtedness under general principles of federal income tax law. The Second Mortgage loan is made in accordance with § 517(a)(1)(B) of the MAHRA Act.

LAW AND ANALYSIS

In general, § 7872 defines a below-market loan as any loan on which the interest rate charged is less than the AFR. Section 7872(b) provides that the borrower of a below-market term loan is treated as having received from the lender, on the date the loan is made, cash in an amount equal to the excess of the amount loaned over the present value of all payments required under the loan (the “imputed transfer”). Section 7872(b) further provides that a below-market term loan is treated as having original issue discount (“OID”) in an amount equal to the imputed transfer, which is in addition

to any other OID on the loan determined without regard to § 7872(b).

Section 1.7872-5T(a)(1) of the temporary Income Tax Regulations provides that, notwithstanding any other provision of § 7872 and the regulations thereunder, § 7872 does not apply to the loans listed in § 1.7872-5T(b) because the interest arrangements of those loans do not have a significant effect on the federal tax liability of the borrower or the lender. Section 1.7872-5T(a)(2) provides, however, that if a taxpayer structures a transaction as a loan exempt under § 1.7872-5T(b) and one of the principal purposes of so structuring the transaction is the avoidance of federal tax, then the transaction will be recharacterized as a tax avoidance loan under § 7872(c)(1)(D).

Section 1.7872-5T(b)(5) provides an exemption for loans that are subsidized by a federal, state, or municipal government (or any agency or instrumentality thereof), and that are made available under a program of general application to the public.

Under § 1.7872-5T(b)(15), other loans described in revenue rulings or revenue procedures may be exempted from § 7872 if the Commissioner finds that the factors justifying the exemption for those loans are sufficiently similar to the factors justifying the other exemptions listed in § 1.7872-5T.

The legislative history of § 7872 indicates that most government-subsidized loans, such as government-insured residential mortgage loans, were intended to be exempt from § 7872. See 1 Senate Comm. on Finance, 98th Cong., 2d Sess., Deficit Reduction Act of 1984: Explanation of Provisions Approved by the Committee on March 21, 1984, at 482 (S. Prt. 169).

The factors justifying exemption of the Second Mortgage loan from § 7872 are similar to the factors justifying the exemption for government subsidized loans made available under a program of general application to the public, which are exempt from § 7872 under § 1.7872-5T(b)(5).

The MAHRA Act was enacted as a reform measure to reduce HUD’s cost of renewing project-based assistance contracts on multifamily low-income rental properties while ensuring the continued viability of these multifamily rental housing pro-

jects. The interest arrangements of the Second Mortgage loan to *PRS* are, therefore, not structured with a principal purpose of avoiding federal tax.

HOLDING

The Second Mortgage loan is exempt from § 7872.

DRAFTING INFORMATION

The principal authors of this revenue ruling are David B. Silber and Tina Jannotta of the Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department partici-

pated in its development. For further information regarding this notice, contact Tina Jannotta on (202) 622-3940 (not a toll-free call).

Part IV. Items of General Interest

1998 Form Specifications; Correction

Announcement 98-72

This announcement corrects Rev. Proc. 98-35, 1998-21 I.R.B. 6, relating to specifications for the magnetic or electronic filing of 1998 Forms 1098, 1099, 5498, and W-2G.

On page 6 of the Bulletin, the bullet relating to Form 8809 is incorrectly stated as follows:

- ▶ **Form 8809, 8027, – Request for Extension of Time to File Information Returns (For Forms W-2, W-2G, 1042-S, 1099, 1098, and 5498)**

The correct wording is as follows:

- ▶ **Form 8809 – Request for Extension of Time to File Information Returns (For Forms W-2, W-2G, 1042-S, 1099, 1098, 5498, and 8027)**

On page 16, under **Section 10, Due Dates**, the date for Forms 5498 and 5498-MSAs is incorrectly stated as follows:

Forms 5498 and 5498-MSA

Participant Copy – June 1, 1999

IRS Copy – June 1, 1999

The correct date to use is:

Forms 5498 and 5498-MSA

Participant Copy – May 31, 1999

IRS Copy – May 31, 1999

Penalty Relief for TIN Errors on 1996 & 1997 Forms 1099-R

Announcement 98-73

In early August, the Internal Revenue Service (IRS) will send certain filers of Form 1099-R (payers of distributions from pensions, annuities, retirement or profit-sharing plans, individual retirement accounts, insurance contracts, etc.) lists of payees whose taxpayer identification numbers (TINs) on 1996 Forms 1099-R filed with the IRS have been identified as missing or incorrect based on the IRS matching process. Most of these listings will be included with the Notice 972CG, but some will be sent separately. The law provides a penalty of \$50 per return for filing an information return with a missing or incorrect TIN. For 1996 and 1997, for the Forms 1099-R only, the IRS will not assess this TIN penalty, merely because the TIN has been identified as missing or incorrect based on the IRS matching process. In certain cases this penalty may be assessed after an examination of a payer's returns. Payers should use these listings to correct their records and perform necessary solicitations to obtain correct payee information to establish reasonable cause for any TIN penalties in future years.

The IRS will still send out proposed penalty notices for the 1996 Form 1099-R, as well as for other information returns, in early August to those who filed late or failed to file on magnetic media when required to do so.

Questions & Answers on the Form 1099-R TIN Listing

- Q1. Why is the IRS sending this listing?
- A1. The IRS is sending this listing so that the payer can compare the data on it to the information in its records and then take steps to secure correct payee information so that future information returns may be filed accurately.
- Q2. What is contained in this listing?
- A2. This listing consists of the Forms 1099-R filed for Tax Year 1996 that have been identified as having missing or incorrect TINs based on the records of the IRS and the Social Security Administration (SSA).
- Q3. When does the IRS consider a TIN to be missing or incorrect?
- A3. A TIN is identified as missing if there is no entry in the TIN block of a Form 1099 or if the number is obviously incorrect. A number is obviously incorrect if, for example, it does not have nine characters or it

includes alpha characters. A TIN is identified as incorrect if the name/TIN combination on a Form 1099 does not match the name/TIN combination found in IRS and SSA files.

- Q4. What should be done with the information in the listing?
- A4. The payer should compare the information in the listing with its records to identify accounts or records with the same name/TIN combination and account or other number (if provided). The IRS recommends that the payer contact these payees and ask them for the correct name/TIN combination that can be used on future information returns. Although a certified TIN is not required from these payees, the payer may use Form W-9, "Request for Taxpayer Identification Number and Certification," for this purpose. The payer should also check its records for errors (such as transposition of digits) so that the correct name/TIN combination can be used on any future information returns.
- Q5. What should be done if the payer does not have a payee's TIN?
- A5. The payer should comply with the TIN solicitation requirements in Regulations section 301.6724-1(e). In addition, Federal income taxes

should be withheld from any payments made to the payee that are designated distributions under Code section 3405. In the case of nonperiodic payments, a flat rate of 10% should be withheld on non-eligible rollover distributions. On eligible rollover distributions, the withholding rate of 20% should continue to be used. In the case of periodic payments, the payer should withhold using the wage withholding rates for a single taxpayer claiming zero (0) allowances .

- Q6. What should be done if a payee refuses or neglects to provide a TIN?
- A6. The payer should withhold under the provisions of Code section 3405. See Q&A5.
- Q7. What should be done if a payee provides the same name and TIN that was on the listing?
- A7. The payer should continue to use the name and TIN provided and keep a copy on file of the documentation received from the payee.
- Q8. What should be done if a TIN was actually on file but was left off the Form 1099 or reported incorrectly?
- A8. The payer should make the change to its records and use the correct information on future filings.
- Q9. Will the IRS impose a penalty under Code section 6721 with respect to the information returns merely because a TIN is identified as missing or incorrect on this listing?
- A9. No. In August 1998 (for Tax Year 1996), the IRS is providing this listing so that payers can obtain correct name/TIN information for use on any future Forms 1099-R filed. Incorrect name/TIN combinations and missing TINs on future Forms 1099-R filed may result in a penalty.
- Q10. Is this listing a notification, under Code section 3405(e)(12)(B), that the TIN furnished by the payee is incorrect?
- A10. No. The informational listing provided in August 1998 will not be treated as a notice under Code section 3405(e)(12)(B) that the TIN furnished by the payee is incorrect. In 1998 (for Tax Year 1996), the IRS is only providing this informational listing so that payers can con-

tact these payees and obtain correct name/TIN information for use on future Forms 1099-R filed.

- Q11. Where can I find additional information about the reasonable cause regulations and requirements for missing and incorrect name/TIN combinations?
- A11. See Publication 1586, "Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs."
- Q12. Since it is likely that Forms 1099-R for Tax Year 1997 have already been filed with the missing or incorrect information found on this listing, will penalty relief for 1997 also be granted?
- A12. Yes. For Tax Year 1997, this relief will be granted for the TIN penalty for Forms 1099-R only.
- Q13. Who should be called with any questions?
- A13. The Information Reporting Program Centralized Call Site may be called at (304) 263-8700 (not a toll-free number) between 8:30 a.m. and 4:30 p.m. (EST). Payers may also access the Information Returns Program Bulletin Board using standard personal computing equipment at (304) 264-7070 (not a toll-free number).

Trading Safe Harbors; Correction

Announcement 98-74

A G E N C Y: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

S U M M A R Y: This document contains corrections to REG-106031-98, which was published in the **Federal Register** on Friday, June 12, 1998 (63 F.R. 32164 [1998-26 I.R.B. 38]), relating to the treatment of foreign taxpayers trading in derivative financial instruments for their own account.

FOR FURTHER INFORMATION CONTACT: Milton Cahn, (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 864(b) of the Internal Revenue Code.

Need for Correction

As published, REG-106031-98 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-106031-98), which is the subject of FR Doc. 98-15452, is corrected as follows:

1. On page 32164, column 3, in the preamble under the paragraph heading "Background", the second paragraph, line 3, the language "promulgated in 1972. Since the" is corrected to read "promulgated in 1968. Since the".

2. On page 32165, column 2, in the preamble under the paragraph heading "2. *Eligible Nondealer*", the third paragraph, line 9, the language "securities in 475(c)(1)(B), including" is corrected to read "securities in section 475(c)(1)(B), including".

§1.864(b)-1 [Corrected]

3. On page 32166, columns 2 and 3, §1.864(b)-1(b) (1) introductory text, the last line in column 2 and the first line in column 3, the language "*nondealer* is a person that is not a resident of the United States and is not," is corrected to read "*nondealer* is a foreign corporation or a person that is not a resident of the United States, and either of which is not,".

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

(Filed by the Office of the Federal Register on July 14, 1998, 8:45 a.m., and published in the issue of the Federal Register for July 15, 1998, 63 F.R. 38139)

Foundations Status of Certain Organizations

Announcement 98-75

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:

A Better Option Dwelling Enterprise, Inc., Laurel, MD
African Family Services Center, New York, NY
American Aid for Polands Environment Foundation Inc., Chicago, IL
Angela Barber Foundation, Ashland, OR
Aradia Inc. Aradia Theatre, Buskirk, NY
Bread of Life Outreach Deliverance, East Orange, NJ
Cleveland Haddassah House, Inc., Beachwood, OH

Delaware Crime Prevention Association, Dover, DE
Dixie Hollins Band Boosters, Inc., St. Petersburg, FL
Doniphan Education Foundation, Doniphan, NE
Environmental Technology Syntheists, Beltsville, MD
For a Better Life Foundation, Chicago, IL
Glen Shumate Ministries, Inc., Corbin, KY
Good Stewards, Woodbury, MN
Gospel Music Museum & Archives Inc., Huntsville, AK
Hans Lehfeldt Charitable Trust, New York, NY
Help or Motivate Everybody, Inc., Dallas, TX
Henrietta J. Gersoni Educational Foundation, Stockton, CA
Hine-2 Corporation, Portland, ME
Hintz Research Foundation, Rock Island, IL
Hope & Charity Incorporated, Pittsburg, PA
Impoverished, Inc., Chicago, IL
International Center for Addiction and AIDS Training, Inc., Rochester, NY
Itis H. Chidester Scout Museum of Southern Arizona, Tucson, AR

Lochearn Child Care & Development Center, Baltimore, MD
Living History Society of Delaware, Inc., Dover, DE
Sayre Charitable Union, Sayre, OK
Shelter Plus Inc., North Miami, FL
Sphere, Inc., Dixmont, ME
Steve Nelson Ministries, Gallatin, TN
TASCA, Raleigh, NC
Team Jesus Inc., Amory, MS
Vanguard Communications, St. Louis, MO
Visions & Associates, Bath, OH
Westwood Education Foundation, Mapleton, IA

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 procedure (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.
Ci.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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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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