

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. 99-14, page 3.

Business expenses; interest; lease-in/lease-out transactions. A taxpayer may not deduct, under sections 162 and 163 of the Code, rent and interest paid or incurred in connection with a lease-in/lease-out (LILO) transaction that lacks economic substance.

Rev. Rul. 99-16, page 5.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1999, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 5.5 percent.

EMPLOYMENT TAX

Notice 99-16, page 10.

Deferred compensation; methods of accounting. This notice provides procedures for implementing a change in method of accounting to comply with section 404(a)(11) of the Code, regarding the payment of deferred compensation.

EMPLOYEE PLANS

REG-118662-98, page 13.

Proposed regulations under section 411 of the Code provide applicable standards for transmitting certain notices and consent through electronic media, and modify the timing requirements for providing certain distribution-related notices. A public hearing is scheduled for April 15, 1999.

Announcement 99-18, page 21.

This announcement clarifies the reporting of conversions to Roth IRAs on Form 8606, Nondeductible IRAs. It clarifies the note in Part III of the form relating to the 10% additional tax. In addition, it corrects the computation of modified AGI for Roth IRAs and the Ed IRA contribution worksheet in the instructions to the form.

Finding Lists begin on page 32.

Announcement of Disbarments and Suspensions begins on page 27.

EXEMPT ORGANIZATIONS

Announcement 99-27, page 22.

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

ADMINISTRATIVE

Rev. Proc. 99-19, page 10.

Interest netting for interest accruing before October 1, 1998. This procedure provides guidance on how to apply the net interest rate of zero in section 6621(d) of the Code to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments. Public comments are requested regarding the application of section 6621 to these payments.

Announcement 99-28, page 25.

This document contains a correction to the notice of proposed rulemaking, REG-106177-98 (1999-12 I.R.B. 25), published in the Federal Register on December 22, 1998 (63 F.R. 70701).

Announcement 99-29, page 25.

This document contains a correction to final regulations, T.D. 8804 (1999-12 I.R.B. 5), under section 1441 of the Code, relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

Announcement 99-30, page 26.

This document contains a correction to REG-104072-97 (1999-11 I.R.B. 12) relating to financing arrangements involving fast-pay stock.

Announcement 99-31, page 26.

This document contains corrections to T.D. 8795 (1999-7 I.R.B. 8), under section 411 of the Code, relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of the Employment Retirement Income Security Act of 1974.



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 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.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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

Section 162.—Trade or Business Expenses

26 CFR 1.162-11: Rentals.
(Also section 163; 1.163-1.)

Business expenses; interest; lease-in/lease-out transactions. A taxpayer may not deduct, under sections 162 and 163 of the Code, rent and interest paid or incurred in connection with a lease-in/lease-out (LILO) transaction that lacks economic substance.

Rev. Rul. 99-14

ISSUE

May a taxpayer deduct, under §§ 162 and 163 of the Internal Revenue Code, rent and interest paid or incurred in connection with a “lease-in/lease-out” (“LILO”) transaction?

FACTS

X is a U.S. corporation. FM is a foreign municipality that has historically owned and used certain property having a remaining useful life of 50 years and a fair market value of \$100 million. BK1 and BK2 are banks. None of the parties is related.

On January 1, 1997, X and FM entered into a LILO transaction under which FM leased the property to X under a “Headlease,” and X immediately leased the property back to FM under a “Sublease.” The term of the Headlease is 34 years. The “primary” term of the Sublease is 20 years. Moreover, as described below, the Sublease may also have a “put renewal” term of 10 years.

The Headlease requires X to make two rental payments to FM during its 34-year term: (1) an \$89 million “prepayment” at the beginning of year 1; and (2) a “postpayment” at the end of year 34 that has a discounted present value of \$8 million. For federal income tax purposes, X and FM allocate the prepayment ratably to the first 6 years of the Headlease and the future value of the postpayment ratably to the remaining 28 years of the Headlease.

The Sublease requires FM to make fixed, annual rental payments over both the primary term and, if exercised, the put renewal term. The fixed, annual payments during the put renewal term are

substantially higher than those for the primary term. Nevertheless, the fixed, annual payments during the put renewal term are projected (as of January 1, 1997) to equal only 90 percent of the fair market value rental amounts for that term.

At the end of the Sublease primary term, FM has a “fixed-payment option” to purchase from X the Headlease residual (the right to use the property beyond the Sublease primary term subject to the obligation to make the rent postpayment) for a fixed amount that is projected (as of January 1, 1997) to be equal to the fair market value of the Headlease residual. If FM exercises the option, the transaction is terminated at that point and X is not required to make any portion of the postpayment due under the Headlease. If FM does not exercise the option, X may elect to (1) use the property itself for the remaining term of the Headlease, (2) lease the property to another person for the remaining term of the Headlease, or (3) compel FM to lease the property for the 10-year put renewal term of the Sublease. If FM does not exercise the fixed-payment option and X exercises its put renewal option, X can require FM to purchase a letter of credit guaranteeing the put renewal rents. If FM does not obtain the letter of credit, FM must exercise the fixed-payment option.

To partially fund the \$89 million Headlease prepayment, X borrows \$54 million from BK1 and \$6 million from BK2. Both loans are nonrecourse, have fixed interest rates, and provide for annual debt service payments that fully amortize the loans over the 20-year primary term of the Sublease. The amount and timing of the debt service payments mirror the amount and timing of the Sublease payments due during the primary term of the Sublease.

Upon receiving the \$89 million Headlease prepayment, FM deposits \$54 million into a deposit account with an affiliate of BK1 and \$6 million into a deposit account with an affiliate of BK2. The deposits with the affiliates of BK1 and BK2 earn interest at the same rates as the loans from BK1 and BK2. FM directs the affiliate of BK1 to pay BK1 annual amounts equal to 90 percent of FM’s annual rent obligation under the Sublease (that is,

amounts sufficient to satisfy X’s debt service obligation to BK1). The parties treat these amounts as having been paid from the affiliate to FM, then from FM to X as rental payments, and finally from X to BK1 as debt service payments. In addition, FM pledges the deposit account to X as security for FM’s obligations under the Sublease, while X, in turn, pledges its interest in FM’s pledge to BK1 as security for X’s obligations under the loan from BK1. Similarly, FM directs the affiliate of BK2 to pay BK2 annual amounts equal to 10 percent of FM’s annual rent obligation under the Sublease (that is, amounts sufficient to satisfy X’s debt service obligation to BK2). The parties treat these amounts as having been paid from the affiliate to FM, then from FM to X as rental payments, and finally from X to BK2 as debt service payments. Although this deposit account is not pledged, the parties understand that FM will use the account to pay the remaining 10 percent of FM’s annual rent obligation under the Sublease.

X requires FM to invest \$15 million of the Headlease prepayment in highly-rated debt securities that will mature in an amount sufficient to fund the fixed amount due under the fixed-payment option, and to pledge these debt securities to X. Having economically defeased both its rental obligations under the Sublease and its fixed payment under the fixed-payment option, FM keeps the remaining portion of the Headlease prepayment as its return on the transaction.

For tax purposes, X claims deductions for interest on the loans and for the allocated rents on the Headlease. X includes in gross income the rents received on the Sublease and, if and when exercised, the payment received on the fixed payment option. By accounting for each element of the transaction separately, X purports to generate a stream of substantial net deductions in the early years of the transaction followed by net income inclusions on or after the conclusion of the Sublease primary term. As a result, X anticipates a substantial net after-tax return from the transaction. X also anticipates a positive pre-tax economic return from the transaction. However, this pre-tax return is insignificant in relation to the net after-tax return.

LAW AND ANALYSIS

In general, a transaction will be respected for tax purposes if it has “economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached.” *Frank Lyon Co. v. United States*, 435 U.S. 561, 583–84 (1978); *James v. Commissioner*, 899 F.2d 905, 908–09 (10th Cir. 1990). In assessing the economic substance of a transaction, a key factor is whether the transaction has any practical economic effect other than the creation of tax losses. Courts have refused to recognize the tax consequences of a transaction that does not appreciably affect the taxpayer’s beneficial interest except to reduce tax. The presence of an insignificant pre-tax profit is not enough to provide a transaction with sufficient economic substance to be respected for tax purposes. *Knetsch v. United States*, 364 U.S. 361, 366 (1960); *ACM Partnership v. Commissioner*, 157 F.3d 231, 248 (3d Cir. 1998); *Sheldon v. Commissioner*, 94 T.C. 738, 768 (1990).

In determining whether a transaction has sufficient economic substance to be respected for tax purposes, courts have recognized that offsetting legal obligations, or circular cash flows, may effectively eliminate any real economic significance of the transaction. For example, in *Knetsch*, the taxpayer purchased an annuity bond using nonrecourse financing. However, the taxpayer repeatedly borrowed against increases in the cash value of the bond. Thus, the bond and the taxpayer’s borrowings constituted offsetting obligations. As a result, the taxpayer could never derive any significant benefit from the bond. The Supreme Court found the transaction to be a sham, as it produced no significant economic effect and had been structured only to provide the taxpayer with interest deductions.

In *Sheldon*, the Tax Court denied the taxpayer the purported tax benefits of a series of Treasury bill sale-repurchase transactions because they lacked economic substance. In the transactions, the taxpayer bought Treasury bills that matured shortly after the end of the tax year and funded the purchase by borrowing against the Treasury bills. The taxpayer

accrued the majority of its interest deduction on the borrowings in the first year while deferring the inclusion of its economically offsetting interest income from the Treasury bills until the second year. The transactions lacked economic substance because the economic consequences of holding the Treasury bills were largely offset by the economic cost of the borrowings. The taxpayer was denied the tax benefit of the transactions because the real economic impact of the transactions was “infinitesimally nominal and vastly insignificant when considered in comparison with the claimed deductions.” *Sheldon* at 769.

In *ACM Partnership*, the taxpayer entered into a near-simultaneous purchase and sale of debt instruments. Taken together, the purchase and sale “had only nominal, incidental effects on [the taxpayer’s] net economic position.” *ACM Partnership* at 250. The taxpayer claimed that, despite the minimal net economic effect, the transaction had a large tax effect resulting from the application of the installment sale rules to the sale. The court held that transactions that do not “appreciably” affect a taxpayer’s beneficial interest, except to reduce tax, are devoid of substance and are not respected for tax purposes. *ACM Partnership* at 248. The court denied the taxpayer the purported tax benefits of the transaction because the transaction lacked any significant economic consequences other than the creation of tax benefits.

Viewed as a whole, the objective facts of the LILO transaction indicate that the transaction lacks the potential for any significant economic consequences other than the creation of tax benefits. During the 20-year primary term of the Sublease, X’s obligation to make the property available under the Sublease is completely offset by X’s right to use the property under the Headlease. X’s obligation to make debt service payments on the loans from *BK1* and *BK2* is completely offset by X’s right to receive Sublease rentals from *FM*. Moreover, X’s exposure to the risk that *FM* will not make the rent payments is further limited by the arrangements with the affiliates of *BK1* and *BK2*. In the case of the loan from *BK1*, X’s economic risk is completely eliminated through the defeasance arrangement. In the case of the

smaller loan from *BK2*, X’s economic risk, although not completely eliminated, is substantially reduced through the deposit arrangement. As a result, neither bank requires an independent source of funds to make the loans, or bears significant risk of nonpayment. In short, during the Sublease primary term, the offsetting and circular nature of the obligations eliminate any significant economic consequences of the transaction.

At the end of the 20-year Sublease primary term, X will have either the proceeds of the fixed-payment option or a Headlease residual that has a fair market value approximately equal to the proceeds of the fixed payment option. If, at the end of the 20-year Sublease primary term, the Headlease residual is worth more than the payment required on the fixed-payment option, *FM* will capture this excess value by exercising the fixed payment option, leaving X with only the proceeds of the option. Conversely, if, at the end of the 20-year Sublease primary term, the Headlease residual is worth significantly less than the payment required on the fixed-payment option, X will put the property back to *FM* under the put renewal option at rents, that while initially projected to be at only 90 percent of estimated fair market value, are (because of the decline in the value of the property) greater than fair market value. Thus, the fixed payment option and put renewal option operate to “collar” the value of the Headlease residual during the primary term, limiting much of the economic consequence of the Headlease residual.

In addition, facts indicate that there is little economic consequence from X’s nominal exposure to *FM*’s credit under the fixed-payment option and, if exercised, the put renewal term. At the inception of the transaction, *FM* was required to use a portion of the Headlease prepayment to purchase highly-rated debt securities that were pledged to X, ensuring *FM*’s ability to make the payment under the fixed-payment option. If *FM* does not exercise the fixed-payment option and X exercises the put renewal option, X can require *FM* to purchase a letter of credit guaranteeing *FM*’s obligation to make the put renewal rent payments. If *FM* does not obtain the letter of credit, *FM* must exercise the fixed-payment option. Thus,

as a practical matter, the transaction is structured so that *X* is never subject to *FM*'s credit.

The conclusion that *X* is insulated from any significant economic consequence of the Headlease residual is further supported by several factors indicating that the parties expect *FM* to exercise the fixed-payment option. First, *FM* has historically used the property. Second, because the fixed payment obligation is fully defeased, *FM* need not draw on other sources of capital to exercise the option. However, if *FM* does not exercise the fixed payment option and *X* exercises the put renewal option, *FM* would be required to draw on other sources of capital to satisfy its put renewal rental obligations.

In sum, the LILO transaction lacks the potential for significant economic consequences other than the creation of tax benefits. During the primary term of the Sublease, *X*'s obligations to provide property are completely offset by its right to use property. *X*'s obligations to make debt service payments on the loans are completely offset by *X*'s right to receive rent on the Sublease. These cash flows are further assured by the deposit arrangements with the affiliates of *BK1* and *BK2*. Finally, *X*'s economic exposure to the Headlease residual is rendered insignificant by the option structure and the pledge of the securities that defeases *FM*'s option payment. Thus, the only real economic consequence of the LILO transaction during the 20-year primary term of the Sublease is *X*'s pre-tax return. This pre-tax return is too insignificant, when compared to *X*'s after-tax yield, to support a finding that the transaction has significant economic consequences other than the creation of tax benefits.

Some of the features of the LILO transaction discussed above are present in transactions that the Service will respect for federal income tax purposes. For example, an arrangement for "in-substance defeasance" of an outstanding debt was respected in Rev. Rul. 85-42, 1985-1 C.B. 36. By contrast, in the LILO transaction, the deposit arrangement exists from the inception of the transaction, eliminating any need by *BK1* and *BK2* for an independent source of funds. Simi-

larly, other features of the LILO transaction, such as nonrecourse financing and fixed-payment options, are respected in other contexts. However, when these and other features are viewed as a whole in the context of the LILO transaction, these features indicate the transaction should not be respected for tax purposes.

As a result of the transaction lacking economic substance, *X* may not deduct interest or rent paid or incurred in connection with the transaction.

The Service will scrutinize LILO transactions for lack of economic substance and/or, in appropriate cases, recharacterize transactions for federal income tax purposes based on their substance. See, e.g., *Gregory v. Helvering* 293 U.S. 495 (1935), *Bussing v. Commissioner*, 88 T.C. 449 (1987), *Supplemental Opinion*, 89 T.C. 1050 (1987). Use of terms such as "loan," "lease," "Headlease," and "Sublease" in this revenue ruling should not be interpreted to indicate the Service's acceptance of *X*'s characterization of the LILO transaction described above.

HOLDING

A taxpayer may not deduct, under §§ 162 and 163, rent and interest paid or incurred in connection with a LILO transaction that lacks economic substance.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 85-42 is distinguished.

DRAFTING INFORMATION

The principal author of this revenue ruling is John Aramburu of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling contact Mr. Aramburu on (202) 622-4960 (not a toll-free call).

Section 163.—Interest

26 CFR 1.163-1: Interest deduction in general.

May a taxpayer deduct interest paid or incurred in connection with a lease-in/lease-out (LILO) transaction that lacks economic substance? See Rev. Rul. 99-14, page 3.

Section 6601.—Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax

26 CFR 301.6601-1: Interest on underpayments.

How is the net interest rate of zero in section 6621(d) of the Code to be applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments? See Rev. Proc. 99-19, page 10.

Section 6611.—Interest on Overpayments

26 CFR 301.6611-1: Interest on overpayments.

How is the net interest rate of zero in section 6621(d) of the Code to be applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments? See Rev. Proc. 99-19, page 10.

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

How is the net interest rate of zero in section 6621(d) of the Code to be applied to interest accruing before October 1, 1998, with respect to overlapping tax underpayments and tax overpayments? See Rev. Proc. 99-19, page 10.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 1999, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 5.5 percent.

Rev. Rul. 99-16

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning April 1, 1999, is the sum of the

federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 1999 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning April 1, 1999. The

overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning April 1, 1999, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 1999, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under § 6621(b)(2)(B), the 7 percent rate that applies to estimated tax underpayments for the first calendar quarter in 1999, as provided in Rev. Rul. 98-61, 1998-51 I.R.B. 8, also applies to such underpayments for the first 15 days in April 1999.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95-17, 1995-1 C.B. 556, 570, 573, 575, and 579.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Bailey on (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B. RATE	TABLE	PG	1995-1 C.B. RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995-1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE PG		RATE	1995-1 C.B. TABLE PG	
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	RATE	1995-1 C.B. TABLE PG	
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT (Continued)

	RATE	1995-1 C.B.	
		TABLE	PG
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995-1 C.B.	
		TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570

Part III. Administrative, Procedural, and Miscellaneous

Change in Accounting Method for Deferred Compensation

Notice 99-16

This notice provides procedures for implementing a change in method of accounting to comply with § 404(a)(11) of the Internal Revenue Code, regarding the payment of deferred compensation.

Section 404(a)(11) was added to the Code by § 7001 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 685, 827 (July 22, 1998), effective for taxable years ending after July 22, 1998. Section 404(a)(11) provides that, for purposes of determining under § 404 whether compensation of an employee is deferred compensation and when deferred compensation is paid, no amount is treated as received by the employee, or paid, until it is actually received by the employee. Section 404(a)(11) overturns the decision in *Schmidt Baking Co. v. Commissioner*, 107 T.C. 271 (1996), in which the court held that a § 83(a) income inclusion event upon securitization of vacation and severance pay benefits with a letter of credit constitutes receipt of those benefits by employees for purposes of determining whether an employer's deduction for the benefits is subject to § 404.

Section 7001(b) of the RRA provides that a taxpayer changing its method of accounting to comply with § 404(a)(11) for its first taxable year ending after July 22, 1998, will be treated as making a change initiated by the taxpayer with the consent of the Commissioner. It further provides that the change will be made with a § 481 adjustment that will be taken into account ratably over a 3-taxable-year period beginning with the first taxable year ending after July 22, 1998.

A taxpayer changing its method of accounting for its first taxable year ending after July 22, 1998, to comply with § 404(a)(11) must follow the automatic change in accounting method provisions of Rev. Proc. 98-60, 1998-51 I.R.B. 16, with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 98-60 do not apply.

However, if the taxpayer is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the Form 3115, Application for Change in Accounting Method, to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate.

(2) The § 481(a) adjustment period generally is three taxable years (as opposed to four taxable years as specified in section 5.04(1) of Rev. Proc. 98-60).

(3) A taxpayer that, on or before May 28, 1999, files its original federal income tax return for its first taxable year ending after July 22, 1998, may comply with the filing requirement in section 6.02(2)(a) of Rev. Proc. 98-60 or with the following filing requirement. The taxpayer must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's amended federal income tax return for the taxpayer's first taxable year ending after July 22, 1998. This amended return must be filed no later than July 27, 1999. A copy of the Form 3115 must be filed with the national office (at the address specified in section 6.02(6) of Rev. Proc. 98-60) no later than when the taxpayer's amended return is filed.

(4) Section 7 of Rev. Proc. 98-60 does not apply; a taxpayer does not receive audit protection in connection with this change.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98-60 is modified and amplified to include this automatic accounting method change in the Appendix.

DRAFTING INFORMATION

The principal author of this notice is Robert Testoff of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Testoff at (202) 622-4800 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 6601, 6611, 6621; 301.6601-1, 301.6611-1, 301.6621-1.)

Rev. Proc. 99-19

SECTION 1. PURPOSE

With respect to interest accruing before October 1, 1998, this revenue procedure provides guidance, and requests public comment, regarding the application of § 6621(d) of the Internal Revenue Code. Section 6621(d) was enacted by § 3301 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 741, and was amended by § 4002(d) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681. Section 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). However, the net interest rate of zero in § 6621(d) also applies to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided certain conditions are met. This revenue procedure provides guidance on, and how to comply with, those conditions.

SECTION 2. BACKGROUND

.01 Interest computations in general.

(1) Section 6601(a) provides, in general, that if any amount of tax imposed by the Code is not paid on or before the last date prescribed for payment, interest on such amount must be paid for the period from such last date to the date paid at the underpayment rate established under § 6621.

(2) Section 6611(a) provides that interest must be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621. Section 6611(b)(1) provides that, in the case of a credit, interest must be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken.

Section 6611(b)(2) provides that, in the case of a refund, interest must be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days.

.02 Interest rates in general.

(1) For interest accruing before January 1, 1999, § 6621(a)(1) provides that the overpayment rate is the federal short-term rate (determined under § 6621(b)) plus 2 percentage points. To the extent that an overpayment of tax by a corporation exceeds \$10,000, the overpayment rate is the federal short-term rate plus 0.5 percent.

(2) Section 6621(a)(2) provides that the underpayment rate is the federal short-term rate (determined under § 6621(b)) plus 3 percentage points. Special rules in § 6621(c) increase the underpayment rate on large corporate underpayments.

.03 Interest for overlapping periods.

(1) Section 6621(d), as enacted by the RRA on July 22, 1998, provides that, to the extent that for any period interest is payable under subchapter A (§§ 6601 and 6602) and allowable under subchapter B (§ 6611) on equivalent underpayments and overpayments by the same taxpayer of tax imposed by the Code, the net rate of interest under § 6621 on such amounts is zero for such period.

(2) The Conference Report, H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998), accompanying the RRA provides that the net interest rate of zero is applied without regard to whether the overpayment or underpayment is currently outstanding. However, each overpayment or underpayment is considered only once in determining whether equivalent amounts of overpayment and underpayment overlap for a particular period. That report also provides that the net interest rate of zero applies even when special rules increase the rate of interest for large corporate underpayments under § 6621(c), or decrease the rate of interest for large corporate overpayments under § 6621(a).

(3) Section 6621(d) generally applies to interest for periods (calendar quarters) beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). *See* H. R. Rep. No. 364 (Part 1), 105th Cong., 1st Sess. 64 (1998); S. Rep. No.

174, 105th Cong., 2d Sess. 62 (1998); H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998). However, § 3301(c)(2) of the RRA provides that § 6621(d) applies to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided certain conditions are met. First, both periods of limitation applicable to the tax underpayment and to the tax overpayment (as described in section 2.04 of this revenue procedure) must have been open on July 22, 1998. Second, the taxpayer must:

(a) reasonably identify and establish periods of tax overpayments and underpayments for which the net interest rate of zero applies, and

(b) not later than December 31, 1999, request the Secretary of the Treasury to apply § 6621(d) to such periods.

.04 *Applicable periods of limitation.* The applicable periods of limitation are as follows:

(1) *Underpayment interest.* A claim for credit or refund of interest paid on an underpayment pursuant to § 6601 or 6602 generally must be filed within 3 years from the time the tax return was filed or 2 years from the time the interest was paid, whichever period expires later, pursuant to § 6511.

(2) *Overpayment interest.* A claim for payment of additional interest allowable on an overpayment pursuant to § 6611 must be filed within the 6-year period in which a suit must be filed pursuant to 28 U.S.C. §§ 2401 and 2501. *See* Rev. Rul. 56-506, 1956-2 C.B. 959.

SECTION 3. SCOPE

.01 *Applicability.* This revenue procedure applies to a taxpayer that requests the application of the net interest rate of zero in § 6621(d) to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided:

(1) both applicable periods of limitation described in section 2.04 of this revenue procedure were open on July 22, 1998;

(2) the periods of tax overpayments and underpayments for which the net interest rate of zero applies are reasonably identified and established (as described in section 4 of this revenue procedure); and

(3) the request is made not later than December 31, 1999.

.02 *Inapplicability.* This revenue procedure does not apply to:

(1) the application of the net interest rate of zero in § 6621(d) to interest for periods beginning after July 22, 1998 (*i.e.*, interest accruing on or after October 1, 1998). The Service intends to provide further guidance for those periods;

(2) an overpayment or underpayment for any period during which interest on the overpayment or underpayment was not allowable or payable by law (*e.g.*, the 45-day interest disallowance rule under § 6611(e)); or

(3) an offset made pursuant to §§ 6402(a) and 6601(f), regarding the crediting of an outstanding overpayment against an outstanding underpayment.

SECTION 4. APPLICATION PROCEDURES

.01 *Form to file.* Except as provided in section 4.06 of this revenue procedure, requests for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998, should be made on Form 843, Claim for Refund and Request for Abatement.

.02 *Where to file.* Form 843 should be filed with the Internal Revenue Service Center where the taxpayer filed its most recent federal income tax return.

.03 *Label.* The taxpayer should label the top of the Form 843: "Request for Net Interest Rate of Zero Under Rev. Proc. 99-19."

.04 *Filing requirements for Form 843.*

(1) Line 1 should be left blank.

(2) The taxpayer may, but is not required to, place a dollar amount on Line 2.

(3) Line 3 should indicate the type of tax and type of return covered by the request. More than one box may be checked if more than one type of tax or return is covered by the request. In addition, any taxes imposed by the Code (or returns for those taxes) for which there is no box on Line 3 should be written in on that line.

(4) Line 4 should be left blank.

(5) Line 5 should:

(a) identify the taxable periods for which the taxpayer overpaid and underpaid its tax liability. A separate Form 843 is not required for each separate taxable period involved in the request;

(b) state when the taxpayer paid the tax if the underpayment is no longer outstanding;

(c) state when the taxpayer received a refund of tax if the overpayment is no longer outstanding;

(d) identify and establish the period(s) for which the taxpayer's overpayment and underpayment overlapped. For this purpose, the taxpayer should provide any background material (such as copies of examination reports, notices, or prior interest computations provided by the Service) relating to the overpayments and underpayments. The background material is needed to assist the Service in determining the period(s) for which the overpayment and underpayment overlap, and the amount of such overlap;

(e) state that, to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established under section 4.04(5)(d) of this revenue procedure, the period(s) has (have) been used only once in a request to obtain the net interest rate of zero under § 6621(d); and

(f) provide a computation, to the extent possible, of the amount of interest to be credited, refunded, or abated to provide a net interest rate of zero for the period(s) of overlap. This computation should be made by applying § 6621(d) to an underpayment year to reduce the taxpayer's liability for underpayment interest.

.05 *Verification.* The amounts used in a computation provided under section 4.04(5)(f) of this revenue procedure are subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

.06 *Special procedure.* No Form 843 is required when a computation of interest using the net interest rate of zero under § 6621(d) for interest accruing before October 1, 1998, is requested by a taxpayer in connection with a return (or returns) of the taxpayer under consideration by any office of the Service. The taxpayer must furnish a letter or written statement to such office that:

(1) states that the taxpayer is requesting the net interest rate of zero under § 6621(d);

(2) indicates the type of tax and type of return that affects the interest computation for the taxable period under consideration;

(3) states when and for what period(s) the refund or payment (that affects the interest computation for the taxable period under consideration) was made; and

(4) states that, to the extent of equivalent amounts of overpayment or underpayment, the period(s) set forth under section 4.06(3) of this revenue procedure has (have) not previously been applied to obtain a net interest rate of zero under § 6621(d).

.07 *Special procedure verification.* The refund or payment provided under section 4.06(3) of this revenue procedure is subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

SECTION 5. EXAMPLES

.01 *Example 1.* X is a calendar year corporation. The Service examined X's Form 1120, Corporation Income Tax Return, for the 1992 and 1994 taxable years. For the 1994 taxable year, the Service determined that X was entitled to a refund of \$30,000. This Service-initiated refund was made on September 21, 1997, with interest computed from March 15, 1995, to July 29, 1997. For the 1992 taxable year, the Service determined that X underpaid its income tax by \$80,000. The Service sent X a notice and demand for payment dated May 3, 1998, which X paid on May 12, 1998, with interest computed from March 15, 1993, to May 3, 1998. On April 27, 1999, X filed a Form 843 requesting the application of § 6621(d) for the overlap period from March 15, 1995, to July 29, 1997. On July 22, 1998, both the 6-year period of limitation for claiming additional overpayment interest on X's 1997 refund and the 2-year period of limitation for claiming a refund of underpayment interest paid in 1998 were open. X will be refunded the difference between the underpayment interest paid on \$30,000 for the period from March 15, 1995, to July 29, 1997, and the overpayment interest computed and paid on \$30,000 for that period.

.02 *Example 2.* The facts are the same as in *Example 1*, except that the Service sent X a notice and demand for payment dated May 3, 1996, which X paid on May 12, 1996, with interest computed from March 15, 1993, to May 3, 1996. On April 27, 1999, X filed a Form 843 requesting the application of § 6621(d) for the overlap period from March 15, 1995, to May 3, 1996. On July 22, 1998, the 6-year period of limitation for claiming additional overpayment interest on X's 1997 refund was open, but the 2-year period of limitation for claiming a refund of underpayment interest paid in 1996 was not open. Therefore, the net interest rate of zero under § 6621(d) does not apply to the overlap period and no adjustment will be made.

SECTION 6. REQUEST FOR COMMENTS

.01 For the application of the net inter-

est rate of zero in computing interest accruing before October 1, 1998, taxpayers must reasonably identify and establish periods of overlapping overpayments and underpayments for which the net interest rate of zero applies, and not later than December 31, 1999, request that § 6621(d) be applied. The Treasury Department and the Service recognize that by December 31, 1999, some taxpayers may not be able to provide a final computation of how the net interest rate of zero applies to interest accruing before October 1, 1998. For example, a taxpayer may not be able to provide this final computation by December 31, 1999, because the Service's examination of the taxable years involved has not been completed or commenced.

.02 Written comments are requested regarding the level of specificity necessary to reasonably identify and establish on or before December 31, 1999, the period(s) for which an equivalent amount of overpayment and underpayment of tax overlap when the taxpayer cannot provide by December 31, 1999, a final computation of how the net interest rate of zero applies to interest accruing before October 1, 1998. Comments should be submitted by May 14, 1999, either to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:DOM:CORP:R (IT&A,
Branch 1) Room 5228
or electronically via:

http://www.irs.ustreas.gov/prod/tax_reg/comments.html
(the Service's internet site).

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for taxpayer requests made not later than December 31, 1999, for the application of the net interest rate of zero in § 6621(d) to interest accruing before October 1, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is John J. McGreevy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. McGreevy on (202) 622-4910 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

New Technologies in Retirement Plans

REG-118662-98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations governing certain notices and consent required in connection with distributions from retirement plans. Specifically, these proposed regulations set forth applicable standards for the transmission of those notices and consent through electronic media and modify the timing requirements for providing certain distribution-related notices. The proposed regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The proposed regulations affect retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 18, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 15, 1999, at 10 a.m. must be received by March 25, 1999. ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-118662-98), 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-118662-98), 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, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Catherine Livingston Fernandez (202) 622-6030; concerning submissions of comments and the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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 16, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are 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 collections 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 collections of information in this proposed regulation are in 26 CFR §§1.402(f)-1, 1.411(a)-11, and 35.3405-1. This information is required for notices to recipients of distributions from retirement plans, individual retirement accounts, and annuities. This information will be used to help recipients make informed decisions regarding these distributions. The collections of information are mandatory. The likely respondents are individuals, business or other for-profit institutions, and nonprofit institutions.

Estimated total annual reporting and/or recordkeeping burden: 477,563 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 76 minutes.

Estimated number of respondents and/or recordkeepers: 375,000.

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

Background

Section 411(a)(11) of the Internal Revenue Code generally provides that if the value of a participant's accrued benefit exceeds \$5,000, the benefit may not be immediately distributed without the participant's consent. Section 1.411(a)-11(c) of the Income Tax Regulations states that this requirement applies until the later of normal retirement age or age 62 and requires that the consent be in writing. Section 1.411(a)-11(c)(2) of the regulations provides that the participant's consent is not valid unless, prior to the distribution, the participant is given an explanation of the plan distribution options (e.g., lump sum, annual installments, annuity, etc.) and is advised of the right to defer the distribution in a manner that would satisfy the notice requirement of section 417(a)(3).

Section 402(f) requires that the plan administrator of a qualified retirement plan provide the recipient of an eligible rollover distribution with a written explanation of the direct rollover, mandatory 20-percent income tax withholding, and other relevant tax information. Section 1.402(f)-1 Q&A-2 requires that notices under section 402(f) be provided no less than 30 and no more than 90 days before the date of a distribution, although a participant may waive the 30-day period.

Section 3405(e)(10)(B) of the Code requires the payor of any designated distribution (other than an eligible rollover distribution) to transmit to the payee a notice of the right not to have income tax withheld from the payment.

Section 1510 of the Taxpayer Relief Act of 1997 provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit “paperless” transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

The IRS and Treasury issued Announcement 98-62, 1998-29 I.R.B.13, to request comments from interested members of the public concerning the development of the guidance described in section 1510. Announcement 98-62 solicited information on the kinds of electronic or “paperless” technologies used by sponsors and administrators in plan administration, identified a number of specific legal and practical issues for comment, and requested that commentators identify the issues most in need of administrative guidance. Commentators generally encouraged the IRS and Treasury to issue guidance facilitating the use of new technologies in plan administration, particularly the use of electronic technologies for transmission of the notices and consent required for plan distributions. These proposed regulations respond to the com-

ments by providing the guidance most frequently requested by commentators.

Additionally, in response to many of the comments submitted under Announcement 98-62, the IRS and Treasury are issuing a notice concerning the use of electronic media for general plan transactions. The notice confirms that the “paperless” administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions will not cause a qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). The notice is intended to apply to a broad range of general plan transactions and electronic media, but it does not apply to transactions for which the Code, the regulations, or other guidance of general applicability prescribes requirements for the media through which such transactions may be conducted (for example, it does not apply to providing the section 402(f) notice). Additionally, the notice does not address the application of Title I of ERISA to the use of electronic media for any plan transactions.

Explanation of Provisions

General

These proposed regulations permit the use of electronic media for the transmission of certain notices and consent required for distributions from qualified plans. Using flexible standards — rather than detailed requirements — the proposed regulations:

- Permit electronic delivery of the notice of distribution options and the right to defer under section 411(a)(11), the rollover notice under section 402(f), and the voluntary tax withholding notice under section 3405(e)(10)(B);
- Permit participant consent to a distribution under section 411(a)(11) to be given electronically; and
- Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

Notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B)

1. Use of electronic media for delivery of notices

The proposed regulations provide that, in general, a plan may provide a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards that are intended to parallel the key attributes of notices provided on written paper documents without imposing more stringent requirements on electronic notices. The use of generally applicable standards rather than detailed rules is consistent with the comments received under Announcement 98-62.

Under the proposed regulations, an electronic notice must be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document. The no-less-understandable requirement is to be applied taking into account the method of delivery and the format and content of the electronic notice; however, the standard is not intended to require that the electronic notice be identical in form or content to a corresponding notice provided on a written paper document (although an electronic notice must contain all the information that would be required if the notice were provided on a written paper document).

The IRS and Treasury would expect that provision of notices through e-mail or a plan web site would in most cases satisfy the no-less-understandable requirement under well designed systems. However, the IRS and Treasury expect that the amount and nature of the information that must be provided in the section 402(f) notice would preclude oral delivery of the full section 402(f) notice through a telephone system. By contrast, the amount and nature of the information required in the notice under section 3405(e)(10)(B) is such that the no-less-understandable stan-

dard may be met by a notice provided through a telephone system.¹ Whether a section 411(a)(11) notice may be provided through a telephone system will depend on the complexity of the plan distribution options. A plan with a few simple distribution options could provide, through a well designed telephone system, a section 411(a)(11) notice that is just as understandable as a notice provided on a written paper document; a plan with more numerous or more complex distribution options may not be able to satisfy the no-less-understandable standard in that manner.

The IRS and Treasury believe that participants should be able to receive a written paper notice from the plan on request and that the right to receive a written paper notice is an important safeguard for participants. Many of the comments submitted under Announcement 98-62 strongly supported this proposition. Certain participants may be unable to use paperless technologies in an effective manner, particularly as these new technologies emerge and change rapidly. In such cases, the right to receive a notice on a written paper document may be necessary to ensure that the participant has an adequate opportunity to deliberate about his or her rights and options (and to seek advice from third parties, if desired). In accordance with these considerations, the proposed regulations provide that a participant who is given a legally required notice through an electronic medium be advised at the time the notice is given that he or she may request and receive the notice on a written paper document at no charge.

Because of its potential significance to individuals, this written paper notice must be a copy that participants can retain for their own records (thus, a posted copy is not adequate). Merely making paper notices available through the electronic medium used to deliver the notice or another electronic medium (for example, by including a "print" option on an e-mail system or a web site) is not adequate because of the uncertainty in determining

whether a participant will in fact be able to generate the paper version of the notice. A written paper notice furnished on request need not contain precisely the same information or be presented in the same format as the notice delivered through an electronic medium. Rather, the written paper notice (like the electronic notice) need only satisfy the applicable legal requirements regarding that notice.

These generally applicable standards for electronic notices are illustrated by several examples. The examples illustrate whether certain uses of electronic technologies satisfy the proposed regulations, but they are not intended to constitute an exhaustive list of permissible uses, systems, or media. Other uses, systems, or media (whether extant, such as CD-ROM or touch-screen kiosk, or not yet developed) that satisfy the applicable standards would be permitted.

To conform the rules for providing the section 411(a)(11) notice to the standards described above, the proposed regulations remove from the existing regulations the requirement that the section 411(a)(11) notice be received "in a manner that would satisfy the notice requirements of section 417(a)(3)." Also, while they do not remove references in the existing regulations to the "written" section 402(f) notice (because the statutory provisions of section 402(f) specifically refer to a "written" notice), the proposed regulations provide for the electronic transmission of the section 402(f) notice and modify the timing requirement for providing that notice.

2. Flexibility for timing requirement in providing notices

The proposed regulations modify the timing requirement for providing the section 402(f) and section 411(a)(11) notices. Under existing regulations, those notices must be provided no less than 30 days and no more than 90 days before the date of a distribution, although a participant is permitted to waive the 30-day period.² As discussed above, the proposed regulations permit plans with comparatively few and

simple distribution options to provide the section 411(a)(11) notice through a variety of electronic media, including (in many cases) automated telephone systems. This will make it easier for those plans to provide the notice within the 90/30-day period (for example, by providing the notice when a participant requests a distribution through the automated telephone system). Similarly, plans with more numerous or more complex distribution options that use an e-mail system or a web site may provide the notice when a participant requests a distribution through the e-mail system or the web site.

The proposed regulations also provide flexibility with respect to the 90-day period by providing an alternative timing rule under sections 402(f) and 411(a)(11). Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period. The full notice is not required to be provided on a regular periodic basis and could be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is provided.

The summary of the notice must set forth the material provisions of the notice, must refer the participant to the most recent occasion on which the full notice was provided (and, in the case of a notice provided in a document — such as the summary plan description — that contains other information, must identify that document and must indicate where the notice may be found in that document), and must advise the participant of the right to request and receive a full notice without charge. The plan could make this full notice available through an electronic medium under a system that satisfies the standards discussed above if it also offers the participant the option to request the full notice on a written paper document. Whether written or electronic, the full notice, if requested, must be provided without charge no fewer than 30 days prior to the date of the distribution (although the

¹ The permissibility under the proposed regulations of providing the section 3405 notice through an electronic medium is not limited to qualified plans described in section 401(a); rather, it applies with respect to any payor under section 3405.

² The timing requirements and waiver provisions for purposes of the section 411(a)(11) notice are provided in Treasury Regulations §§1.411(a)-11(c)-(2)(ii) and (iii), which are part of final regulations published in T.D. 8796, 1999-4 I.R.B. 16.

participant may waive this 30-day period).

In the case of the section 411(a)(11) notice, the summary will consist of a statement that the participant has a right to defer receipt of the distribution (if applicable) and a summary of the plan distribution options. In the case of the section 402(f) notice, the summary must summarize the principal provisions of the section 402(f) notice. The use of electronic media to provide these summaries is subject to the same generally applicable standards that apply to the electronic transmission of the full section 411(a)(11) and section 402(f) notices, as described above. In contrast to the full section 402(f) notice, however, the IRS and Treasury believe that the summary of the section 402(f) notice can be provided orally through a well designed telephone system in a manner no less understandable than a written paper summary. The following summary, based on the summary set forth in Notice 92-48, 1992-2 C.B. 377, is an example of a section 402(f) summary that may be provided through an automated telephone system:

Summary of Notice Regarding
Important Tax Information

The following is a brief explanation of an important decision you must make about any distribution you request from the Plan. Please listen to it carefully. You can find a more complete written explanation of these rules in the Summary Plan Description for the Plan, beginning on page x. You can obtain a free copy of the complete explanation from the Personnel Office, or you will have an opportunity at the end of this message to request to have a copy mailed to you.

A payment from the Plan may be eligible for "rollover" treatment. A payment that is eligible for "rollover" can be taken in two ways. You can have ALL OR ANY PORTION of your payment either (1) PAID IN A "DIRECT ROLLOVER" or (2) PAID TO YOU.

A rollover is a payment of your Plan benefits to your individual retirement arrangement (IRA) or to another employer plan. This choice will affect the tax you owe.

If you choose a DIRECT ROLLOVER

1. Your payment will not be taxed in the current year and no income tax will be withheld.
2. Your payment will be made directly to your IRA or, if you choose, to another employer plan that accepts your rollover.
3. Your payment will be taxed later when you take it out of the IRA or the employer plan.

If you choose to have your Plan benefits PAID TO YOU

1. You will receive only 80% of the payment, because the plan administrator is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes.
2. Your payment will be taxed in the current year unless you roll it over. You may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59-1/2, you also may have to pay an additional 10% tax.
3. You can roll over the payment by paying it to your IRA or to another employer plan that accepts your rollover within 60 days of receiving the payment. The amount rolled over will not be taxed until you take it out of the IRA or employer plan.
4. If you choose to have your Plan benefits paid to you and you want to roll over 100% of the payment to an IRA or an employer plan, YOU MUST FIND OTHER MONEY TO REPLACE THE 20% THAT WAS WITHHELD. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

You can find a complete explanation of these rules, as well as additional rules that may apply in special circumstances, beginning on page x of your Summary Plan Description. You can also obtain a free copy of the complete explanation from the Personnel Office.

If you wish to have a free copy of the complete explanation mailed to you, press 1.

If you wish to hear this explanation again, press 2.

If you wish to end this transaction now, without requesting any distribution, press 3.

If you wish to continue with this transaction, press 4.

Consent under section 411(a)(11)

The proposed regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards for transmitting consent through electronic media. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. To conform the existing regulations to this change, the proposed regulations remove the requirement that a participant's consent be "written."

The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. The proposed regulations do not set out specific rules regarding adequate identification or authentication of participants; the IRS and Treasury note, however, that many comments submitted under Announcement 98-62 confirmed that "paperless" systems ordinarily use passwords and personal identification numbers to ensure participant identity in plan transactions.

The requirement that a participant be given a reasonable opportunity to review and to confirm, modify, or rescind the terms of a distribution before his or her consent becomes effective is not intended to require a mandatory rescission period after a transaction has been completed; it is sufficient for the plan to provide this opportunity immediately before the participant completes the session in which the consent is given (for example, before exiting the plan web site or at the end of an automated telephone transaction). The opportunity to review and to confirm, modify, or rescind the terms of the distribution may be compared to a participant's opportunity to review the terms of a distribution on a written paper distribution election form prior to submitting that written paper form to the plan.

Many comments submitted under Announcement 98-62 indicated that it is a very common practice in electronic plan administration to provide participants with confirmations (usually written confirmations) of plan transactions. The receipt of a confirmation is, for the participant, analogous to the opportunity to retain a photocopy of a written paper distribution election form. Consistent with these comments, the proposed regulations provide for the plan to give the participant a confirmation of the terms of the distribution within a reasonable time after the participant has given consent through an electronic medium. However, the confirmation of the participant's consent to the distribution generally need not

be given through a written paper document; it may be given through any electronic medium that would satisfy the provisions of the proposed regulations for delivery of the section 411(a)(11) notice. (Thus, if the confirmation is given through an electronic medium, the participant must be given the right to request and to receive the confirmation on a written paper document.) Additionally, the confirmation need not be given as a separate transaction. For example, the confirmation could be given immediately before completion of a session conducted on a plan web site. Alternatively, a plan could provide the confirmation by reflecting the transaction in a participant's periodic account statement (provided that the confirmation is given within a reasonable time after the consent).³

As with notices, the general standards for the section 411(a)(11) consent are illustrated by several examples intended to describe in broad terms certain uses of electronic technologies that would satisfy the proposed regulations. The examples illustrate consent given through e-mail, web sites (Internet or intranet), and automated telephone systems and clarify that a participant may consent to a distribution orally through an automated telephone system. The examples are not intended to constitute an exhaustive list of permissible uses, systems, or electronic media or to imply that other uses, systems, or electronic media (whether extant or not yet developed) would fail to satisfy the proposed regulations.

Other transactions and recordkeeping

A few comments submitted under Announcement 98-62 requested guidance on the use of electronic media for waivers of the qualified joint and survivor annuity and the qualified preretirement survivor annuity, spousal consent, and related explanations under section 417. Guidance

³ Several commentators requested that guidance on electronic plan administration clarify that participants need not receive written paper confirmation of every plan transaction conducted through an electronic medium (such as an inquiry regarding a participant's account value). The IRS and Treasury note that (apart from the provision of the proposed regulations described above) neither the Code nor the regulations impose a requirement to provide confirmation (written or otherwise) of plan transactions conducted through an electronic medium.

on those issues has not been issued at this time because any use of electronic media for those purposes — as well as for the notice requirements of sections 401(k)(12) and 401(m)(11) (pertaining to the safe harbor methods of satisfying the nondiscrimination requirements of sections 401(k) and (m)) and the notice requirements of section 204(h) of ERISA — would raise substantial issues distinct from those raised by the use of electronic media for the notice and consent requirements of sections 402(f), 411(a)(11), and 3405(e)-(10)(B). The IRS and Treasury will be reviewing those issues and will consider whether guidance should be issued in the future.

Several comments also requested guidance regarding the use of electronic media for withholding elections under section 3405. The IRS and Treasury are issuing guidance permitting payors to establish systems to receive Form W-4P (Withholding Certificate for Pension or Annuity Payments) electronically. Interested parties are invited to submit comments concerning what, if any, additional guidance is needed concerning the use of electronic media for withholding elections under section 3405.

Several comments submitted under Announcement 98-62 addressed recordkeeping under section 6001 for electronic plan administration. Revenue Procedure 98-25, 1998-11 I.R.B. 7, specifies the basic requirements that the IRS considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing system. Under section 3.01 of Revenue Procedure 98-25, these requirements apply to employee plans. Additionally, Revenue Procedure 97-22, 1997-1 C.B. 652, provides guidance to taxpayers maintaining books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage medium, such as an optical disk. Under section 3.02 of Revenue Procedure 97-22, the requirements of that revenue procedure apply employee plans. The IRS and Treasury invite interested parties to submit comments on what specific guidance is needed concerning recordkeeping requirements for electronic plan administration in addition to that provided in Revenue Procedures 98-25 and 97-22.

Reliance

Plan sponsors and administrators may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Proposed Effective Date

These regulations are proposed to be effective the first day of the first plan year beginning on or after the date that is six months after they are published in the **Federal Register** as final 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will only add a minor increment to the cost of these paperless distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

tion will be given to any electronic and written 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 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 April 15, 1999, at 10 a.m. in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present a 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, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

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

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 25, 1999.

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

An agenda showing the scheduling of 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 Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 35 are 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 1.402(f)-1 is amended by:

1. Revising Q&A-2.
2. Adding Q&A-5 and Q&A-6.

The revision and additions read as follows:

§1.402(f)-1 Required explanation of eligible rollover distributions; questions and answers.

* * * * *

Q-2: When must the plan administrator provide the section 402(f) notice to a distributee?

A-2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A-2.

(a) Paragraph (a) of this Q&A-2 is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A-2, the plan administrator may substitute the annuity starting date, within the meaning of §1.401(a)-20, Q&A-10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A-2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A-2, provides the section 402(f) notice to the distributee without charge and within the period specified in paragraph (a) of this Q&A-2 (disregarding the 90-day period described in paragraph (a) of this Q&A-2). The summary described in paragraph (b)(2) of this Q&A-2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent occasion on which the section 402(f) notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q-5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A-2 of this section other than through a written paper document?

A-5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A-2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document, and, upon request, that document

must be provided to the distributee at no charge.

Q-6: Are there examples that illustrate the provisions of Q&A-2 and Q&A-5 of this section?

A-6: The following examples illustrate the provisions of Q&A-2 and Q&A-5 of this section:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice. Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 2. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 402(f) notice. Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 3. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that

in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent occasion on which the section 402(f) notice was provided in the summary plan description, informs the participant where the section 402(f) notice may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period). Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text. Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

Example 5. The facts are the same as in *Example 3*, except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant. Plan C does not satisfy the notice requirement of section 402(f) by oral delivery of the section 402(f) notice through the automated telephone system.

Par. 3. Section 1.411(a)-11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).
2. Adding paragraphs (f) and (g).
3. Removing the language "Written consent" in paragraph (c)(2)(ii) and (c)(3) and adding the language "Consent" in its place.

The revisions and additions read as follows:

§1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(1) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(2) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(3) If the participant so requests after receiving the summary described in para-

graph (c)(2)(iii)(B)(2) of this section, provides the notice to the participant without charge and within the period specified in paragraph (c)(2)(iii)(A) of this section (disregarding the 90-day period described in paragraph (c)(2)(iii)(A) of this section). The summary described in paragraph (c)(2)(iii)(B)(2) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent occasion on which the notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—
(1) *Notice.* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(2) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other

than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples.* The provisions of paragraph (f) of this section are illustrated by the following examples:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent, the plan administrator, by e-mail, sends confirmation of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan A does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 2. The facts are the same as in *Example 1*, except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution. Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

Example 3. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must

enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 4. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated

telephone system is no less understandable to the participant than a written paper notice. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 5. The facts are the same as in *Example 4*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

PART 35—TEMPORARY EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 4. The authority citation for part 35 is revised to read as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Pub. L. 97-248 (96 Stat. 623).

Section 35.3405-1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Par. 5. Section 35.3405-1 is amended by adding d-35 and d-36 to read as follows:

§35.3405-1. Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

* * * * *

d-35. Q. Through what medium may a payor provide the notice required under section 3405 to a payee?

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee

may request and receive the notice on a written paper document, and, upon request, that document must be provided to the payee at no charge.

d-36. Q. Are there examples that illustrate the provisions of d-35 of this section?

A. The provisions of d-35 of this section are illustrated by the following examples:

Example 1. An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and

personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

* * * * *

John M. Dalrymple,
*Acting Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on December 17, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 18, 1998, 63 F.R. 70071)

Supplemental Instructions for Form 8606, Nondeductible IRAs Announcement 99-18

This announcement provides supplemental instructions for the proper completion of Form 8606, Nondeductible IRAs, for Roth IRA conversions and recharacterizations. It also clarifies the proper computation of the 10% additional tax for early distributions in the case of Roth IRA conversions and subsequent withdrawals from Roth IRA accounts. Finally, it corrects the computation of modified AGI for purposes of Roth IRAs on page 2 and the Ed IRA Contribution Worksheet on page 3 in the separate instructions for Form 8606.

I. Reporting Roth IRA Conversions and Recharacterizations

Holders of traditional IRAs may convert these accounts to Roth IRAs if they meet the eligibility requirements and include any previously untaxed amounts converted in their gross income for the year of conversion. For conversions in 1998, the includible amount may be spread over 4 years, at the election of the taxpayer. A conversion may be undone by recharacterizing the converted amounts back to the traditional IRA.

Some questions have arisen about the proper reporting of conversions, recharacterizations, and reconversions to Roth IRAs, particularly regarding the reconciliation of amounts on Forms 1099-R issued by account trustees with amounts to be entered on Form 8606 and Form 1040.

The following comprehensive example clarifies this reporting.

Example: Mr. Smith has the following IRA activity in 1998:

Date	Activity
2/19/98	Mr. Smith contributes \$2,000 to a Roth IRA.
2/19/98	Mr. Smith converts the entire \$8,000 balance in his traditional IRA to a Roth IRA. The converted amount was placed into an account separate from the Roth contribution account. His total basis in the traditional IRA was \$2,000 (from a nondeductible contribution in an earlier year).
9/10/98	The fair market value of Mr. Smith's conversion account decreased from \$8,000 to \$7,000. Mr. Smith recharacterizes the entire remaining balance of \$7,000 to a traditional IRA.
9/10/98	Mr. Smith reconverts the \$7,000 from the traditional IRA back to a Roth IRA.

In 1999, Mr. Smith receives three Forms 1099-R: one for the original conversion of \$8,000, another for the \$7,000 recharacterization, and a third one for the subsequent reconversion of \$7,000.

Completion of Form 8606: Mr. Smith should complete the identifying information above Part I. He should leave Part I

blank. Mr. Smith completes Part II of Form 8606 as follows:

Line 14a. Mr. Smith enters \$15,000 on this line. This is the sum of the amounts reported to him in box 1 of the Forms 1099-R he received for the \$8,000 conversion on February 19, 1998, and the \$7,000 reconversion on September 10, 1998.

Line 14b. Although Mr. Smith recharacterized \$7,000 from his Roth conversion account to his traditional IRA, he reports \$8,000 on line 14b. This is because line 14a includes \$8,000 from his original conversion and he recharacterized the entire remaining balance of \$7,000. He enters \$8,000 on line 14b to "zero out" the conversion and subsequent recharacterization. Otherwise, Mr. Smith would be taxed on the \$1,000 decline in market value in his Roth conversion account before the recharacterization.

Line 14c. Mr. Smith reports \$7,000 on this line (\$15,000-\$8,000).

Line 15. Mr. Smith refers to the chart on page 5 of the Form 8606 instructions to determine the amount to enter on this line. As a result, he enters \$2,000, which is his prior year nondeductible contribution to a traditional IRA.

Line 16. The taxable amount of the conversion is \$5,000 (\$7,000-\$2,000).

Line 17. Mr. Smith elects to have the taxable amount spread over 4 years. In 1998 and in each of the next 3 years, Mr. Smith is taxed on \$1,250.

Part III. Mr. Smith does not complete Part III. Although he received a Form 1099-R for his recharacterization of \$7,000 from the Roth IRA to a traditional IRA, the recharacterization is not a distribution that is to be reported on line 18 of Part III. It is merely a trustee-to-trustee transfer of funds between IRA accounts.

Completion of Form 1040: Mr. Smith includes \$22,000 on line 15a. This is the total IRA distributions that were reported to him in box 1 of the Forms 1099-R he received. Mr. Smith includes \$1,250, the amount of the conversion that is taxable in 1998, on line 15b. This is the amount from line 17 of Form 8606.

II. Clarification of Amount Subject to 10% Additional Tax

The **Note** after line 26 of Form 8606 is incomplete. Regardless of whether you have an amount on line 22 or 25 of Form 8606, you may be subject to an additional 10% tax. The **Note** should read as follows:

Note: If you receive a Roth IRA distribution before reaching age 59½, you may be subject to an additional 10% tax. See Form 5329. Include on line 1 of Form 5329 the **smaller** of the amount on line 20 **or** the sum of the amounts on lines 16 and 25."

Please disregard the paragraph headed **Lines 22 and 25-Additional 10% Tax** on page 6 of the instructions for Form 8606, as well as the first complete paragraph in the middle column of page 3 of the instructions for Form 5329.

III. Correction to Computation of Modified AGI for Purposes of Roth IRAs

Under **Roth IRAs** on page 2 of the Form 8606 instructions, item 1 under **Modified AGI for purposes of Roth IRAs** should include a reference to Form 1040A, line 10b.

IV. Correction to Ed IRA Contribution Worksheet

Line 2 of the worksheet on page 3 of the Form 8606 instructions should read: "Enter \$150,000 if married filing jointly; or \$95,000 for all other filers." The referenced amount for married filing separately should be deleted.

Foundations Status of Certain Organizations

Announcement 99-27

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 organiza-

tions 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:

Adolescent Interchange Service Inc., Shreveport, LA
African Haitian American Operation Hope for Democracy for Rebuilding, Newburg, IN
American Friends of the International Disability Foundation Inc., New York, NY
American Relief Services Inc., Walnut Creek, CA
Arcadia Academy Valley Inc., Ironton, MO
Beauty of Life, Brooklyn, NY
Blazer Mat Club, Douglassville, PA
Brothers Empowering African Minds, Raleigh, NC
Career Kids Incentive Program, Seattle, WA
Cheerleading Association of Stratford High School, Goose Creek, SC
Chicago Lawn and Gage Park Community Youth Center Inc., Chicago, IL
City Wide Resident Management Corporation Inc., Gary, IN
Community Homeowners Association Inc., Dorchester, MA
Creative Bridges Inc., San Francisco, CA
David S Brown Foundation Inc., Boston, MA
Dejesus Foundation Inc., Castle Point, NY
Dobbs Ferry Schools Foundation Inc., Dobbs Ferry, NY
Downstate AIDS Projects, Springfield, IL
Dutchman Chapel Corporation, Enoree, SC
Earth Camp International Inc., Los Angeles, CA
Family Wellness Center Inc., North Palm Beach, FL
Firefighters Museum and Hall of Fame, College Station, TX
Franklin County Legal Childrens Services Inc., Malone, NY
Friendly Neighbors Club of N C, Asheville, NC
Friends of the BBC Marshall Plan of the Mind Trust Inc., Bethesda, MD

Gaffney Main Street Corporation, Gaffney, SC
Greater Ottumwa Vocal Arts Project Inc., Ottumwa, IA
Hayes School Alumni Inc., Brooklyn, NY
HIV-AIDS Planning & Management Organization Inc., Miami, FL
Housing Authority of the City of Laredo, Laredo, TX
Imani & Friends Incorporated, Chicago, IL
I M P A C T Institute Inc., Oakland Park, FL
Iberia Pro Bono Project, New Iberia, LA
Idaho Empowerment Program Inc., Boise, ID
Idaho Freedom Chorus Inc., Boise, ID
IHS Inc., Winslow, AZ
Ila Gail Educational Foundation Inc., Salt Lake City, UT
Illinois Education First Foundation, Springfield, IL
Image Productions, Colorado Springs, CO
Imagination Childrens Television, Mansfield Ctr., CT
Imani Inc., Detroit, MI
Immunet Inc., New York, NY
Impact Community & Economic Development Corporation, Portland, OR
In Christ International, Santa Ana, CA
In His Service Ministries Inc., Ponchatoula, LA
In-Reach Foundation, Pittsburg, CA
In Recital, New York, NY
Incentives Inc., Jamacia, NY
Independence for Physically Disabled Children Inc., Oceanside, NY
Independent Democratic Education Association Ideas Inc., Great Neck, NY
Independent School Board Members of Wisconsin Inc., Hales Corners, WI
Indian Nations Recreation Trail Inc., Muskogee, OK
Indiana Raiders Girls Softball Club, Portage, IN
Indianapolis AIDS Housing Corp., Indianapolis, IN
Indianapolis Neighborhood Resource Center Inc., Indianapolis, IN
Indigenous Arts Foundation Inc., Belmont, MA
Indo-U S Bio-Medical Research Foundation, Burton, MI
Indonesian Society of Portland, Lake Oswego, OR

Indy Tres Dias Inc., Indianapolis, IN
Infancia Mexicana Inc., South Bend, IN
Infinity Systems for Nonprofits Inc., Minneapolis, MN
Injured Athletes Recovery Fund, Providence, RI
Inland Empire Pride Inc., San Bernardino, CA
Inland Northwest Mens Evolvement Network, Spokane, WA
Inn Fellowship Inc., St. Louis, MO
Inner City Community Development Inc., Knoxville, TN
Inner-City Ministries Inc., Ellendale, ND
Inner-City Vision Ministries, Mercer Island, WA
Inner City Youth Foundation, Cleveland, OH
Inner Development Inc., Staten Island, NY
Inner Essence Deliverance Ministries, Kalamazoo, MI
Innervision, Denver, CO
Inside Out Productions, Houston, TX
Insight Alaska, Anchorage, AK
Inspirational Moments Inc., West Chester, PA
Inspirit Counseling Center, San Anselmo, CA
Inspirit Inc. A Non-Profit Corporation, Wheat Ridge, CO
Institute for Family Education and Economic Development IFEED, Greenville, MS
Institute for Christian Leadership Inc., Portland, OR
Institute for Competition Inc., Cambridge, MA
Institute for Disability Resources, Washington, DC
Institute for Financial Economics and Public Policy, Bethesda, MD
Institute for Multi-Cultural Enrichment, Portland, OR
Institute for Multi-Party Democracy Inc., Washington, DC
Institute for Naturopathic Medicine, Van Nuys, CA
Institute for Psycho Social Studies Inc., N Wales, PA
Institute for School Board Effectiveness, Austin, TX
Institute for Strategic Servanthood, Thousand Oaks, CA
Institute for Sustainable Tropical Resource Management Inc., Pittsboro, NC

Institute for the Advanced Study of Culture, Waterford, VA
 Institute for the Study of Distributed Work, Walnut Creek, CA
 Institute for University Studies, Arlington, TX
 Institute for the Study of Family Violence, Mt. Sinai, NY
 Institute for Water Policy Studies, Santa Fe, NM
 Institute for World Religions, Irvine, CA
 Institute for Young Leaders Inc., Marietta, GA
 Institute of Caribbean Studies, Washington, DC
 Institute of Tuition Scholarships and Grants Inc., Wilmington, DE
 Institute on Cultural Dynamics and Social Change Inc., Rochester, MN
 Intelcross Inc., Kentfield, CA
 Inter-Disciplinary Developmental Assessment Studies for Kids Corp., Chicago, IL
 Inter Institute for Infant Nutri & Gastrointestinal Disease, Haverford, PA
 Inter-Neighborhood Housing, Bronx, NY
 Interamericas Hash 95 Inc., Longwood, FL
 Interexchange Network Inc., Kansas City, MO
 Interfaith Hunger Services Inc., Bridgeport, CT
 Interfaith Pastoral Counseling Service Inc., Biddford, ME
 International Alcohol and Drug Institute, Mentor, OH
 International Association for the Study of Jewish Mysticism, Cambridge, MA
 International Cancer Association Inc., Orange City, FL
 International Center for Disarmament and Conversion, Davidson, NC
 International Center for Dispute Resolution, Reno, NV
 International Center for Study of Jewish Heroism Inc., New York, NY
 International Christian Training Institute, New Smyrna Beach, FL
 International Committee Invalid Assistance Cambodia, Portland, ME
 International Congress for Environmental Comm and Technology, Chattanooga, TN
 International Congress on Toxicology VII, Research Triangle Park, NC
 International Development Research and Initiatives Inc., Gainesville, FL
 International Eye Project Inc., Port Saint Lucie, FL
 International Fund for Children, Chicago, IL
 International Fund for Humanitarian Aid & Development Inc., Roswell, GA
 International Guild of Musicians In Dance, Tucson, AZ
 International Mind Dynamics Institute Inc., Chamblee, GA
 International Multicultural Inc., Beaverton, OR
 International Nepali Literary Society, Washington, DC
 International Network of Lesbian and Gay Officials, Minneapolis, MN
 International Nippon Karate-Do Federation, Alexandria, VA
 International Quarterly, Tallahassee, FL
 International Roma Federation Corporation, New York, NY
 International Society for Intraoperative Card Ultrasound Inc., Durham, NC
 International Trade Club of Southern California, Long Beach, CA
 International Witness Inc., Cambridge, MA
 International Woode Foundation Inc., Brooklyn, NY
 International Womens Independence Network, Houston, TX
 Interreligious Council of Linn County Incorporated, Cedar Rapids, IA
 Intro International Inc., Sterling, VA
 IOB Productions Inc., Springfield, VA
 Irish Focus Inc., Boston, MA
 Iroquois Environmental and Educational Services Inc., Perrysburg, NY
 Isabella Community Playscape Inc., Mount Pleasant, MI
 Isabella International Institute, Bethesda, MD
 Isaiah House Incorporated, Upper Marlboro, MD
 Islamic Education Institute of Texas Inc., Houston, TX
 Islamic Federation of New Jersey Inc., Jersey City, NJ
 Islamic Information Center of the Americas, La Jolla, CA
 Issachar Institute Inc., Tupelo, MS
 Ithaca Performing Arts Center Inc., Ithaca, NY
 Its a Kids World Inc., Albuquerque, NM
 Ivy Plaza Housing Corporation, Shaker Heights, OH
 Ivy Self Help Publishing Inc., Santa Barbara, CA
 James L Leinwand Foundation, North Palm Beach, FL
 Joe Marzari Foundation, New York, NY
 Lawrence Foundation, Lawrence, KS
 Local Community Associates Inc., Fairport, NY
 Main Street Playground Project, Hyannis, MA
 Marion County Three-Point Club Inc., Lebanon, KY
 Martha for the Homeless Incorporated, Petersburg, VA
 Mesa Martin Luther King Jr Celebration Inc., Mesa, AZ
 Missouri Research Institute, Kansas City, MO
 Mustang Basketball Association Incorporated, Merritt Island, FL
 National Alliance of Pan African Seminarians, Antioch, CA
 National Amputee Sports Foundation, Thornton, CO
 New Caney AG Supporters Inc., New Caney, TX
 New Life Options Inc., Palm, FL
 New Mexico Middle School Assn., Tijeras, NM
 New Mexico Society for Perenteral and Enteral Nutrition, Albuquerque, NM
 New Women Entrepreneur Center Corporation, Miami, FL
 Operation Lookout for Missing Children Inc., Brooklyn, NY
 Outreach Foundation Inc., Dallas, TX
 Pacific Northwest Aleut Council, Seattle, WA
 Perch America Inc., Hammond, IN
 Pleasant Valley Stingray Swim Team, Davenport, IA
 Progress & Freedom Foundation, Washington, DC
 Riverdale High School Band Boosters, Riverdale, GA
 Scottish Rite Tower Development Corporation, Philadelphia, PA
 Smacks Peace Brigades Inc., New York, NY
 Southeastern Massachusetts Round-Up Inc., New Bedford, MA
 St Judes Fund of Tappahannock Inc., Tappahannock, VA
 Stuff for Kids Inc., Boston, MA
 Surrogate Father Program Inc., Mt Vernon, NY
 Tarrant County Dental Study Group, Bedford, TX

The Mount Airy Community
 Development & Resource Association,
 Philadelphia, PA
 Troy Chavez Foundation, Denver, CO
 United States Hispanic Chamber of
 Commerce Inc., Washington, DC
 Vision Earth Society Incorporated,
 Miami, FL
 Washington Center for Policy &
 Research Inc., Washington, DC
 Washingtonville Centennial Celebration
 Inc., Washingtonville, NY
 West Branch Athletic Booster Club Inc.,
 Salem, OH
 West Virginia Society for Parenteral and
 Enteral Nutrition, Elkview, WV
 Youth-in-Action, St. George, UT

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.

Adequate Disclosure of Gifts; Correction

Announcement 99-28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the notice of proposed rulemaking (REG-106177-98, 1999-12 I.R.B. 25), which was published in the Federal Register Tuesday, December 22, 1998 (63 F.R. 70701 [I.R.B.]), relating to changes made by the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 re-

garding the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 2001 and 2504 of the Internal Revenue Code.

Need for Correction

As published, REG-106177-98 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-106177-98), which was the subject of FR Doc. 98-33648, is corrected as follows:

§20.2001-1 [Corrected]

On page 70704, column 3, §20.2001-1(c) introductory text, line 2, the language “of paragraph (a) of this section, the” is corrected to read “of paragraph (b) of this section, the”.

Michael L. Slaughter,
Acting Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 5, 1999, 8:45 a.m., and published in the issue of the Federal Register for March 8, 1999, 64 F.R. 10964)

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; Correction

Announcement 99-29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to technical amendments.

SUMMARY: This document contains a correction to final regulations (T.D. 8804, 1999-12 I.R.B. 5), which were published in the **Federal Register** Thursday, December 31, 1998 (63 F.R. 72183), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

DATES: This correction is effective January 1, 2000.

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 these corrections are under sections 1441, 1442, and 1443 of the Internal Revenue Code.

Need for Correction

As published, TD 8804 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final rule; technical amendments (TD 8804), which was the subject of FR Doc. 98-34359, is corrected as follows:

§§1.6041-1 and 1.6042-2 [Corrected]

On page 72188, in the table following “Par. 15.”, two entries are added in numerical order to read as follows:

Section	Remove	Add
* * * * *		
1.6041-1(d)(5), first sentence	December 31, 1998	December 31, 1999
* * * * *		
1.6042-2(a)(1)(iii), first sentence	1099A	1099
* * * * *		

Michael L. Slaughter,
*Acting Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).*

(Filed by the Office of the Federal Register on March 8, 1999, 8:45 a.m., and published in the issue of the Federal Register for March 9, 1999, 64 F.R. 11378)

Recharacterizing Financing Arrangements Involving Fast-pay Stock; Correction Announcement 99-30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to REG-104072-97, which was published in 1999-11 I.R.B. 12, relating to financing arrangements involving fast-pay stock.

FOR FURTHER INFORMATION CONTACT: Jonathan Zelnik, (202) 622-3940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 7701 of the Internal Revenue Code.

Need for Correction

As published, REG-104072-97 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-104072-97), which is the subject of FR Doc. 99-178, is corrected as follows:

§1.1441-7 [Corrected]

1. On page 810, column 1, §1.1441-7(g)(4) *Example 2*, line 4, the language “that A entered the arrangement with a” is corrected to read “that A entered into the arrangement with a”.

§1.7701(l)-3 [Corrected]

2. On page 810, column 3, §1.7701(l)-3(c)(3)(iv)(A), line 3, the language “attributable to financing instruments)” is corrected to read “attributable to the financing instruments)”.

3. On page 811, column 3, §1.7701(l)-3(e) *Example 5(i)*, line 3 from the bottom of the paragraph, the language “Y’s 1996 deduction attributable to financing” is corrected to read “Y’s 1996 deduction attributable to the financing”.

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

(Filed by the Office of the Federal Register on February 25, 1999, at 8:45 a.m., and published in the issue of the Federal Register for March 3, 1999, 64 F.R. 10262)

Notice of Significant Reduction in the Rate of Future Benefit Accrual; Correction Announcement 99-31

Announcement 99-31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision (T.D. 8795, 1999-7 I.R.B. 8) relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of the Employment Retirement Income Security Act of 1974.

DATES: These corrections are effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Diane S. Bloom, (202) 622-6214 or Christine L. Keller, (202) 622-6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 411 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8795 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8795), which was the subject of FR Doc. 98-32925, is corrected as follows:

1. On page 68680, column 2, in the preamble under the paragraph heading “Special Analyses”, line 12, the language “24, 1996, the Regulatory Flexibility Act” is corrected to read “29, 1996, the Regulatory Flexibility Act”.

§602.101 [Corrected]

2. On page 68684, column 1, §602.101(c), in the table under the column heading Current OMB control No., the OMB number “1545-1447” is corrected to read “1545-1477”.

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

(Filed by the Office of the Federal Register on March 2, 1999, at 8:45 a.m., and published in the issue of the Federal Register for March 3, 1999, 64 F.R. 10218)

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.

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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.

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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.

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