

Internal Revenue bulletin

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. 99-15, page 4.

LIFO; price indexes; department stores. The January 1999 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 1999.

T.D. 8798, page 16.

REG-120168-97, page 21.

Temporary and proposed regulations under section 6695 of the Code relate to the due diligence requirements for paid preparers of federal income tax returns or claims for refund involving the earned income credit. A public hearing is scheduled for May 20, 1999.

T.D. 8803, page 15.

REG-106386-98, page 31.

Final and temporary regulations under section 6695 of the Code provide income tax return preparers with two alternative means of meeting the requirements that a preparer retain the manually signed (by the preparer) copy of the return or claim.

T.D. 8804, page 5.

Final regulations relate to delaying the effective date and making technical amendments to final regulations under section 1441 of the Code.

REG-105964-98, page 22.

Proposed regulations under section 1502 of the Code clarify the treatment of the transfer or extinguishment of rights under an intercompany obligation.

ESTATE TAX

REG-106177-98, page 25.

Proposed regulations under sections 2001, 2504, and 6501 of the Code relate to changes made by the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restruc-

turing and Reform Act of 1998 regarding the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax. A public hearing is scheduled for April 28, 1999.

GIFT TAX

REG-106177-98, page 25.

Proposed regulations under sections 2001, 2504, and 6501 of the Code relate to changes made by the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 regarding the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax. A public hearing is scheduled for April 28, 1999.

EMPLOYEE PLANS

Notice 99-15, page 20.

Weighted average interest rate update. Guidelines are set forth for determining the weighted average interest rate for March 1999 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code.

EXEMPT ORGANIZATIONS

Announcement 99-22, page 32.

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

ADMINISTRATIVE

REG-116099-98, page 34.

This notice withdraws certain proposed regulations under section 162 of the Code.

Announcement 99-25, page 35.

The Joint Board for the Enrollment of Actuaries is proposing a restructuring of the examination program. Clarification is also provided on the Continuing Professional Education (CPE) requirements and the use of the four-digit enrollment number.

Finding Lists begin on page 43.

Announcement of Disbarments and Suspensions begins on page 38.



Department of the Treasury
Internal Revenue Service

Mission of the Service

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

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 quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

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

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The January 1999 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 1999.

Rev. Rul. 99-15

The following Department Store Inventory Price Indexes for January 1999 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended

on, or with reference to, January 31, 1999.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups – soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Jan. 1998	Jan. 1999	Percent Change from Jan. 1998 to Jan. 1999 ¹
1. Piece Goods	536.7	507.3	-5.5
2. Domestics and Draperies	627.9	643.1	2.4
3. Women's and Children's Shoes	656.3	640.4	-2.4
4. Men's Shoes	890.5	894.0	0.4
5. Infants' Wear	619.0	628.6	1.6
6. Women's Underwear	558.3	560.7	0.4
7. Women's Hosiery	304.6	316.2	3.8
8. Women's and Girls' Accessories	544.1	535.4	-1.6
9. Women's Outerwear and Girls' Wear	395.6	376.9	-4.7
10. Men's Clothing	614.6	603.8	-1.8
11. Men's Furnishings	584.2	585.2	0.2
12. Boys' Clothing and Furnishings	504.4	482.1	-4.4
13. Jewelry	981.2	965.3	-1.6
14. Notions	803.3	729.7	-9.2
15. Toilet Articles and Drugs	929.7	946.8	1.8
16. Furniture and Bedding	662.8	678.4	2.4
17. Floor Coverings	583.9	602.4	3.2
18. Housewares	811.8	813.6	0.2
19. Major Appliances	241.8	237.7	-1.7
20. Radio and Television	73.5	69.6	-5.3
21. Recreation and Education ²	108.3	100.7	-7.0
22. Home Improvements ²	134.0	130.3	-2.8
23. Auto Accessories ²	107.8	107.8	0.0
Groups 1 – 15: Soft Goods	593.1	586.4	-1.1
Groups 16 – 20: Durable Goods	461.9	459.0	-0.6
Groups 21 – 23: Misc. Goods ²	111.5	106.0	-4.9
Store Total ³	547.5	539.4	-1.5

¹ Absence of a minus sign before percentage change in this column signifies price increase.

² Indexes on a January 1986=100 base.

³ The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Richard C. Farley, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Farley on (202) 622-4970 (not a toll-free call).

Section 1441.—Withholding of Tax on Nonresident Aliens

26 CFR 1.1441-1: Requirement for the deduction and withholding of tax on payments to foreign persons.

T.D. 8804

DEPARTMENT OF THE TREASURY Internal Revenue Services 26 CFR Parts 1, 31, 35a and 301

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date, technical amendments, and partial withdrawal.

SUMMARY: This document contains changes delaying the effective date and making technical amendments to final regulations (T.D. 8734, 1997-2 C.B. 109), relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to extend the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As ex-

tended by this document, the final withholding regulations will apply to payments made after December 31, 1999. This document also withdraws two amendments which have already been dealt with in T.D. 8772, (1998-31 I.R.B. 8), which was published in the **Federal Register** for June 30, 1998.

DATES: Effective Dates: The amendments in this final rule are effective January 1, 2000. As of December 31, 1998, the effective date of the final regulations published at 62 F.R. 53387, October 14, 1997, is delayed from January 1, 1999, until January 1, 2000; however, the effective date of the addition of §31.9999-0 and §35a.9999-0 and the removal of §35a.9999-0T remains October 14, 1997.

Withdrawal: Effective December 31, 1998, the amendments removing §§1.6045-1T and 1.6045-2T published at 62 F.R. 53387, October 14, 1997, are withdrawn.

FOR FURTHER INFORMATION CONTACT: Lilo Hester, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 13, 1998, in Notice 98-16 (1998-15 I.R.B. 12), the IRS and Treasury announced their decision to extend the effective date of the final regulations, and to make correlative changes to the transition rules for obtaining new withholding certificates and statements containing the necessary information and representations required by the final regulations. As published in the **Federal Register** on October 14, 1997 (62 F.R. 53387 [T.D. 8734, 1997-2 C.B. 109]), the final regulations were generally applica-

ble to payments made after December 31, 1998, and generally granted withholding agents until after December 31, 1999, to obtain the new withholding certificates and statements required under those regulations. This amendment serves to make the final regulations applicable to payments made after December 31, 1999, and to require mandatory use of the new withholding certificates and statements after December 31, 2000. In addition, this amendment serves to address typographical errors, and to withdraw the removal of §§1.6045-1T and 1.6045-2T since those sections were already removed on June 30, 1998, in T.D. 8772 (63 F.R. 35517).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 F.R. 17614) was submitted to the Small Business Administration for comment on its impact on small business.

* * * * *

Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, 35a, and 301 are amended by making the following correcting amendments:

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. In §1.871-14, paragraph (h) is revised to read as follows:

§1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 1999.

(2) *Transition rule.* For purposes of this section, the validity of a Form W-8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W-8 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 3. In §1.1441-1 as revised at 62 F.R. 53424, paragraph (f) is revised to read as follows:

§1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, the validity of a withholding certificate (namely, Form W-8, 8233, 1001, 4224, or 1078, or a statement described in §1.1441-5 in effect prior to January 1, 2000 (see §1.1441-5 as contained in 26 CFR part 1, revised April 1, 1998)) that was valid on January 1, 1998 under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2)(i), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in paragraph (e)(4)(ii) of this section, regardless of when the certificate is obtained.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those

provisions in the same manner as the taxpayer would take action for payments made after December 31, 1999.

Par. 4. In §1.1441-4 as amended at 62 F.R. 53450, paragraph (g) is revised to read as follows:

§1.1441-4 Exemptions from withholding for certain effectively connected income and other amounts.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8223 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 5. In §1.1441-5 as revised at 62 F.R. 53452, paragraph (g) is revised to read as follows:

§1.1441-5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a withholding certificate that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 6. In §1.1441-6 as revised at 62 F.R. 53458, paragraph (g) is revised to read as follows:

§1.1441-6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form 1001 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 1001 or 8233 is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 1001 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under §1.894-1T(d). Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 7. In §1.1441-8 as redesignated and amended at 62 F.R. 53464, paragraph (f) is revised to read as follows:

§1.1441-8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form 8709 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 8709 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a Form 8709 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)-(4)(ii), regardless of when the certificate is obtained.

Par. 8. In §1.1441-9, paragraph (d) is revised to read as follows:

§1.1441-9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

* * * * *

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of a Form W-8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W-8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 9. In §1.1443-1 as revised at 62 F.R. 53466, paragraph (c) is revised to read as follows:

§1.1443-1 Foreign tax-exempt organizations.

* * * * *

(c) *Effective date—(1) In general.* This section applies to payments made after December 31, 1999.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in §1.1443-1(b)(4)(i) in effect prior to January 1,

2000 (see §1.1443-1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1998) that is valid on December 31, 1998 is extended until December 31, 2000. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR part 1, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

§1.6041-3 [Amended]

Par. 10. Section 1.6041-3 as amended at 62 F.R. 53472 is further amended by removing the last sentence of the introductory text.

Par. 11. In §1.6042-3 as amended at 62 F.R. 53475, paragraph (b)(5) is revised to read as follows:

§1.6042-3 Dividends subject to reporting.

* * * * *

(b) * * *

(5) *Effective date—(i) General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 1999.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(5)(ii), however,

if earlier, until December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose to not take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 12. In §1.6045-1 as amended at 62 F.R. 53476, paragraph (g)(5) is revised to read as follows:

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

* * * * *

(g) * * *

(5) *Effective date—(i) General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 1999.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(5)(ii), however,

does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par 13. Effective December 31, 1998, the amendments removing §§1.6045-1T and 1.6045-2T, published at 62 F.R. 53480, are withdrawn.

Par. 14. In §1.6049-5 as amended at 62 F.R. 53483, paragraph (g) is revised to read as follows:

§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 1999.

(2) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) or, if earlier, until December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name

is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2000 (see 26 CFR parts 1 and 35a, revised April 1, 1998). Further, a new withholding certificate remains valid for the period specified in §1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

**PARTS 1, 31, 35a, and 301
[AMENDED]**

Par. 15. In the list below, for each section indicated in the left column (which was added, revised, or amended at 62 F.R. 53387), remove the language in the middle column and add the language in the right column:

<i>Section</i>	<i>Remove</i>	<i>Add</i>
1.871-14(c)(2)(iii) 1.871-14(c)(3)(ii), <i>Example</i> , first and sixth sentences	1.1441-1(c)(3)(ii) October 12, 1999	1.1441-1(e)(3)(ii) October 12, 2000
1.871-14(c)(3)(ii), <i>Example</i> , sixth sentence	December 31, 1999	December 31, 2000
1.871-14(c)(3)(ii), <i>Example</i> , sixth and seventh sentences	June 15, 2003	June 15, 2004
1.1441-1(b)(2)(iii)(B), fifth sentence	savings clause	saving clause
1.1441-1(b)(2)(iv)(E), second sentence	actually maintain	actually maintains
1.1441-1(b)(3)(iii)(B), first sentence	that cannot reliably	cannot reliably
1.1441-1(b)(3)(iii)(C), last sentence	1.1441-4(e)	1.1441-4(d)
1.1441-1(b)(3)(x), <i>Example 1</i> , seventh and ninth sentences	W s	W's

1.1441-1(b)(3)(x), <i>Example 2</i> , sixth and seventh sentences	W s	W's
1.1441-1(b)(3)(x), <i>Example 3</i> , third sentence	X, nc.	X, Inc.
1.1441-1(b)(4)(i), first sentence	1.871-7(b)(2)(i)	1.871-7(b)(2)
1.1441-1(b)(4)(xix)	January 1, 1999	January 1, 2000
1.1441-1(b)(4)(xix)	April 1, 1997	April 1, 1998
1.1441-1(b)(5)(viii)	I.R.B. 1996-49	1996-2 C.B. 227
1.1441-1(b)(7)(v), <i>Example 1</i> , first, fourth, and eighth sentences	June 15, 1999	June 15, 2000
1.1441-1(b)(7)(v), <i>Example 1</i> , third and ninth sentences	September 30, 2001	September 30, 2002
1.1441-1(b)(7)(v), <i>Example 1</i> , ninth sentence	March 15, 2000	March 15, 2001
1.1441-1(b)(7)(v), <i>Example 2</i> , first, fourth, and seventh sentences	June 15, 1999	June 15, 2000
1.1441-1(b)(7)(v), <i>Example 2</i> , third and seventh sentences	September 30, 2001	September 30, 2002
1.1441-1(b)(7)(v), <i>Example 2</i> , seventh and ninth sentences	March 15, 2000	March 15, 2001
1.1441-1(c)(6)(ii)(B)	January 1, 1999	January 1, 2000
1.1441-1(c)(6)(ii)(B)	April 1, 1997	April 1, 1998
1.1441-1(e)(4)(ii)(A)	September 30, 1999	September 30, 2000
1.1441-1(e)(4)(ii)(A)	December 31, 2002	December 31, 2003
1.1441-1(e)(4)(vi), sixth sentence	provided the acceptable	provided on the acceptable
1.1441-1(e)(4)(ix)(A)(2), second sentence	§31.3406(c)1(c)(3)(ii)	§31.3406(c)-(c)(3)(ii)
1.1441-1(e)(5)(i), penultimate sentence	reportable payments	reportable amounts
1.1441-1(e)(5)(v)(A), third sentence	the intermediary	the qualified intermediary
1.1441-1(e)(5)(v)(A), fourth sentence	the intermediary to	the qualified intermediary to

1.1441-1(e)(5)(v)(B), introductory text, third sentence	paragraph (b)(3)(vi)	paragraph (e)(3)(vi)
1.1441-1(e)(5)(v)(B)(1), second sentence	withholding agent	qualified intermediary
1.1441-1(e)(5)(v)(C), first sentence	The intermediary	The qualified intermediary
1.1441-2(a), last sentence	871(h)(5)(B)	871(h)(5)(B) or a member of a clearing organization which member is the benefi- cial owner of the obligation
1.1441-2(b)(1)(ii), fifth sentence	someone s	someone's
1.1441-2(b)(3)(iv)	December 31, 1998	December 31, 1999
1.1441-2(f)	December 31, 1998	December 31, 1999
1.1441-3(h)	December 31, 1998	December 31, 1999
1.1441-4(a)(2)(i), second sentence	United States	United States and is includable in the beneficial owner's gross income for the taxable year
1.1441-5(a)(6), second sentence	withholding partnership	withholding foreign partnership
1.1441-5(c)(2)(ii)(B), sixth sentence	qualified intermediary	withholding foreign partnership
1.1441-5(c)(2)(ii)(B), sixth sentence	customers	partners
1.1441-5(c)(3)(iii)(D)	that the partners	that the amounts allocable to the partners
1.1441-5(d)(4), <i>Example 2</i> , second sentence	depending of	depending on
1.1441-6(b)(1), first sentence	§1.1441-1(e)(1)(ii)(B)	§1.1441-1(e)(1)(ii)(A)(2)
1.1441-6(c)(2)(ii), first sentence	upon a certificate	upon receipt of a certificate
1.1441-6(d), second sentence	rate of tax	rate of withholding
1.1441-7(g)	December 31, 1998	December 31, 1999
1.1461-1(b)(2)(v)	foreign partnership shall	foreign partnership (whether or not a withholding foreign partnership) shall
1.1461-1(b)(2)(vi), paragraph heading	<i>banks, securities dealers, or insurance companies.</i>	<i>banks, or insurance companies.</i>

1.1461-1(c)(4)(iv), first sentence	certificate attached to the intermediary's or partnership withholding certificate that is from a qualified intermediary or a withholding foreign partnership	certificate or documentary evidence attached to the intermediary's or partnership withholding certificate
1.1461-1(i)	December 31, 1998	December 31, 1999
1.1461-2(a)(1), third sentence	an adjustment to	a refund of
1.1461-2(a)(3), first sentence	beneficial owner	beneficial owner or payee
1.1461-2(a)(4), <i>Example 1(i)</i> , second sentence	December 1999	December 2000
1.1461-2(a)(4), <i>Example 1(i)</i> , third sentence	February 10, 2000	February 10, 2001
1.1461-2(a)(4), <i>Example 1(ii)</i> , first, second, and last sentences	1999	2000
1.1461-2(a)(4), <i>Example 1(ii)</i> , first sentence	March 15, 2000	March 15, 2001
1.1461-2(a)(4), <i>Example 1(ii)</i> , third sentence	2000	2001
1.1461-2(a)(4), <i>Example 2</i> , second and last sentences	2000	2001
1.1461-2(a)(4), <i>Example 2</i> , second sentence	June 2000	June 2001
1.1461-2(a)(4), <i>Example 2</i> , third sentence	July 15, 2000	July 15, 2001
1.1461-2(a)(4), <i>Example 2</i> , third sentence	1999	2000
1.1461-2(a)(4), <i>Example 2</i> , last sentence	March 15, 2001	March 15, 2002
1.1461-2(a)(4), <i>Example 3</i> , last sentence	February 15, 2000	February 15, 2001
1.1461-2(a)(4), <i>Example 3</i> , last sentence	March 15, 2000	March 15, 2001
1.1461-2(d)	December 31, 1998	December 31, 1999
1.1462-1(c)	December 31, 1998	December 31, 1999
1.1463-1(a), last sentence	§1.1441-7(b)(7)	§1.1441-7(b)
1.1463-1(b)	December 31, 1989	December 31, 1999

1.1464-1(b)	§1.1461-4	§1.1461-2
1.6041-4(d)	December 31, 1998	December 31, 1999
1.6041A-1(d)(3)(i)(B), first sentence	if payments made	if payments are made
1.6041A-1(d)(3)(iv), paragraph heading	amount paid	amounts paid
1.6041A-1(d)(3)(v)	December 31, 1998	December 31, 1999
1.6043-2(a), first, second, and last sentences	966	1099
1.6045-1(d)(6)(ii)(B)	December 31, 1998	December 31, 1999
1.6045-1(g)(3)(iv), second sentence	<i>Example 7</i>	<i>Example 6</i>
1.6045-1(g)(4), <i>Example 7(ii)</i> , last sentence	Y s	Y's
1.6049-4(c)(1)(ii)(A), second sentence	certificate meeting the certification requirements of paragraphs (c)(2)(ii)(A) (1) through (5) of this section.	certificate stating that each member of the partnership meets the requirements of paragraphs (c)(1)(ii)(A)(1) through (4) of this section.
1.6049-4(d)(3)(ii)(B)	December 31, 1998	December 31, 1999
1.6049-5(b)(12), first sentence	Returns of information are not required for payments that	Payments that
1.6049-5(c)(4)(i), first sentence	the payor may	the bank or other financial institution may
1.6049-5(c)(4)(ii), second sentence	then the financial institution	then the bank or other financial institution
1.6049-5(c)(4)(v)	January 1, 1999	January 1, 2000
1.6049-5(d)(2)(ii), second and last sentences	publicly traded	actively traded
1.6049-5(d)(2)(ii), eighth sentence	is less than 31	is equal to or less than 31
1.6049-5(e)(1)(i), introductory text	The amount	An amount is described in this paragraph (e)(1)(i) if it
1.6049-5(e)(1)(ii)	The amount	An amount is described in this paragraph (e)(1)(ii) if it
1.6049-5(e)(4), second sentence	specifically identifies	specifically identify
1.6049-5(e)(5), <i>Example 5</i> , last sentence	of is section	of this section

1.6049-5(e)(5), <i>Example 9</i> , second sentence	a holds	A holds
1.6049-5(e)(5), <i>Example 9</i> , third sentence	paid to a	paid to A
1.6049-5(e)(5), <i>Example 9</i> , third sentence	a's	A's
1.6049-5(e)(5), <i>Example 9</i> , last sentence	to a by DB	to A by DB
1.6050N-1(e), first sentence	is applies to	applies to
1.6050N-1(e), last sentence	December 31, 1998	December 31, 1999
31.3401(a)(6)-1(e), paragraph heading	January 1, 1999	January 1, 2000
31.3401(a)(6)-1(e), first sentence	January 1, 1999	January 1, 2000
31.3401(a)(6)-1(f), paragraph heading	December 31, 1998	December 31, 1999
31.3401(a)(6)-1(f), first sentence	December 31, 1998	December 31, 1999
31.3406(g)-1(e), first sentence	December 31, 1998	December 31, 1999
31.3406(h)-2(d), penultimate sentence	December 31, 1998	December 31, 1999
31.9999-0	January 1, 1999	January 1, 2000
301.6114-1(b)(4)(ii)(C), introductory text	December 31, 1998	December 31, 1999
301.6114-1(b)(4)(ii)(D)	December 31, 1998	December 31, 1999
301.6724-1(g)(2) Q-11	January 1, 1999	January 1, 2000
301.6724-1(g)(2) Q-11	April 1, 1997	April 1, 1998
301.6724-1(g)(2) A-11	January 1, 1999	January 1, 2000
301.6724-1(g)(2) A-11	April 1, 1997	April 1, 1998
301.6724-1(g)(3), first sentence	December 31, 1998	December 31, 1999
301.6724-1(g)(3), last sentence in both places	January 1, 1999	January 1, 2000
301.6724-1(g)(3), last sentence	April 1, 1997	April 1, 1998

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

Approved January 7, 1998.

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

(Filed by the Office of the Federal Register on December 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1998, 63 F.R. 72183)

Section 6695.—Other Assessable Penalties With Respect to the Preparation of Income Tax Returns for Other Persons

26 CFR 1.6695-1: Other assessable penalties with respect to the preparation of income tax returns for other persons.

T.D. 8803

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the manually signed (by the preparer) copy of the return or claim. The regulations are necessary to inform preparers of the two alternatives and provide preparers with the guidance needed to comply with the alternatives. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG-106386-98, page 31.

DATES: *Effective date.* These regulations are effective December 31, 1998.

Applicability date: For dates of applicability, see §1.6695-1T(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code. Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of \$50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed \$25,000.

Section 7701(a)(36)(A) provides that, in general, the term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695-1(b)(1) and (c) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Section 1.6695-1(b)(4)(i) provides that the manual signature requirement may be satisfied by a photocopy of a copy of the return or claim for refund if the copy is manually signed by the income tax return preparer after completion of its preparation. The taxpayer may file a photocopy of this manually signed return with the IRS, see Rev. Proc. 78-370, (1978-2 C.B. 335). The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner

of a partnership which is a preparer), must retain the manually signed copy of the return or claim.

Explanation of Provisions

The regulations provide that, if an income tax return preparer presents for a taxpayer's signature a return or claim for refund that has a copy of the preparer's manual signature, the preparer may either retain a photocopy of the manually signed copy of the return or claim for refund or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97-22, (1997-1 C.B. 652) or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return of claim manually signed by the preparer.

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 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, 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 Marc C. Porter, 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 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entity in

numerical order to read as follows:

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

Section 1.6695-1T also issued under U.S.C. 6695(b) ***

Par 2. Section 1.6695-1 is amended by revising paragraph (b)(4)(i) to read as follows:

§1.6695-1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) ***

(4) (i) [Reserved]. For further guidance on acceptable methods of meeting the manual signature requirement of paragraph (b)(1) and (2), see §1.6695-1T(b)(4)(i).

* * * * *

Par. 3. Section 1.6695-1T is added to read as follows:

§1.6695-1T Other assessable penalties with respect to the preparation of income tax returns for other persons (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see §1.6695-1(a) through (b)(3).

(4) (i) The manual signature requirement of paragraph 1.6695-1(b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or

claim for refund, or use an electronic storage system to store and produce a copy of the manually signed return or claim for refund. For purposes of paragraph (b)(4)(i) of this section, an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97-22 (1997-1 C.B. 652) or procedures subsequently prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

(b)(4)(ii) through (f) [Reserved]. For further guidance, see §1.6695-1(b)(4)(ii) through (f).

(g) Effective date. This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims for refund retained on or before that date. This section expires on December 31, 2001.

Robert E. Wenzel, Deputy Commissioner of Internal Revenue.

Approved December 17, 1998.

Donald C. Lubick, Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1998, 63 F.R. 72182)

26 CFR 1.6695-2T: Preparer due diligence requirements for determining earned income credit eligibility (temporary).

T.D. 8798

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

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the due diligence requirements for paid preparers of federal income tax returns or claims for refund involving the earned income credit. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The temporary regulations provide guidance to paid preparers who prepare federal income tax returns or claims for refund claiming the earned income credit. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG-120168-97, page 21.

DATES: These regulations are effective December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Marc C. Porter (202) 622-4940 (not a toll free call).

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 1545-1570. 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 the collection of information displays a valid control number.

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-120168-97.

Books and 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 parts 1 and 602) under section 6695(g) relating to the penalty for failure of a preparer to be diligent in determining a taxpayer's eligibility for the earned income credit (EIC). Section 6695(g) was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105-34 (11 Stat. 788, 955 (1997)) (the Act), effective for taxable years beginning after December 31, 1996.

Section 6695(g) imposes a \$100 penalty for each failure by an income tax return preparer to meet the due diligence requirements set forth in this regulation. The IRS may impose the section 6695(g) penalty in addition to any other applicable penalty provided by law.

In Notice 97-65 (1997-51 I.R.B. 14 (December 22, 1997)), the IRS set forth the preparer due diligence requirements for 1997 returns and claims for refund involving the EIC. To avoid the imposition of the section 6695(g) penalty for 1997 returns and claims for refund, Notice 97-65 requires preparers to meet four requirements: (1) complete the Earned Income Credit Eligibility Checklist attached to Notice 97-65 (Eligibility Checklist), or otherwise record the information necessary to complete the Eligibility Checklist; (2) complete the Earned Income Credit Worksheet (Computation Worksheet), as contained in the 1997 Form 1040 instructions, or otherwise record the computation and information necessary to complete the Computation Worksheet; (3) have no knowledge that any information used by the preparer in determining eligibility for, and amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and amount of, the EIC was obtained by the preparer. This information may be retained either as a paper record or in magnetic media format consistent with Rev. Proc. 81-46 (1981-2 C.B. 621).

Notice 97-65 also requested comments on preparer due diligence requirements

for tax years after 1997. Two comments were received. The commentators did not suggest alternative due diligence requirements. One commentator suggested, however, increased education for the public. The IRS and Treasury Department adhere to the principle that education is an integral part of good tax administration. Therefore, as part of its overall EIC strategy, the IRS has established various educational tools and outreach programs for taxpayers and preparers. These efforts are intended to provide the public with the tools necessary to receive the full amount of the EIC allowed by law.

The second commentator suggested that preparers should be able to meet the due diligence requirements by using software reviewed and approved by the IRS. The IRS does not approve commercial software. The IRS is currently exploring, however, new opportunities for partnership with outside stakeholders to reduce burden, enhance customer service, and increase compliance. As part of this effort, the IRS will continue to review this comment and evaluate options.

Explanation of Provisions

The temporary and proposed regulations impose due diligence standards on persons who are income tax return preparers with respect to determining eligibility for, or the amount of, the EIC. Consistent with existing regulations under section 6695, these temporary regulations apply a modified definition of income tax return preparer. Section 7701(a)(36) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or claim for refund of tax imposed by subtitle A. The preparation of a substantial portion of a return or claim for refund is treated as if it were the preparation of such return or claim for refund. Persons are considered preparers if they give legal advice concerning a return or claim for refund or if they prepare another return which affects the return or claim for refund (§301.7701-15(a)(2) and (b) and §301.7701-15(b)(3), respectively). The regulations retain this definition of an income tax return preparer, except that preparers who merely give advice or prepare another return that af-

fects the EIC return or claim for refund are not preparers for purposes of the section 6695(g) penalty. Rather, the due diligence standards are imposed only on paid preparers who prepare the return claiming the EIC.

The temporary regulations essentially adopt the four due diligence requirements in Notice 97-65. Thus, to avoid the penalty under section 6695(g), a preparer must: (1) complete the Eligibility Checklist (Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS), or otherwise record in the preparer's files the information necessary to complete the Eligibility Checklist; (2) complete the Computation Worksheet (*Earned Income Credit Worksheet* contained in the Form 1040 instructions), or otherwise record in the preparer's files the computation and information necessary to complete the Computation Worksheet; (3) have no knowledge, and have no reason to know, that any information used by the preparer in determining eligibility for, and amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and the Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer.

The temporary regulations also provide that the income tax return preparer may avoid the section 6695(g) penalty with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of the regulations, and that the particular failure was isolated and inadvertent.

The temporary regulations will be effective for taxable years beginning after December 31, 1996. However, the Eligibility Checklist contained in Notice 97-65 has been expanded in Form 8867. Therefore, for taxable year 1997, the applicable Eligibility Checklist is the Eligibility Checklist contained in Notice 97-65. For taxable year 1998, a preparer may choose as the applicable Eligibility Checklist either the Eligibility Checklist published in Notice 97-65 modified however, by re-

placing, \$9,770, \$25,760, \$29,290, and \$2,250 each time these figures appear on the 1997 Eligibility Checklist with \$10,030, \$26,473, \$30,095, and \$2,300, respectively, or Form 8867. For taxable years beginning after December 31, 1998, the applicable Eligibility Checklist will be the Form 8867.

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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, 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 upon the fact that the amount of time necessary to record and retain the required information will be nominal for those income tax return preparers that choose to use the Alternative Eligibility Record and Alternative Computation Record. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

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

* * * * *

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 adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.6695-2T also issued under 26 U.S.C. 6695(g). * * *

Par. 2. Section 1.6695-2T is added to read as follows:

§1.6695-2T Preparer due diligence requirements for determining earned income credit eligibility (temporary).

(a) *Penalty for failure to meet due diligence requirements.* A person who is an income tax return preparer (preparer) of an income tax return or claim for refund under subtitle A of the Internal Revenue Code (Code) with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure. However, no penalty will be imposed under section 6695(g) on a person who is an income tax return preparer solely by reason of —

(1) Section 301.7701-15(a)(2) and (b) of this chapter, on account of having given advice on specific issues of law; or

(2) Section 301.7701-15(b)(3) of this chapter, on account of having prepared the return solely because of having prepared another return that affects amounts reported on the return.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.*

(i) The preparer must either —

(A) Complete Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS (Eligibility Checklist); or

(B) Otherwise record in the preparer's paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Eligibility Checklist or Alternative Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either —

(A) Complete the *Earned Income Credit Worksheet* in the Form 1040 in-

structions or such other form as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer's paper or electronic files the preparer's EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(3) *Knowledge.* The preparer must not know, or have reason to know, that any information used by the preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The preparer may not ignore the implications of information furnished to, or known by, the preparer, and must make reasonable inquiries if the information furnished to, or known by, the preparer appears to be incorrect, inconsistent, or incomplete.

(4) *Retention of records.* (i) The preparer must retain —

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) These items must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance.

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circum-

stances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective date.* (1) *In general.* This section applies to income tax returns and claims for refund for taxable years beginning after December 31, 1996. This section expires on, December 21, 2001. For the applicable Eligibility Checklist see paragraph (d)(2) of this section.

(2) *Eligibility Checklist*—(i) *For the 1997 taxable year.* For taxable year 1997, the applicable Eligibility Checklist is the Eligibility Checklist published in Notice 97-65 (1997-51 I.R.B.14) December 22, 1997. (See §601.601(d)(2)(ii)(b) of this chapter.)

(ii) *For the 1998 taxable year.* For taxable year 1998 the applicable Checklist is either—

(A) The Checklist published in Notice 97-65 (1997-51 I.R.B.14) December 22,

1997, modified however, by applying the figures \$10,030, \$26,473, \$30,095, and \$2,300 in place of \$9,770, \$25,760, \$29,290, and \$2,250, respectively, each time these figures appear on the 1997 Checklist; or

(B) Form 8867, *Paid Preparer's Earned Income Credit Checklist.*

(iii) *For taxable years after 1998.* For taxable years beginning after December 31, 1998, the applicable Eligibility Checklist is the Eligibility Checklist contained in Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or such other form as may be prescribed by the IRS.

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 the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *	
(c) * * *	
CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6695-2T	1545-1570
* * * * *	

David S. Mader,
*Acting Deputy Commissioner
of Internal Revenue.*

Approved December 9, 1998.

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

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 FR. 70339)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 99-15

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of

interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for February 1999 is 5.37 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
March	1999	6.15	5.54 to 6.46	5.54 to 6.77

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans Di-

vision. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number

is (202) 622-8458 (also not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking Notice of Public Hearing

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

REG-120168-97

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. 8798, page 16, the IRS is issuing temporary regulations relating to the due diligence requirements in determining eligibility for the earned income credit for paid preparers of federal income tax returns or claims for refund. The text of those 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, March 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for Thursday, May 20, 1999, at 10 a.m. must be received by Thursday, April 29, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-120168-97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-120168-97), 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 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, LaNita Van Dyke, (202) 622-7190; concerning the regulations, Marc C. Porter, (202) 622-4940 (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 Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by, February 19, 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 service to provide information.

The collection of information in this proposed regulation is in §1.6695-2T. This information is required by the IRS to determine preparer due diligence compliance. This information will be used to avoid the imposition of the penalty imposed by section 6695(g) of the Internal

Revenue Code. The collection of information is mandatory. The likely recordkeepers are individuals, business or other for profit institutions, and small businesses or organizations.

The collection of information in §1.6695-2T is generally satisfied by completing: 1) the required information on the Checklist published in Notice 97-65 or the Form 8867, *Paid Preparer's Earned Income Credit Checklist*; and 2) the required Worksheet information on the *Earned Income Credit Worksheet* contained in the instructions to the Form 1040. The burden for the Checklist requirement is reflected in the burden estimate for Form 8867. The burden for the Worksheet requirement is reflected in the burden estimate for the *Earned Income Credit Worksheet* contained in the instructions to the Form 1040. Preparers may also choose to record the information necessary to complete the Checklist and Worksheet in their paper or electronic files (alternative method).

The information collections in this regulation were originally included in Notice 97-65 and have been approved by the Office of Management and Budget under control number 1545-1570.

The collection of information for preparers who choose to record the information required by the regulations in alternative paper or electronic form is as follows:

Estimated total annual recordkeeping burden: 507,136 hours.

Estimated average annual burden hours per recordkeeper: 5 hours 4 minutes (40 minutes per return or claim for refund, 7.6 returns per preparer).

Estimated number of recordkeepers: 100,000.

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 and 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 and Explanation of Provisions

Temporary regulations in T.D. 8798 amend the Income Tax Regulations (26 CFR part 1) relating to section 6695. The temporary regulations set forth due diligence requirements that paid preparers of federal income tax returns or claims for refund involving the Earned Income Credit (EIC) must meet to avoid imposition of the penalty under section 6695(g) for taxable years beginning after December 31, 1996. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, 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 upon the fact that the amount of time necessary to record and retain the required information will be minimal for those income tax return preparers that choose to use the Alternative Eligibility Record and Alternative Computation Record. 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 their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS

and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 20, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by (April 29, 1999). 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 Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and 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 is amended by adding an entry in numerical order to read as follows:

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

Section 1.6695-2 also issued under 26 U.S.C. 6695(g). * * *

Par. 2. Section 1.6695-2 is added to read as follows:

§1.6695-2 Preparer due diligence requirements for determining earned income tax credit eligibility.

[The text of proposed §1.6695-2 is the same as the text of §1.6695-2T published in T.D. 8798.]

David S. Mader,
*Acting Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 F.R. 70357)

**Notice of Proposed Rulemaking
Intercompany Obligations
REG-105964-98**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that clarifies the treatment of the transfer or extinguishment of rights under an intercompany obligation. The existing regulation has caused uncertainty concerning the tax treatment of such transactions. The proposed regulation affects corporations that are members of consolidated groups, their subsidiaries, and their shareholders.

DATES: Comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-105964-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-105964-98), 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_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Theresa A. Abell, (202) 622-7790; concerning submissions of comments, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to §1.1502-13(g) of the Income Tax Regulations. Section 1.1502-13(g) prescribes rules relating to the treatment of the transfer or extinguishment of rights an intercompany obligation. An intercompany obligation is generally defined as an obligation between members of a consolidated group, but only for the period during which both parties are members of the group. The current regulation provides that if a member of a consolidated group realizes an amount (other than zero) of income, gain, deduction, or loss upon the transfer or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the obligation is treated as satisfied (and the transferor's basis in the property received is adjusted to reflect the satisfaction amount) and, if the obligation remains outstanding, it is treated as reissued as a new obligation.

The current regulation is, however, ambiguous regarding the form of the recast transaction, i.e., the deemed transaction that encompasses the satisfaction, reissuance, and actual transaction. Under one interpretation of the regulation, there is a potential that the form of the recast jeopardizes the tax-free treatment of common corporates restructuring transactions. While it is not clear the regulation produces such consequences, the IRS and Treasury believe that any such consequences would be inappropriate and unnecessary to achieve the objectives of the regulation. Accordingly, the IRS and Treasury propose to amend the regulation as described below.

Explanation of Provisions

The existing regulation does not apply to transactions in which the amount of income, gain, deduction, or loss realized is zero. This rule was intended to avoid application of the regulation to transactions in which preservation of gain or loss location, an objective of §1.1502-13(g), would not be at issue. However, the determination of whether the amount of income, gain, deduction, or loss realized is zero might depend on the fair market value of property received in an exchange. The difficulty and manipulability of that valuation is a reason for the enactment of certain provisions of the original issue discount (OID) rules, particularly section 1274. To the extent that taxpayers were able to avoid the deemed satisfaction and reissuance rule by inaccurately maintaining that the amount of income, gain, deduction, or loss realized is zero, taxpayers could avoid those OID rules and could inappropriately shift gain or loss among members. The IRS and Treasury have concluded that the better and more administrable approach is not to condition the application of the regulation on a realization of some amount of income, gain, deduction, or loss other than zero. Accordingly, the regulation as proposed will apply to all transactions in which any amount is realized due to the transfer or extinguishment of rights in an intercompany obligation.

The IRS and Treasury believe the exception from the operation of this provision for transactions that will not have significant effect on any person's Federal income tax liability for any year is unclear in its application and scope. Further, the exception offers little, if any, relief from the requirements of the provision. Accordingly, the exception is eliminated from the regulation.

The proposed regulation clarifies the form and timing of the recast applied to transactions subject to the regulation. In particular, it clarifies that the deemed satisfaction proceeds (rather than the obligation) are treated as transferred by the initial creditor in the actual transaction and then advanced by the transferee to the debtor in the deemed reissuance of the obligation. The proposed regulation includes an example to illustrate clearly the mechanics of the proposed regulation. It

also includes certain conforming adjustments.

The proposed regulation retains the rule that the deemed satisfaction and reissuance amounts are determined under the principles of the OID provisions if the debt is transferred for property. The IRS and Treasury recognize that an alternate rule providing for a fair market value determination of the deemed satisfaction and reissuance amounts might (in theory) more accurately preserve location of economic gain or loss. In such an alternate regime, however, the inherent difficulty of valuing intercompany obligations would prove burdensome to both taxpayers and the IRS and may provide significant potential for abuse when member obligations are transferred. Certain provisions of the OID rules are intended to address the difficulty and manipulability of this valuation. Other developments in the tax law have recognized that issue price, as determined under the OID rules, is the surrogate for fair market value in the case of a debt obligation. For example, §1.100-1(g) provides that issue price is used in determining the amount realized from the receipt of a debt instrument. For these reasons, and consistent with the objective of promoting single entity treatment of the group, the IRS and Treasury continue to believe that the use of the OID provisions is appropriate and desirable in determining the deemed satisfaction amount and the amount for which the obligation is deemed reissued. Accordingly, the regulation as proposed continues to use the OID provisions to determine both the amount repaid in the deemed satisfaction and the issue price of the reissued obligation in cases involving the exchange of an intercompany obligation for cash or property.

In addition, the proposed regulation clarifies that the term "conversion" includes only conversions pursuant to the terms of the instrument.

Proposed Effective Date

The regulation is proposed to be effective on the date that the final regulation is published in the **Federal Register**. For purposes of determining the tax treatment of transactions undertaken prior to such effective date, taxpayers may rely on the form and timing of the recast transaction,

as clarified by these proposed regulations. No inference is intended, however, as to the correct interpretation of the existing regulation.

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 is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated Federal income tax returns. Available data indicates that many consolidated return filers are larger companies (not small businesses). 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 Requests for a Public hearing

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

Drafting Information

The principal author of this regulation is Theresa A. Abell of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in its 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 ***

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

Par. 2. Section 1.1502–13 is amended by:

1. Revising paragraphs (g)(3)(i)(A), (g)(3)(i)(B)(3), (g)(3)(ii)(A), and (g)(3)(ii), and removing paragraph (g)(3)(i)(B)(4).

2. Revising paragraph (g)(4)(i)(B).

3. Amending paragraph (g)(5) by:

a. Removing the language “Example 2” in each place it appears in paragraphs (d), (e) and (f) of Example 2 and adding “Example 3” in its place.

b. Removing the language “Example 3” in each place it appears in paragraph (c) and (d) of Example 3 and adding “Example 4” in its place.

c. Removing the language “Example 5” in each place it appears in paragraph (c) of Example 5 and adding “Example 6” in its place.

d. Redesignating Examples 2, 3, 4 and 5 as Examples 3, 4, 5 and 6 and adding a new Example 2.

The revisions and additions read as follows:

§1.1502–13 Intercompany transactions.

* * * * *

(g) ***

(3) *Deemed satisfaction and reissuance of intercompany obligations*—(i)

Application—(a) *In general.* If a member realizes an amount from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation, the intercompany obligation is treated for all Federal income tax purposes as satisfied under paragraph (g)(3)(ii) of this section and, if it remains outstanding (either as an intercompany obligation or a nonintercompany obligation), reissued under paragraph (g)(3)(iii) of this section. Similar principles apply under this paragraph (g)(3) if a member realizes an amount, directly or indirectly, from a comparable transaction (for example, a marking-to-market of an obligation or a bad debt deduction), or if an intercompany obligation becomes an obligation that is not an intercompany obligation.

(B) ***

(3) The amount realized is from the conversion of an obligation (under the terms of the instrument) into stock of the obligor.

(ii) *Satisfaction*—(A) *General rule.* If a creditor member sells an intercompany debt for cash, the debt is treated as satisfied by the debtor immediately before the sale for an amount equal to the amount of the cash. If the debt is transferred for property, the debt is treated as satisfied immediately before the transaction for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, for such property. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the debt is treated as satisfied for cash in an amount equal to its fair market value immediately before the debtor or creditor becomes a nonmember.

If the debt is transferred for cash or property, the proceeds of the deemed satisfaction are treated as transferred by the creditor to the transferee of the debt in exchange for the cash or property. Similar principles apply to other transactions and to transactions involving intercompany obligations other than debt. For example, if a corporation assumes the debtor’s liability in exchange for property of the debtor, the debt is treated as satisfied for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, for such property. If, in a transaction to which this paragraph (g)(3) applies, the obligation is extinguished, including in a transaction in which the creditor and debtor become the same entity, the obligation is treated as satisfied for an amount equal to the issue price (determined under section 1273 or section 1274) of a new debt issued on the date of the transaction, with identical terms, to a third party, for property that is not publicly traded.

* * * * *

(iii) *Reissuance.* If an intercompany debt is transferred for cash or property, it is treated as a new debt (with a new holding period but otherwise identical terms) issued to the transferee in exchange for the proceeds of the deemed satisfaction as determined under paragraph (g)(3)(ii) of

this section. If this paragraph (g)(3) applies because the debtor or creditor becomes a nonmember, the debt is treated as a new debt (with a new holding period but otherwise identical terms) issued to the creditor for the deemed satisfaction proceeds. Similar principles apply to other transactions and to transactions involving intercompany obligations other than debt.

* * * * *

(4) ***

(i) ***

(B) Exception. This paragraph (g)(4) does not apply to an obligation if the obligation becomes an intercompany obligation by reason of an event described in §1.108-2(e) (exceptions to the application of section 108(e)(4)).

* * * * *

(5) *Examples.*

* * * * *

Example 2. Nonrecognition transactions. (a) Facts. On January 1 of Year 1, B borrows \$100 from S in return for B's not providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of Year 5. B fully performs its obligations with the same tax consequences as described in paragraph (a) of Example 1. At the end of Year 3, S transfers the note to a newly formed subsidiary, Newco, in exchange for Newco stock. Section 351 applies to the exchange. The interest is adequate stated interest within the meaning of section 1274(c)(2) (determined on the date of the transfer). Neither B's not nor Newco's stock is publicly traded.

(b) Deemed satisfaction and reissuance of note. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to Newco. Zero gain or loss is recognized by S and B on the deemed satisfaction of B's note. S is then treated as transferring the deemed proceeds of the satisfaction of the note (\$100) to Newco in exchange for the Newco stock. S's basis in the Newco stock is \$100. Under paragraph (g)(3)(iii) of this section, B is treated as reissuing the note to Newco for \$100. Newco's basis in B's note is \$100.

(c) Intercompany obligation transferred in section 332 transaction. The facts are the same as in paragraph (a) of this Example 2, except that S transfers the note to P in a complete liquidation under section 332. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied for \$100 (the issue price of the reissued note, determined under section 1273(b)(4)) immediately before S's transfer of the note to P. Zero gain or loss is recognized by S and B on the deemed satisfaction of the note. S is then treated as transferring the deemed proceeds of the satisfaction of the note, with its other assets, to P in complete liquidation. Under paragraph (g)(3)(iii)

of this section, B is treated as reissuing the note to P for \$100. P's basis in the note is \$100.

* * * * *

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 F.R. 70354)

Notice of Proposed Rulemaking and Notice of Public Hearing

Adequate Disclosure of Gifts

REG-106177-98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to changes made by the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 regarding the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax. The proposed regulations affect individual donors and the estates of those donors. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by March 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for Wednesday, April 28, 1999, must be received by Wednesday, April 7, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R [REG-106177-98] room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG-106177-98], 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_regs/comments.html. The public hearing will be held in room 2615, at 10 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC.

FOR FURTHER INFORMATION

CONTACT: Concerning the regulations, William L. Blodgett, (202) 622-3090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Introduction

This document proposes to amend the Estate and Gift Tax Regulations (26 CFR parts 20 and 25) under sections 2001 and 2504 relating to the value of prior gifts for purposes of computing the estate and gift tax. This document also proposes to amend the Procedure and Administration Regulations relating to the period for assessment and collection of gift tax under section 6501.

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, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by February 22, 1999. 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 service to provide information.

The collection of information in this proposed regulation is proposed §301.6501(c)-1(f) of the Procedure and Administration Regulations. This information is required by statute in order to commence the period of limitations on assessment. This information will be used to identify gift tax issues relating to the reported transfers. The collection of information is mandatory. The likely respondents are individuals.

The reporting burden contained in §301.6501-1(f) is reflected in the burden of Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return.

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 information are confidential, as required by 26 U.S.C. 6103.

Background

Under the unified estate and gift tax system, a single rate schedule is applied to an individual's cumulative gifts and bequests. Gift tax is computed by determining a tax on the total of the gifts made by the donor in the current calendar year plus the gifts made in prior years (prior taxable gifts). The tax computed is then reduced by the tax that would have been payable on the prior taxable gifts. The result (after taking into account the applicable credit amount under section 2505) is the gift tax on the current gifts. Similarly, the

estate tax is computed by determining a tax on the value of the decedent's taxable estate plus the value of lifetime gifts (adjusted taxable gifts) made by the decedent. The tax computed is then reduced by the gift tax that would have been payable on the adjusted taxable gifts. The result (after allowing for various credits) is the estate tax on the taxable estate.

The Statute of Limitations for Assessment of Gift Tax Under Section 6501(c)(9) of the Internal Revenue Code

Prior to the Taxpayer Relief Act of 1997 (the 1997 Act) and the Internal Revenue Service Restructuring and Reform Act of 1998 (the 1998 Act), the period for assessment of gift tax for a calendar period generally expired three years from the date a gift tax return for that period was deemed to be filed. The statute of limitation protection extended to all gifts made in a calendar period for which a return was filed, including gifts not reported on the gift tax return for the period. An exception to this general rule applied for gifts subject to the special valuation rules of sections 2701 and 2702. For gifts subject to these rules, section 6501(c)(9) extends the period of assessment indefinitely unless the gifts were disclosed on the gift tax return in a manner adequate to apprise the IRS of the nature of the transfer.

Under the 1997 and 1998 Acts, this adequate disclosure requirement was extended to all gifts, whether or not subject to section 2701 or 2702. Consequently, the period of assessment will not close for any gift made in a calendar year ending after August 5, 1997, or with respect to any increase in gift tax required under section 2701(d), that is not adequately disclosed on a gift tax return.

The proposed regulations provide a list of information that, if applicable to a transaction, must be reported on a gift tax return, or a statement attached thereto, in order for the transaction to be considered adequately disclosed to cause the period for assessment to commence. The required information must completely and accurately describe the transaction and include: the nature of the transferred property; the parties involved; the value of the transferred property; and how the value was determined, including any discounts or adjustments used in valuing the transferred property.

Specific rules are provided in the case of transfers of entities that are not actively traded that own interests in other non-actively traded entities. Comments are requested on how these rules should be applied when the required information is not available to the donor.

In addition, the return must disclose the facts affecting the gift tax treatment of the transaction in a manner that reasonably may be expected to apprise the IRS of the nature of any potential controversy regarding the gift tax treatment of the transfer. In lieu of this statement, the taxpayer may provide a statement of any legal issue presented by the facts. Finally, the taxpayer must also provide a statement of any position taken by the taxpayer that is contrary to any temporary or final Treasury regulation or any revenue ruling. These standards are based on those currently employed under §6662 in determining whether an item is adequately disclosed under that section, such that accuracy-related penalties will not be imposed.

The proposed regulations contain examples that illustrate adequate disclosure under these standards.

Under the proposed regulations, adequate disclosure of a transfer that is reported as a completed gift on the gift tax return will commence the running of the statute of limitations under section 6501(c)(9) even if the transfer is ultimately determined to be an incomplete gift. Thus, if the donor reports a transfer on the gift tax return as a completed gift for gift tax purposes, the period for assessing a gift tax with respect to the transfer will commence. If the IRS does not examine the transaction reported on the gift tax return prior to the expiration of the running of the statute of limitations, the transaction will be treated as a completed gift as reported on the gift tax return. If the IRS, upon examination, disagrees with the donor's characterization of the transaction, and the issue remains unresolved through the administrative process, the donor will be sent a final notice of determination and the donor will be able to seek a declaratory judgment on the matter pursuant to section 7477.

On the other hand, if a donor initially reports a transfer as an incomplete gift, even if adequately disclosed, the statute of limitations does not commence to run

until the donor reports the transfer as a completed gift. The IRS would have three years from the date of filing of the subsequent gift tax return disclosing the completed gift to make any assessment with respect to the gift.

As discussed below, the 1997 and 1998 Act amendments to sections 2001 and 2504 curtail the IRS' ability to redetermine the value of a gift in computing the estate or gift tax, after the statute of limitations expires. However, the adequate disclosure requirement contained in section 6501(c)(9) is intended to afford the IRS the reasonable opportunity to identify in a timely manner and with a minimum expenditure of resources returns that present issues that merit further examination. Accordingly, the information required is intended to enable the IRS to identify issues, if any, without imposing an undue burden on taxpayers.

The proposed regulations conform the regulations to the new statutory rules for gifts made in calendar years ending after August 5, 1997, if such gift tax return is filed after the regulations are published as final regulations. In the interim period, the statutory provisions apply.

Valuation of Prior Gifts for Gift Tax Purposes

Prior to the 1997 and 1998 Acts, section 2504(c) provided that if a gift tax had been paid or assessed with respect to the calendar period in which the gift occurred and the statute of limitations on assessment for the prior gift had expired, then the value of any gift made in such calendar period could not be adjusted for purposes of determining the total amount of prior taxable gifts that the individual had made. This prohibition on adjustments applied even if a particular gift was not disclosed on the gift tax return. This rule continues to apply for gifts made prior to August 6, 1997.

Under section 2504(c) as amended by the 1997 and 1998 Acts, if a gift was adequately disclosed such that the time has expired for assessing gift tax for a preceding calendar period under section 6501, then the value of such gift made in the prior calendar period cannot be adjusted (regardless of whether or not a gift tax has been assessed or paid for a prior calendar period). Rather, the value of the gift is the value as finally determined for gift tax

purposes, as defined in section 2001(f). A similar rule applies with respect to any increase in taxable gifts required under section 2701(d) (pertaining to the transfer of applicable retained interests under section 2701).

Section 2504(c) applies only to adjustments involving issues of valuation. Thus, even after the 1997 and 1998 amendments to section 2504(c), adjustments to prior taxable gifts may be made if the adjustment is not related to the valuation of the gift; e.g., the erroneous inclusion or exclusion of property for gift tax purposes. See Rev. Rul. 76-451 (1976-2 C.B. 304). This result is consistent with the legislative history to the 1997 Act which emphasizes that the statutory change imposes a prohibition on revaluing certain gifts. The House Committee report states that a gift for which the limitations period has passed cannot be revalued for purposes of determining the applicable estate tax bracket and available unified credit. H.R. Rep. No. 148, 105th Cong., 1st Sess. 359 (1997).

The proposed regulations conform the regulations to the new statutory rules for gift tax returns filed after the regulations are published as final regulations. In the interim period, the statutory provisions apply.

Valuation of Prior Gifts for Estate Tax Purposes

Prior to the enactment of the 1997 and 1998 Acts, there was no estate tax provision corresponding to section 2504(c). Therefore, even where the period of assessment expired for a calendar period, and gift tax was paid or assessed for that period, the value of any gifts made in that period could be adjusted for purposes of determining the estate tax liability. The statutory change and these proposed regulations preserve that treatment for gifts made prior to August 6, 1997.

Section 2001(f) was added by the 1997 Act and amended by the 1998 Act. Under section 2001(f) as amended, if the time has expired for assessing gift tax for a preceding calendar period under section 6501, then the value of the gift, for purposes of computing the estate tax liability, is the value of the gift as finally determined for gift tax purposes. A similar rule applies for any increase in taxable gifts required under section 2701(d).

Under the statute, the value of a gift is finally determined if: the value is shown on a gift tax return and the IRS does not contest the value before the period for assessing gift tax expires; or, before the period for assessing gift tax expires, the value is specified by the IRS and the taxpayer does not contest the specified value; or, the value is determined by a court or pursuant to a settlement agreement between the taxpayer and the IRS.

As discussed above, the provision only limits the IRS' ability to make adjustments related to the value of a gift. Thus, the IRS is not precluded from making adjustments that are not related to value, such as the erroneous inclusion or exclusion of property for gift tax purposes.

The proposed regulations conform the current regulations to the statutory change for gift tax returns filed after the regulations are published as final regulations. In the interim period, the statutory provisions apply.

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 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. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on their impact on small business.

Comment and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to electronic and written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, April 28, 1999, at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by Wednesday, April 7, 1999.

A period of 10 minutes will be allocated 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 William L. Blodgett, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2001-1 is revised to read as follows:

§20.2001-1 Valuation of adjusted taxable gifts and section 2701(d) taxable events.

(a) *Adjusted taxable gifts made prior to August 6, 1997.* For purposes of determining the value of adjusted taxable gifts as defined in section 2001(b), if the gift was made prior to August 6, 1997, the value of the gift may be adjusted at any time, even if the time within which a gift tax may be assessed has expired under section 6501. This paragraph (a) also applies to adjustments involving issues other than valuation.

(b) *Adjusted taxable gifts and section 2701(d) taxable events occurring after August 5, 1997.* For purposes of determining the value of adjusted taxable gifts as defined in section 2001(b), if, under section 6501, the time has expired within which a gift tax may be assessed under chapter 12 of the Internal Revenue Code (or under corresponding provisions of prior laws) with respect to a gift made after August 5, 1997, and during a preceding calendar period (as defined in §25.2502-1(c)(2) of this chapter), or with respect to an increase in taxable gifts required under section 2701(d) and §25.2701-4 of this chapter, then the value of the gift will be the value as finally determined for gift tax purposes under chapter 12 of the Internal Revenue Code. This paragraph (b) does not apply to adjustments involving issues other than valuation. See §25.2504-1(d) of this chapter.

(c) *Finally determined.* For purposes of paragraph (a) of this section, the value of a gift is finally determined for gift tax purposes if—

(1) The value is shown on a gift tax return, or on a statement attached to the return, and the Internal Revenue Service does not contest the value before the time has expired under section 6501 within which gift taxes may be assessed;

(2) The value is specified by the Internal Revenue Service before the time has expired under section 6501 within which gift taxes may be assessed on the gift and such specified value is not timely contested by the taxpayer;

(3) The value is finally determined by a court of competent jurisdiction; or

(4) The value is determined pursuant to a settlement agreement entered into between the taxpayer and the Internal Revenue Service.

(d) *Definitions.* For purposes of paragraph (b) of this section, the value is finally determined by a court of competent jurisdiction when the court enters a final decision, judgment, decree or other order passing on the valuation that is not subject to appeal. See, for example, section 7481 regarding the finality of a decision by the U.S. Tax Court. Also, for purposes of paragraph (b) of this section, a settlement agreement means any agreement entered into by the Internal Revenue Service and the taxpayer that is binding on both. The term includes a closing agreement under section 7121, a compromise under section 7122, and an agreement entered into in settlement of litigation involving a valuation issue.

(e) *Expiration of period of assessment.* For purposes of determining if the time has expired within which a tax may be assessed under chapter 12 of the Internal Revenue Code, see §301.6501(c)-1(e) and (f) of this chapter.

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

Example 1. (i) *Facts.* A owns Blackacre and B, A's child, owns Whiteacre. In 1999, A and B exchange ownership of these properties. On A's federal gift tax return, Form 709, for the 1999 calendar year, the transfer of Blackacre to B is adequately disclosed under §301.6501(c)-1(f)(2) of this chapter. A reports the transfer as nontaxable, representing that the fair market values of Whiteacre and Blackacre, at the time of the transfer, were equal. A dies after the period of assessment for the transfer has expired.

(ii) *Application of the rule limiting adjustments to valuation issues.* The fair market values of Blackacre and Whiteacre at the time of the transfer are valuation issues. Because A filed the return adequately disclosing the transfer, the period of assessment with respect to A's transfer has expired, notwithstanding the fact that no gift tax return was required to be filed. Therefore, the Internal Revenue Service is precluded from revaluing Blackacre and Whiteacre in determining the amount of A's adjusted taxable gifts in computing A's estate tax liability.

Example 2. (i) *Facts.* In 1999, A transfers stock in a closely-held corporation to an irrevocable trust. Under the terms of the trust, the trustee has the discretion to accumulate trust net income or distribute it among A's children. At A's death, the trust is to terminate and the trust corpus is to be paid to A's surviving issue. On A's federal gift tax return, Form 709, filed for the 1999 calendar year, the transfer is adequately disclosed under §301.6501(c)-1(f)(2) of this chapter. A claims an annual exclusion under

section 2503(b) for the transfer. A dies after the period of assessment for the transfer has expired.

(ii) *Application of the rule limiting adjustments to valuation issues.* Because the period of assessment has closed on the transfer due to adequate disclosure, the Internal Revenue Service is precluded from revaluing the transferred stock for purposes of assessing gift tax. Therefore, the value of the transfer as reported on A's 1999 Federal gift tax return may not be redetermined for purposes of determining A's adjusted taxable gifts. However, the applicability of the annual exclusion to the transfer is a question of law and not of valuation. Accordingly, although the Internal Revenue Service may not assess or collect additional gift tax on the 1999 transfer (because the period of assessment has closed), the Internal Revenue Service is not precluded from challenging the annual exclusion claimed by A for purposes of determining A's adjusted taxable gifts in computing the estate tax liability.

(g) *Effective dates.* Paragraph (a) of this section applies to transfers of property by gift made prior to August 6, 1997, if the estate tax return for the donor/decedent's estate is filed after this document is published as a final regulation in the **Federal Register**. Paragraphs (b) through (f) of this section apply to transfers of property by gift made after August 5, 1997, if the gift tax return for the calendar period in which the gift is made is filed after this document is published as a final regulation in the **Federal Register**.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 3. The authority citation for part 25 continues to read in part as follows:

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

Par. 4. Section 25.2504-2 is revised to read as follows:

§25.2504-2 Valuation of certain gifts for preceding calendar periods.

(a) *Gifts made before August 6, 1997.* If the time has expired within which a tax may be assessed under chapter 12 of the Internal Revenue Code (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period, as defined in §25.2502-1(c)(2), the gift was made prior to August 6, 1997, and a tax has been assessed or paid for such prior calendar period, the value of the gift, for purposes of arriving at the correct amount of the taxable gifts for the preceding calendar periods (as defined under §25.2504-1(a)), is the value used in computing the tax for the last preceding calendar period for

which a tax was assessed or paid under chapter 12 of the Internal Revenue Code or the corresponding provisions of prior laws. However, this rule does not apply where no tax was paid or assessed for the prior calendar period. Furthermore, this rule does not apply to adjustments involving issues other than valuation. See §25.2504-(d).

(b) *Gifts made or section 2701(d) taxable events occurring after August 5, 1997.* If the time has expired under section 6501 within which a gift tax may be assessed under chapter 12 of the Internal Revenue Code (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period, as defined in §25.2502-1(c)(2), or with respect to an increase in taxable gifts required under section 2701(d) and §25.2701-4, and the gift was made, or the section 2701(d) taxable event occurred, after August 5, 1997, the value of the gift or the amount of the increase in taxable gifts, for purposes of determining the correct amount of taxable gifts for the preceding calendar periods (as defined in §25.2504-1(a)), is the value that is finally determined for gift tax purposes (within the meaning of §20.2001-1(c) of this chapter). This rule does not apply to adjustments involving issues other than valuation. See §25.2504-1(d). For an illustration of this rule, see the examples under §20.2001-1(f) of this chapter. For purposes of determining if the time has expired within which a gift tax may be assessed, see §301.6501(c)-1(e) and (f) of this chapter.

(c) *Example.* The following example illustrates the rules of paragraphs (a) and (b) of this section:

Example. (i) *Facts.* In 1996, A transfers closely-held stock to B, A's child. A timely filed a federal gift tax return reporting the 1996 transfer to B. No gift tax was assessed or paid as a result of application of A's available unified credit. In 1999, A transfers additional closely-held stock to B. A's federal gift tax return reporting the 1999 transfer is timely filed and the transfer is adequately disclosed under §301.6501(c)-1(f)(2) of this chapter. In 2003, A transfers additional property to B and timely files a federal gift tax return reporting the gift.

(ii) *Application of the rule limiting adjustments to valuation of prior gifts.* Under section 2504(c), in determining A's 2003 gift tax liability, the value of A's 1996 gift can be adjusted for purposes of computing the value of prior taxable gifts, since that gift was made prior to August 6, 1997, and therefore, the provisions of paragraph (a) of this section apply.

However, A's 1999 transfer was adequately disclosed on a timely filed gift tax return and, thus, under §25.2504-1(b), the value of the 1999 gift by A may not be adjusted for purposes of computing the value of prior taxable gifts in determining A's 2003 gift tax liability.

(d) *Effective dates.* Paragraph (a) of this section applies to transfers of property by gift made prior to August 6, 1997. Paragraphs (b) and (c) of this section apply to transfers of property by gift made after August 5, 1997, if the gift tax return for the calendar period in which the transfer is reported is filed after this document is published as a final regulation in the Federal Register.

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 301.6501(c)-1 is amended by:

1. Revising the heading to paragraph (e).

2. Adding paragraph (f).

The revision and addition reads as follows:

§301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(e) *Gifts subject to chapter 14 of the Internal Revenue Code not adequately disclosed on the return—*

* * * * *

(f) *Gifts made after August 5, 1997, not adequately disclosed on the return—(1) In general.* If a transfer of property, other than a transfer described in paragraph (e) of this section, is not adequately disclosed on a gift tax return (Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return) filed for the calendar period in which the transfer occurs, then any gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2) *Adequate disclosure of transfers of property reported as gifts.* A transfer will be adequately disclosed on the return only

if it is reported in a manner adequate to apprise the Internal Revenue Service of the nature of the gift and the basis for the value so reported. Transfers reported on the gift tax return as transfers of property by gift will be considered adequately disclosed under this paragraph (f) only if the return provides a complete and accurate description of the transaction including—

(i) A description of the transferred property and any consideration received by the transferor;

(ii) The identity of, and relationship between, the transferor and the transferee;

(iii) A detailed description of the method used to determine the fair market value of property transferred, including any relevant financial data and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property. In the case of the transfer of an interest in an entity (e.g., a corporation or partnership) that is not actively traded, a description of any discount claimed in valuing the entity or any assets owned by such entity, including a statement regarding the fair market value of 100 percent of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the pro rata portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the return. If the entity that is the subject of the transfer owns an interest in another non-actively traded entity (either directly or through ownership of an entity), the information required in this paragraph (f)(2)(iii) must be provided for each entity and the assets owned by each entity;

(iv) If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust;

(v) Any restrictions on the transferred property that were considered in determining the fair market value of the property; and

(vi) A statement of the relevant facts affecting the gift tax treatment of the transfer that reasonably may be expected to apprise the Internal Revenue Service of the nature of any potential controversy concerning the gift tax treatment of the transfer, or in lieu of this statement, a concise description of the legal issue pre-

sented by the facts. In addition, a statement describing any position taken that is contrary to any temporary or final Treasury regulations or revenue rulings.

(3) *Adequate disclosure of non-gift completed transfers or transactions.* Completed transfers, all or a portion of which are reported as not constituting a transfer by gift (for example, a transaction in the ordinary course of business), will be considered adequately disclosed under this paragraph (f) only if the following information is provided on or attached to the return—

(i) The information required for adequate disclosure under paragraph (f)(2) of this section; and

(ii) An explanation as to why the transfer is not a transfer by gift under chapter 12 of the Internal Revenue Code.

(4) *Adequate disclosure of incomplete transfers.* Adequate disclosure of a transfer that is reported as a completed gift on the gift tax return will commence the running of the statute of limitations for assessment of gift tax on the transfer, even if the transfer is ultimately determined to be an incomplete gift for purposes of §25.2511-2 of this chapter. For example, if an incomplete gift is reported as a completed gift on the gift tax return and is adequately disclosed, the period for assessment of the gift tax will begin running when the return is filed, as determined under section 6501(b). On the other hand, if the transfer is reported as an incomplete gift and adequately disclosed, the period for assessing a gift tax with respect to the transfer will not commence to run even if the transfer is ultimately determined to be a completed gift. In that situation, the gift tax with respect to the transfer may be assessed at any time, up until three years after the donor files a return reporting the transfer as a completed gift.

(5) *Examples.* The following examples illustrate the rules of this paragraph (f):

Example 1. (i) *Facts.* In 1999, A transfers 100 shares of common stock of XYZ Corporation to A's child. The common stock of XYZ Corporation is actively traded on a major stock exchange. For gift tax purposes, the fair market value of one share of XYZ common stock on the date of the transfer, determined in accordance with §25.2512-2(b) of this chapter (based on the mean between the highest and lowest quoted selling prices), is \$150.00. On A's federal gift tax return, Form 709, for the 1999 calendar year, A reports the gift as 100 shares of common stock of XYZ Corporation with a value for gift tax

purposes of \$15,000. A specifies the date of the transfer, recites that the stock is publicly traded, and identifies the stock exchange on which the stock is traded.

(ii) *Application of the adequate disclosure standard.* A has adequately disclosed the transfer. Therefore, the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example 2. (i) *Facts.* On December 30, 1999, A transferred closely-held stock to B, A's child. A determined that the value of the transferred stock, on December 30, 1999, was \$9,000. A made no other transfers to B, or any other donee, during 1999. On A's federal gift tax return, Form 709, filed for the 1999 calendar year, A provides the information required under paragraph (f)(2) of this section (including the method used to determine the fair market value of the stock and a description of discounts claimed) such that the transfer is adequately disclosed. A claims an annual exclusion under section 2503(b) for the transfer.

(ii) *Application of the adequate disclosure standard.* Because the transfer was adequately disclosed under paragraph (f)(2) of this section, the period of assessment for the transfer will expire as prescribed by section 6501(b), notwithstanding that if A's valuation of the closely-held stock was correct, A was not required to file a gift tax return reporting the transfer under section 6019. After the period of assessment has expired on the transfer, the Internal Revenue Service is precluded from revaluing the transferred stock for purposes of assessing gift tax or for purposes of determining the estate tax liability. Therefore, the value of the transfer as reported on A's 1999 federal gift tax return may not be redetermined for purposes of determining A's prior taxable gifts (for gift tax purposes) or A's adjusted taxable gifts (for estate tax purposes).

Example 3. (i) *Facts.* A owns 100 percent of the common stock of X, a closely-held corporation. X does not hold an interest in any other entity that is not actively traded. In 1999, A transfers 20 percent of the X stock to B and C, A's children, in a transfer that is not subject to the special valuation rules of section 2701. The transfer is made outright with no restrictions on ownership rights, including voting rights and the right to transfer the stock. The reported value of the transferred stock incorporates the use of minority discounts and lack of marketability discounts. No other discounts were used in arriving at the fair market value of the transferred stock or any assets owned by X. A reports the transfer on a federal gift tax return, Form 709, for the 1999 calendar year. On the return, A provides a statement reporting the fair market value of 100 percent of X (before taking into account any discounts), the pro rata portion of X subject to the transfer, and the reported value of the transfer. A also attaches a statement regarding the determination of value that includes a discussion of the discounts claimed and how the discounts were determined.

(ii) *Application of the adequate disclosure standard.* A has provided sufficient information such that the transfer will be considered adequately disclosed and the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example 4. (i) *Facts.* A owns a 70 percent limited partnership interest in PS. PS owns 40 percent

of the stock in X, a closely-held corporation. The assets of X include a 50 percent general partnership interest in PB. PB owns an interest in commercial real property. None of the entities (PS, X, or PB) is actively traded. In 1999, A transfers a 25 percent limited partnership interest in PS to B, A's child. On the federal gift tax return, Form 709, filed for the 1999 calendar year, A reports the transfer of the 25 percent limited partnership interest in PS and that the fair market value of 100 percent of PS is \$y and that the value of 25 percent of PS is \$z, reflecting marketability and minority discounts with respect to the 25 percent interest. However, A does not disclose that PS owns 40 percent of X, and that X owns 50 percent of PB and that, in arriving at the \$y fair market value of 100 percent of PS, discounts were claimed in valuing PS's interest in X, X's interest in PB, and PB's interest in the commercial real property.

(ii) *Application of the adequate disclosure standard.* Because A has failed to comply with requirements of paragraph (f)(2) of this section regarding PS's interest in X, X's interest in PB, and PB's interest in the commercial real property, the transfer will not be considered adequately disclosed and the period of assessment for the transfer under section 6501 will remain open indefinitely.

(6) *Effective date.* This paragraph (f) is applicable to gifts made in calendar years ending after August 5, 1997, if the gift tax return for such calendar year is filed after this document is published as a final regulation in the Federal Register.

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 21, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 22, 1998, 63 F.R. 70701)

Notice of Proposed Rulemaking

Retention of Income Tax Return Preparers' Signatures

REG-106386-98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8803, page 15, the IRS is issuing temporary regulations relating to the retention of income tax return preparers' signatures. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 31, 1999. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-106386-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-106386-98), 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_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Marc C. Porter, (202) 622-4940; concerning submissions, LaNita Van Dyke, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8803 amend Income Tax Regulations (26 CFR part 1) under section 6695(b) of the Internal Revenue Code. These regulations require an income tax return preparer to keep a manually signed (by the preparer) copy of a return or claim for refund if the preparer presented to the taxpayer for signature a return or claim with a copy of the preparer's manual signature.

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

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Ad-

ministrative 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.

Proposed Effective Date

The proposed regulations are proposed to be effective for returns or claims for refund presented to a taxpayer for signature after December 31, 1998 and for returns or claims retained on or before that date.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Marc C. Porter, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in its 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 1.6695-1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).

The revision and addition read as follows:

§1.6695-1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * *

(4)(i) [The text of proposed paragraph (b)(4)(i) is the same as the text of §1.6695-1T(b)(4)(i) published in T.D. 8803.]

* * * * *

(g) [The text proposed paragraph (g) is the same as the text of §1.6695-1T(g) published in T.D. 8803.]

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 30, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1998, 63 F.R. 72218)

Foundations Status of Certain Organizations

Announcement 99-22

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:

LI Science and Engineering fair Inc.,
East Setauket, NY
La Alma Lincoln Park Neighborhood
Organization Inc., Denver, CO

La Charitable Organization Alliance Inc.,
Metairie, LA
Lanier Retirement Community, Inc.,
Gainesville, GA
Lansing Neighborhood Housing
Corporation, Lansing, MI
La Porte County Juvenile Service Center
Task Force Inc., LaPorte, IN
La Raza Lawyers Institute, Sacramento,
CA
The Last Harvest Inc., Irvine, CA
La Vida-2 Inc., Rochester, NY
La Vivienda Housing Development
Corporation, Chicago, IL
Labor-Environmental Solidarity
Network, Portland, OR
Lackawanna County Medical Society
Health Care Fund, Scranton, PA
Lady Boston Inc., Charlestown, MA
Lahoma Community Park Association,
Lahoma, OK
Lake Cinderella Improvement
Committee, Spring, TX
Lake County Minority Healty Coalition
Inc., East Chicago, IN
Lake Erie Native American Council Inc.,
Cleveland, OH
Lake Neatahwanta Reclamation
Committee Inc., Fulton, NY
Lake Ontario Youth Athletic League Inc.,
Medina, NY
Lake St. Louis Golf Charities Inc., Lake
St. Louis, MO
Lake Toxaway Community Club, Lake
Toxaway, NC
Lakeland Rebounders Inc., Lakeland, FL
Lakewood Works for Disabled Too,
Lakewood, OH
Laotian American Organized Support,
Fountain Valley, CA
Larimer Land Trust, Loveland, CO
Larose Institution for Development,
Kalamazoo, MI
Las Vegas Valley Fire Fighters
Association, Las Vegas, NV
Lathika International Film &
Entertainment Inc., Virginia Beach, VA
Latin American Mission Programs &
Publishing, National City, CA
Latin World Ministries Inc., Austin, TX
Latino Empowerment Association of
Delmarva – Lead, Dover, DE
Laura Lagrotteria Jill Sawyer Christy
Stevens Michael Gallo, Niantic, CT
Lauravetlan Foundation Inc., New York,
NY
Laurinburg Community Economic Action
Program Inc., Lauringburg, NC

Lawrence Bud Kern Trust Fund Inc.,
Somers Point, NJ
Lawyers for Affordable Housing Inc.,
Dallas, TX
Lay Ministry to Missions Inc., Arlington,
TX
Lay Missionaries of the Blessed
Sacrament, Dayton, OH
LDS International Student Exchange,
Weatherford, TX
Le Bayou Legendaire Company, Lake
Charles, LA
Lead or Leave Education Fund,
Washington, DC
Leadership Lindsay, Lindsay, CA
League of Benefactors for Childrens
Activities Inc., Guthrie, OK
League of Volunteers Association,
Fairfax, VA
Learning Lab Inc., Okemah, OK
Learning Parent Inc., Houston, TX
Learning S Way, Manchester, NH
Lee Guardianship Services Inc., Fort
Myers, FL
Leon-Wakulla County Community
Housing & Development Agency Inc.,
Tallahassee, FL
Leonard Music Institute of Texas Inc.,
Fort Worth, TX
Leroy Christian Youth Centre Inc., Leroy,
KS
Let Live Inc., Baltimore, MD
Life Inc., Lafayette, LA
Leva Tatidar Samaj Inc. USA, Waltham,
MA
Lewisburg Area Community Center Inc.,
Lewisburg, PA
Liberty Glass Company Foundation Inc.,
Sapulpa, OK
Liberty Park USA Foundation, Colorado
Springs, CO
Libraries Worl-Wide Inc., Weston, MO
Life Center Foundation Inc., Key West,
FL
Life-Flite Corporation, Miami, FL
Life From Life Mid-Iowa Transplant
Support Group, Des Moines, IA
Life Harvest, Hersey, MI
Life Involves New Connections Inc.,
Rockville, Centre, NY
Life Long Learning Center Inc.,
Southampton, PA
Life Out Reach Development Center,
Oregonia, OH
Lifechange Ministries Inc., Fort Mill, SC
Lifeline a Mental Retardation
Partnership, Washington, DC
Lifeline Institute Inc., Dale city, VA

Lifestream Ministries Inc., Brentwood, TN
 Lifta Society, Dallas, TX
 Lighthouse Maternity Services, Oxford, OH
 Lighthouse Restoration Center, Castle Hayne, NC
 Lighthouse of the Virginian Sea, Louisa, VA
 Lincoln Avenue Community Development Corporation Inc., Evansville, IN
 Lindale Historical Society, Tyler, TX
 Linden Ladies Auxiliary Inc., Linden, NC
 Linesville Community Public Library Inc., Linesville, PA
 Link Community Inc., Philadelphia, PA
 Link to Life Network Inc., New York, NY
 Linton Teen Center Inc., Linton, IN
 Lionel Washingtons River Parishes Pro Football Camp, Lutcher, LA
 Listen to Me Inc., Baltimore, MD
 Literacy Council of Colorado County Inc., Columbus, TX
 Lithuanian-American Historical Aviation Society, Grand Rapids, MI
 Little Frontier Inc., E Amherst, NY
 Little Hand Charities Inc., New Port Richey, FL
 Little River Community Complex Inc., Durham, NC
 Live Eyes Theatre Company Inc., New York, NY
 Live Foundation Inc., New Orleans, LA
 Livermore Fire Department Inc., Livermore, CO
 Livernois-Seven Mile Non-Profit Housing Corporation, Detroit, MI
 Living Climb Organization Inc., New York, NY
 Living Stones Fellowship Inc., Hixson, TN
 Living Tradition, Garden Grove, CA
 Living Well Foundation, Dallas, TX
 Living Word Explorations, Arriba, CO
 Lo Society Branch of Wisconsin Inc., Oshkosh, WI
 Lodgistics Interim Homes for Homeless Veterans, Corpus Christi, TX
 Lombard Orioles Baseball Club, Lombard, IL
 Long Island for Education Center Inc., Farmingdale, NY
 Long Island Maritime Heritage Society Inc., Riverhead, NY
 Lou Brock Scholarship Foundation Inc., St. Louis, MO
 Loudoun Families for Children, Leesburg, VA
 Louisiana Air National Guard Community, New Orleans, LA
 Louisiana for Low-Income Housing Today Incorporated, New Orleans, LA
 Louisiana League of Anglers, Marrero, LA
 Louisiana Mico Enterprise Development Corporation, Monroe, LA
 Louisianas Absolute Pitch Inc., Baton Rouge, LA
 Love & Action Midwest Inc., Mt. Prospect, IL
 Love All Tennis Patrons Incorporated Not for Profit, East Chicago, IN
 Love and Hope Inc., Lynwood, CA
 Love in Christ Foundation Incorporated, Grand Prairie, TX
 Love Inc. Anchorage, Anchorage, AK
 Love Nutrition Program, Houston, TX
 Love Our Kids Inc., Houston, TX
 Love Santa Inc., Woodburn, OR
 Loving Arms, Memphis, TN
 Loving Hands Adult Day Program, Bellefontaine, OH
 Loving Hands Ministries Inc., Birmingham, AL
 Loving Options, San Bernardino, CA
 Lower Richland Community Care Center Inc., Columbia, SC
 LPS Ministry Inc., Folly Beach, SC
 Lt. Eddie Kitchen Jr Foundation, Natchez, MS
 Lulac National Civil Rights Commission Inc., Lubbock, TX
 Luso American Social and Cultural Center Inc., Providence, RI
 Luther Village of Tampa Bay Inc., Tampa, FL
 Lyme Disease Coalition of Minnesota, Roseville, MN
 Lyon County Girls Club Incorporated, Kuttawa, KY
 Lyons Community Association, Stilwell, OK
 Lyons Parent-Teacher Organization Inc., Randolph, MA
 Lyric Opera of Erie Inc., Erie, PA
 Lytal Aquatic Foundation Inc., Palm Beach, FL
 Maasai Nation, Inc., Atlanta, GA
 Maine Immigration Advocacy Project, Portland, ME
 Merchants Foundation, Inc., Homestead, PA
 Midwest Childrens Theatre, Inc., Kenosha, WI
 Mon County Housing Development Corporation, Morgantown, WV
 The Moreno Valley Arts Association, Moreno Valley, CA
 National Aquatic Foundation, Naperville, IL
 The National Jazz Hall of Fame and Museum, Inc., Pittsburgh, PA
 New Directions Community Improvement Corp., Ravenna, OH
 Northwest Florida Spinal Cord Injury Council, Inc., Pensacola, FL
 North Iowa Alliance for the Mentally Ill, Mason City, IA
 Ohio Jujitsu, Stow, OH
 Operation Unity, Los Angeles, CA
 Orange County Cocaine Anonymous, Costa Mesa, CA
 Outreach Ministries of the Greater New Zion Missionary Baptist Church, Los Angeles, CA
 Oregon Horse Rescue, Eugene, OR
 Pandora Playground, Inc., Pandora, OH
 Paul Emerick Vocational Education Foundation, Wilsonville, OR
 Personal Physician Cave of Ohio, Inc., Cleveland, OH
 Petersburg-Newburg Improvement Association, Inc., Louisville, KY
 PHS Community Development Corporation, Detroit, MI
 Pineland Early Learning Center, Inc., Pineland, TX
 Pinnah Eben Ministries, Lawrenceville, GA
 Portland Metro Mens Council, Portland, OR
 Project Youth Life Skills Center, Las Vegas, NV
 Puritan Community Outreach, Baton Rouge, LA
 Puyallup Schools Foundation, Puyallup, WA
 Rivercrest Community Church Inc., Crescent Springs, KY
 San Antonio Leadership Foundation, San Antonio, TX
 San Antonio Retired Educators Foundation Inc., San Antonio, TX
 San Joaquin County Bar Foundation, Stockton, CA
 San Quentin Productions, San Rafael, CA
 Scuppernong Vision & Action, Creswell, NC
 Sea Ministries Charit Tr, Minonk, IL
 Seenet, Charlottesville, VA
 Shelter From Darkness Ministries, Oroville, WA

Shepherds Field, Mobile, AL
 The Shiloh Community Services
 Foundation, Sacramento, CA
 Shriners Hospital for Crippled Children
 Tr 2225, Boston, MA
 Silver Lake Community Development
 Corporation, Silver Lake, OR
 The Simeon Institute, Claremont, CA
 Smiles Learning Center, Inc., Starkville,
 MS
 Sonshine Sanctuary, Bellingham, WA
 South Florida Aerospace Scholarship
 Corporation, Miami, FL
 Southern Housing Restoration &
 Development, Inc., Atlanta, GA
 Special Games for Special People, Inc.,
 Milford, CT
 St. Edmunds Community Service
 Council, Inc., Chicago, IL
 Steven Langs Aging & Disability
 Services, Chicago, IL
 St. Gregory's Retreat Center, Inc.,
 Mexico, NY
 Sthle Wildlife Fdn., Brewer, ME
 St. Louis Lesbian and Gay Community
 Center, Inc., St. Louis, MO
 Strive Inc., Hilton Head Is., SC
 Symbiosis Foundation, Inc., Miami, FL
 Targeted Research Foundation Inc.,
 Irvine, CA
 Together Grandview A Community Task
 Force on Alcohol & Drug Abuse,
 Grandview, MO
 The Total Care Living Center
 Incorporated, Baltimore, MD
 Tri-Community Youthcare Center Inc.,
 Angie, LA
 Trinity Educational Foundation Inc.,
 Las Vegas, NV
 Triple S Rescue Mission, Chadron, NE
 Under His Wings Ministries, Freeport, IL
 United Black Fund of Tennessee,
 Nashville, TN
 United States School of Hammer
 Throwing, Eugene, OR
 Universal Network Intrust for Youth,
 Inc., Highland park, NJ
 Values, Inc., Birmingham, AL

Vermilion Education Foundation,
 Vermilion, OH
 Vincents Foundation Inc., Aulander, NC
 Virtual Worlds Society, Seattle, WA
 Vox Populi Inc., Bala Cynwyd, PA
 Washington State Tissue Services,
 Seattle, WA
 Watershed Defense Fund, Bellingham,
 WA
 West Florida Child Development Center,
 Inc., New Port Richey, FL
 The West Tennessee Annual Conference
 of the AME Church Inc., Memphis, TN
 Whitfield Manor Inc., Anaheim, CA
 World Entertainers Hall of Fame Inc.,
 Reno, NV
 Youth for a Change, Inc., Stone
 Mountain, GA
 Youth on a Mission of New York, Inc.,
 North Babylon, NY

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.

Notice of Proposed Rulemaking Withdrawal of Proposed Regulations

REG-116099-98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of proposed regulations.

SUMMARY: This document withdraws proposed regulations amending the in-

come tax regulations. This action is taken to remove from the IRS' inventory of regulations projects those proposed regulations that are in an inactive status and would remain in an inactive status for the foreseeable future.

DATES: These proposed regulations are withdrawn December 22, 1998.

FOR FURTHER INFORMATION CONTACT: George Bradley of the Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. Telephone (202) 622-4920, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws certain proposed regulations previously published in the **Federal Register** by the IRS. These proposed regulations are being withdrawn because they are part of regulations projects that will not be pursued in the foreseeable future, and there are no current plans to adopt the proposed regulations as final regulations.

Drafting Information

The principal author of this withdrawal notice is George H. Bradley, Office of the Assistant Chief Counsel (Income Tax & Accounting) within the Office of the Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury Department participated in developing the withdrawal notice.

* * * * *

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the following proposed amendments to 26 CFR part 1 are withdrawn:

Amendments Relating to Proposed Regulations Section:	FR Citation and Project Number	Subject
1.162, 1.162-16, 1.461-1(a)(3)(iii), 1.1016, 1.1253, 1.1253-1, 1.1253-2, 1.1253-3	FR Doc. 71-9954 Published 7/15/71 36 FR 13148	Transfer of Franchises, Trademarks, and Trade Names
1.381(c)(4)-1(c)(1), 1.381(c)(4)-1(c)(3) Example (5), 1.381(c)(4)-1(d)(1)(iii), 1.381(c)(5), 1.381(c)(5)-1	FR Doc. 72-14187 Published 8/23/72 37 FR 16947	Carryover of Inventories and Accounting Methods in Certain Corporate Acquisitions
1.351-1(c)(1)(ii), 1.351-1(c)(4), 1.351-1(c)(5)(i), 1.351-1(c)(5)(ii), 1.351-1(c)(6) Examples (3) & (4), 1.368-4	FR Doc. 80-40833 Published 1/7/81 46 FR 1744 (LR-135-76)	Limitations on Reorganization Treatment for Investment Companies
1.278-2, 1.464-1, 1.464-2	FR Doc. 83-30789 Published 11/15/83 48 FR 51936 (LR-144-76)	Farming Syndicate Expenditures
1.453-2	FR Doc. 84-891 Published 1/13/84 49 FR 1742 (LR-184-80)	Installment Obligations Received From Liquidating Corporations
1.6050J-2	FR Doc. 84-23131 Published 8/31/84 49 FR 34518 (LR-182-84)	Returns Relating to Transfers of Security to Persons Other Than the Lender
1.131-1	FR Doc. 85-2718 Published 2/1/85 50 FR 4702 (LR-83-83)	Exclusion From Gross Income for Certain Foster Care Payments

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 22, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 23, 1998, 63 FR 71047)

Joint Board for the Enrollment of Actuaries

Announcement 99-25

Examinations

The Joint Board for the Enrollment of Actuaries has under consideration the restructuring of the examinations it offers under 20 CFR 901.13(d)(1). The need for

restructuring is based on the expansion of the body of law affecting the private pension system and the corresponding increase in the complexity of the work for which enrolled actuaries are responsible. The syllabus of the current law examination, one of two examinations an individual must pass in order to meet the knowledge requirement for enrollment, does not provide sufficient opportunity to test a candidate's knowledge of the relevant pension law. In addition, the pension mathematics segment of the basic actuarial examination does not cover sufficient material to test a candidate's ability to apply sound actuarial techniques to the increasingly complex regulatory environment in which defined benefit pension plans operate.

As a result of discussions held at a public meeting on June 30, 1998, and in other public forums, the Joint Board and the examination co-sponsors, the Society of Actuaries and the American Society of Pension Actuaries, propose to restructure the examination program.

The major topics for the restructured basic actuarial examination would be (1) compound interest, and (2) life contingencies. These topics are now covered in the first segment of the basic actuarial examination (EA-1A). The restructured examination covering these topics would be 2½ hours long, the same length as the current EA-1A examination.

The restructured pension law examination would be offered in two segments. The first would cover basic pension math-

ematics, including the law and regulations that relate to funding qualified defined benefit pension plans that are neither overfunded nor seriously underfunded. The second segment would cover the remaining relevant law and regulations. This would include treatment of overfunded plans, deficit reduction contributions, qualification standards, etc. A minimum standard of competence would be established for each segment. Each segment of the restructured pension law examination would be 4 hours long.

It is the Joint Board's intention to offer each examination once a year. The basic actuarial examination and the second segment of the pension law examination would be offered in the spring. The first segment of the pension law examination would be offered in the fall. It is anticipated that the restructured program will take effect in the spring of 2001 when the basic actuarial examination and the second segment of the pension law examination will be offered.

Appropriate transition credits would be accorded to persons who have successfully completed portions of the enrollment examination before 2001. The Joint Board is considering the following system of transition credits:

(1) A person who has successfully completed the first segment of the current basic actuarial examination before 2001 will receive credit for the restructured basic actuarial examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes *both* segments of the restructured pension law examination.

(2) A person who has successfully completed *both* segments of the current basic actuarial examination before 2001 will receive credit for the restructured basic actuarial examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes *both* segments of the restructured pension law examination.

(3) A person who has successfully completed the first segment of the current basic actuarial examination *and* the current pension law examination before 2001 will receive credit for the restructured basic actuarial examination *and* for the second segment of the restructured

pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the first segment of the restructured pension law examination.

(4) A person who has successfully completed the second segment of the current basic actuarial examination *and* the current pension law examination before 2001 will receive credit for both segments of the restructured pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination.

(5) A person who has successfully completed the current pension law examination before 2001 will receive credit for the second segment of the restructured pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination *and* the first segment of the restructured pension law examination.

(6) A person who does not meet the requirements of one of the preceding five paragraphs before 2001 will receive no credit for any examinations passed under the current examination program and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination *and both* segments of the restructured pension law examination.

Enrollment

The regulations of the Joint Board for the Enrollment of Actuaries define the period during which Enrolled Actuaries must fulfill their Continuing Professional Education (CPE) requirements to be eligible for renewal of enrollment. Those regulations also define the period during which the enrollment of an Enrolled Actuary is valid and the date by which Enrolled Actuaries must file their application for renewal of enrollment for that application to be timely filed.

The current enrollment cycle, the period in which CPE requirements for the upcoming cycle are fulfilled ran from January 1, 1996 through December 31, 1998.

The current enrollment cycle technically started (with the use of the new pre-fix) on April 1, 1996 and will end on March 31, 1999.

Applications for renewal of enrollment should have been filed by March 1st.

The Board has noted that there is a wide spread impression that credits necessary to meet the CPE requirements for re-enrollment that were not earned by December 31, 1998 could be earned in January and/or February 1999. This is contrary to the regulations. However, the Board recognizes that, in the past, certain circumstances called for relaxation of the rules and that what has happened in the past might have been taken as a precedent.

As result, the Board will not deny re-enrollment to those actuaries solely because they fulfilled their CPE requirements in part with credits obtained in January and/or February 1999. However, the Board will require that Enrolled Actuaries who have availed themselves of this relief should, in a signed letter to the Board, disclose the number of hours of credit thus obtained and how they were obtained (e.g. identify the course taken, when and where the course was taken, etc.). Those credits earned in 1999 will not count towards meeting the requirements for the next enrollment cycle.

Such administrative relief will not be available at the end of the current re-enrollment cycle (April 1, 1999 through March 31, 2002) for credits earned in January and/or February 2002, nor will it be available in subsequent re-enrollment cycles. Enrolled Actuaries who are unable to complete their CPE requirements by the end of the last full year of the cycle will be expected to provide the Board's Executive Director with an explanation of the facts and circumstances which made it impossible for them to meet the requirements in a timely fashion.

Four-Digit Enrollment Number

This notice provides enrolled actuaries and other interested parties with a reminder of the Joint Board's position, which was adopted some years ago, on a matter where some confusion has arisen in the past. The confusion arises regarding the prefix to the four-digit enrollment

number an enrolled actuary should use when signing a schedule B after December 31, 1998, but before the earlier of (1) receipt of official notice of reenrollment, and (2) April 1, 1999.

Accordingly, enrolled actuaries are advised that:

1. An enrolled actuary is not permitted to use the (in this case 99-) prefix until such time as he/she has been

officially notified in writing by the Joint Board of his/her entitlement to do so. See the Instructions for Schedule B.

2. An enrolled actuary who has not yet received official notification from the Joint Board should use the 96-prefix if he/she signs a Schedule B in the first three months of 1999. The IRS Service Center will not re-

ject the 96-prefix for a signature date during this three month period. The 96-prefix will be rejected for a Schedule B where the signature date is April 1, 1999 or later.

Paulette Tino, Chairperson,
*Joint Board for the
Enrollment of Actuaries.*

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

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

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

vice matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any enrolled agent who has resigned from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify former enrolled agents who have resigned from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of former enrolled agents who

have resigned from such practice, and date of resignation. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each enrolled agent, who has resigned, and will be consolidated and published in the Cumulative Bulletin.

The following individual has offered his resignation as an enrolled agent:

Name	Address	Date of Resignation
Ellis, Ronald C.	Billings, MT	October 6, 1998

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

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

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are

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

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

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

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

Name	Address	Designation	Date of Suspension
Pierce, Steven J.	Aventura, FL	Attorney	Indefinite from October 15, 1998
Baker, Charles C.	Monteagle, TN	Attorney	Indefinite from October 15, 1998
Kantor, Stanley L.	New York, NY	Attorney	Indefinite from October 15, 1998
Wagner, Richard E.	Spencerport, NY	Enrolled Agent	Indefinite from October 15, 1998
Tuohey, Seamus	Montclair, NJ	Attorney	Indefinite from October 15, 1998
Burke, Beau E.	Santa Rosa, CA	CPA	Indefinite from October 15, 1998
Marn, Eric Y.	Honolulu, HI	Attorney	Indefinite from October 15, 1998
Todd, Kenneth	Tulsa, OK	Attorney	Indefinite from November 4, 1998

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

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

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

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

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

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

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

Name	Address	Designation	Effective Date
Shaw-Boatner, Deborah	Austin, TX	CPA	September 24, 1998
Hannum, David	Philadelphia, PA	Enrolled Agent	September 30, 1998
Miller, Theodore	Neshaminy Valley, PA	CPA	February 27, 1999

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

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

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

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

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

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

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

Name	Address	Designation	Date of Suspension
Cohn, Irving	Baltimore, MD	Attorney	September 4, 1998 to September 3, 2000
Hwang, Catherine T.	Livingston, NJ	CPA	October 1, 1998 to September 30, 1999
Bratek, Ronald	N. Brunswick, NJ	CPA	October 5, 1998 to July 4, 2000
Walker, Frank O.	Bay City, TX	CPA	October 5, 1998 to April 4, 2001
Ng, Peter J.	Monticello, NY	Attorney	October 5, 1998 to May 4, 2002
Sopkovich, Carol	Girard, OH	Attorney	October 5, 1998 to October 4, 2001
Kappler, John E.	Evansville, IN	CPA	October 8, 1998 to October 7, 1999
Sarcia, Jerry J.	Libertyville, IL	CPA	October 30, 1998 to August 29, 2002
Spey, Gregory E.	Youngstown, OH	CPA	November 1, 1998 to April 30, 2001
Jacobson, Kenneth	Jacksonville, FL	CPA	November 9, 1998 to November 8, 2000
Lopshire, Larry	Whiteland, IN	CPA	December 2, 1998 to December 1, 1999
Lederer, Christine L.	Somers, CT	Attorney	December 7, 1998 to December 6, 2001
Kieffer, Richard D.	Olney, IL	CPA	December 15, 1998 to December 14, 1999
Cleaver Jr., Thomas E.	Severna Park, MD	Enrolled Agent	December 23, 1998 to June 22, 2002
Trent, Douglas I.	Allen, TX	CPA	January 1, 1999 to December 31, 1999
Winters, John E.	Bayonne, NJ	CPA	January 1, 1999 to September 30, 1999
Todd Jr., Emory S.	Chester Springs	CPA	January 15, 1999 to July 14, 1999
Hawkins, William M.	Indianapolis, IN	Attorney	February 1, 1999 to January 31, 2002
Gimbal, Peter	Union City, NJ	CPA	April 1, 1999 to September 30, 2000
Ryan, Thomas J.	Danbury, CT	Attorney	May 1, 1999 to October 30, 2000

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 1999-1 through 1999-11

Announcements:

99-1, 1999-2 I.R.B. 41
99-2, 1999-2 I.R.B. 44
99-3, 1999-3 I.R.B. 15
99-4, 1999-3 I.R.B. 15
99-5, 1999-3 I.R.B. 16
99-6, 1999-4 I.R.B. 24
99-7, 1999-2 I.R.B. 45
99-8, 1999-4 I.R.B. 24
99-9, 1999-4 I.R.B. 24
99-10, 1999-5 I.R.B. 63
99-11, 1999-5 I.R.B. 64
99-12, 1999-5 I.R.B. 65
99-13, 1999-6 I.R.B. 18
99-14, 1999-7 I.R.B. 60
99-15, 1999-8 I.R.B. 78
99-16, 1999-8 I.R.B. 80
99-17, 1999-9 I.R.B. 59
99-19, 1999-10 I.R.B. 63
99-20, 1999-11 I.R.B. 53
99-21, 1999-11 I.R.B. 55

Notices:

99-1, 1999-2 I.R.B. 8
99-2, 1999-2 I.R.B. 8
99-3, 1999-2 I.R.B. 10
99-4, 1999-3 I.R.B. 9
99-5, 1999-3 I.R.B. 10
99-6, 1999-3 I.R.B. 12
99-7, 1999-4 I.R.B. 23
99-8, 1999-5 I.R.B. 26
99-9, 1999-4 I.R.B. 23
99-10, 1999-6 I.R.B. 14
99-11, 1999-8 I.R.B. 56
99-12, 1999-9 I.R.B. 44
99-13, 1999-10 I.R.B. 26
99-14, 1999-11 I.R.B. 7

Proposed Regulations:

REG-209103-89, 1999-11 I.R.B. 10
REG-209619-93, 1999-10 I.R.B. 28
REG-245562-96, 1999-9 I.R.B. 45
REG-246256-96, 1999-11 I.R.B. 12
REG-104072-97, 1999-11 I.R.B. 12
REG-114663-97, 1999-6 I.R.B. 15
REG-114664-97, 1999-11 I.R.B. 21
REG-116826-97, 1999-10 I.R.B. 40
REG-118620-97, 1999-9 I.R.B. 46
REG-121806-97, 1999-10 I.R.B. 46
REG-104924-98, 1999-10 I.R.B. 47
REG-106219-98, 1999-9 I.R.B. 51
REG-106388-98, 1999-11 I.R.B. 27
REG-106564-98, 1999-10 I.R.B. 53
REG-106902-98, 1999-8 I.R.B. 57
REG-106905-98, 1999-11 I.R.B. 39
REG-110524-98, 1999-10 I.R.B. 55
REG-111435-98, 1999-7 I.R.B. 55
REG-113694-98, 1999-7 I.R.B. 56
REG-111435-98, 1999-7 I.R.B. 55
REG-113744-98, 1999-10 I.R.B. 59
REG-114841-98, 1999-11 I.R.B. 41
REG-115433-98, 1999-9 I.R.B. 54
REG-116824-98, 1999-7 I.R.B. 57
REG-117620-98, 1999-7 I.R.B. 59
REG-119192-98, 1999-11 I.R.B. 45
REG-121865-98, 1999-8 I.R.B. 63

Revenue Procedures:

99-1, 1999-1 I.R.B. 6
99-2, 1999-1 I.R.B. 73
99-3, 1999-1 I.R.B. 103
99-4, 1999-1 I.R.B. 115
99-5, 1999-1 I.R.B. 158
99-6, 1999-1 I.R.B. 187
99-7, 1999-1 I.R.B. 226
99-8, 1999-1 I.R.B. 229
99-9, 1999-2 I.R.B. 17
99-10, 1999-2 I.R.B. 11
99-11, 1999-2 I.R.B. 14
99-12, 1999-3 I.R.B. 13
99-13, 1999-5 I.R.B. 52
99-14, 1999-5 I.R.B. 56
99-15, 1999-7 I.R.B. 42
99-16, 1999-7 I.R.B. 50
99-17, 1999-7 I.R.B. 52
99-18, 1999-11 I.R.B. 7

Revenue Rulings:

99-1, 1999-2 I.R.B. 4
99-2, 1999-2 I.R.B. 5
99-3, 1999-3 I.R.B. 4
99-4, 1999-4 I.R.B. 19
99-5, 1999-6 I.R.B. 8
99-6, 1999-6 I.R.B. 6
99-7, 1999-5 I.R.B. 4
99-8, 1999-6 I.R.B. 8
99-9, 1999-7 I.R.B. 14
99-10, 1999-10 I.R.B. 10
99-11, 1999-10 I.R.B. 18
99-12, 1999-11 I.R.B. 6
99-13, 1999-10 I.R.B. 4

Treasury Decisions:

8789, 1999-3 I.R.B. 5
8791, 1999-5 I.R.B. 7
8792, 1999-7 I.R.B. 36
8793, 1999-7 I.R.B. 15
8794, 1999-7 I.R.B. 4
8795, 1999-7 I.R.B. 8
8796, 1999-4 I.R.B. 16
8797, 1999-5 I.R.B. 5
8799, 1999-6 I.R.B. 10
8800, 1999-4 I.R.B. 20
8801, 1999-4 I.R.B. 5
8802, 1999-4 I.R.B. 10
8805, 1999-5 I.R.B. 14
8806, 1999-6 I.R.B. 4
8807, 1999-9 I.R.B. 33
8808, 1999-10 I.R.B. 21
8809, 1999-7 I.R.B. 27
8810, 1999-7 I.R.B. 19
8811, 1999-10 I.R.B. 19
8812, 1999-8 I.R.B. 19
8813, 1999-9 I.R.B. 34
8814, 1999-9 I.R.B. 4
8815, 1999-9 I.R.B. 31
8816, 1999-8 I.R.B. 4
8817, 1999-8 I.R.B. 51

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1998-1 through 1998-52 will be found in Internal Revenue Bulletin 1999-1, dated January 4, 1999.

Finding List of Current Action on Previously Published Items¹

Bulletins 1999-1 through 1999-11

Revenue Procedures:

78-10

Obsoleted by
99-12, 1999-3 I.R.B. 13

94-56

Superseded by
99-9, 1999-2 I.R.B. 17

97-23

Superseded by
99-3, 1999-1 I.R.B. 103

98-1

Superseded by
99-1, 1999-1 I.R.B. 6

98-2

Superseded by
99-2, 1999-1 I.R.B. 73

98-3

Superseded by
99-3, 1999-1 I.R.B. 103

98-4

Superseded by
99-4, 1999-1 I.R.B. 115

98-5

Superseded by
99-5, 1999-1 I.R.B. 158

98-6

Superseded by
99-6, 1999-1 I.R.B. 187

98-7

Superseded by
99-7, 1999-1 I.R.B. 226

98-8

Superseded by
99-8, 1999-1 I.R.B. 229

98-22

Modified and amplified by
99-13, 1999-5 I.R.B. 52

98-56

Superseded by
99-3, 1999-1 I.R.B. 103

98-63

Modified by announcement
99-7, 1999-2 I.R.B. 45

¹ A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1998-1 through 1998-52 will be found in Internal Revenue Bulletin 1999-1, dated January 4, 1999.

Notes

Notes

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	048-004-02309-1	Cum. Bulletin 1991-2 (July-Dec)	\$45	
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