

# IRS News Release

---

Media Relations Office

Washington, D.C.

Media Contact: 202.622.4000

[www.irs.gov/newsroom](http://www.irs.gov/newsroom)

Public Contact: 800.829.1040

---

## **New Issues Selected for IRS Industry Issue Resolution Program**

IR-2003-92, July 24, 2003

WASHINGTON — The Internal Revenue Service and the Treasury Department today announced new tax issues selected for resolution under the Industry Issue Resolution (IIR) Program. These issues have been identified by business taxpayers, industry associations, and other interested parties as being frequently disputed or burdensome.

The selections for the 2003 IIR Program are:

- Application of Section 382 to U.S. branches of foreign banks (included on the Guidance Priority List as an item under “Guidance under Section 382”).
- Guidance on health care provider incentive payments.
- Guidance on tax treatment of vendor allowances involving buildouts and image upgrades.
- Guidance under Section IRC 4051(a) (2) and (3) regarding “suitable for use.”
- Guidance on reporting procedures for successor organizations following Rev. Proc. 96-60.

“The Industry Issues Resolution program provides a common-sense approach to resolving tax issues identified by the business community,” said Large and Mid-Size Business Division Commissioner Deborah M. Nolan. “Businesses and their representatives meet with IRS legal and technical experts to present their issues. We then try to find a way to resolve these areas of controversy in a way that will be less burdensome to taxpayers and allow us to focus our enforcement resources more appropriately.”

IIR project selections are based on the criteria set forth in Revenue Procedure 2003-36. For each issue selected, a multi-functional team of IRS, Chief Counsel, and Treasury personnel will be assembled. The teams will gather and analyze relevant facts from industry groups and taxpayers for each issue and recommend guidance.

Requests for guidance on tax issues under the IIR program can be submitted at any time to [IIR@irs.gov](mailto:IIR@irs.gov). Submissions received are reviewed semi-annually with selections next being made from issues submitted by August 31, 2003.

Revenue Procedure 2003-36 and related information is available at [www.irs.gov](http://www.irs.gov).

Attached is detailed information regarding the issues submitted for the IIR program.

###

**ISSUES SUBMISSIONS FOR THE IIR PROGRAM REVIEWED - 2003 IIR PROJECT SELECTIONS**

**Banking Industry**

**Submitter's Issue Description:** Application of IRC § 382 to U.S. Branches of Acquired International Banks

Guidance is needed on how to value the U.S. branch operations of international banks for purposes of IRC § 382, limitation on net operating loss carry forwards, including (1) how to identify and value the goodwill of the U.S. operations, and (2) how to determine whether, and to what extent, any goodwill premium paid for the shares of the bank is attributable to U.S. operations.

**IRS Contact:**

Carl Weiss

Acting Director, Field Operations, Financial Services Industry, Large and Mid-Size Business Division

Telephone: 212-298-2105 E-mail: [carl.h.weiss@irs.gov](mailto:carl.h.weiss@irs.gov)

**Submitted by:**

Institute of International Bankers

**Insurance Industry**

**Submitter's Issue Description:** Guidance on Health Care Provider Incentive Payments

HMOs pay their physicians under a plan designed to give the physicians an incentive to hold costs down. Under this plan, a portion of the physician's fees is held back and paid after the end of the year. For statutory accounting purposes, the "provider holdbacks" are reflected in the HMOs' incurred but not paid (IBNP) reserve. The submitter proposes that the "provider holdbacks" be deductible as part of the IBNP reserve in accordance with industry practice.

**IRS Contact:**

Patricia Chaback

Director, Field Operations, Financial Services Industry, Large and Mid-Size Business Division

Telephone: 860-756-4572 E-mail: [patricia.c.chaback@irs.gov](mailto:patricia.c.chaback@irs.gov)

**Submitted by:**

Blue Cross Blue Shield Association

<b>Retail Industry</b>	
<p><b>Submitter's Issue Description:</b> Vendor Allowance</p> <p>Guidance, consistent with new accounting standards, on how different types of vendor allowances should be classified and their income tax treatment.</p> <p><b>Selected with Modification:</b> Guidance on the tax treatment of Vendor Allowances involving buildouts and image upgrades.</p> <p><b>IRS Contact:</b>  James Sevier  Director, Field Operations, Retailers, Food, Pharmaceutical and Healthcare Industry, Large and Mid-Size Business Division  Telephone: 630-493-5966 E-mail: <a href="mailto:james.c.sevier@irs.gov">james.c.sevier@irs.gov</a></p>	<p><b>Submitted by</b>  International Mass Retail Association</p>
<b>Trucking Industry</b>	
<p><b>Submitter's Issue Description:</b> Guidance under Section IRC 4051(a)(2) and (3) regarding "Suitable for Use"</p> <p>Guidance is requested to assist in the determination as to what makes a truck body "suitable for use" on a vehicle 33,000 lbs. gross vehicle weight or less under IRC § 4051(a)(2).</p> <p><b>IRS Contact:</b>  Bill Conlon  Director, Reporting Compliance, Small Business/Self Employed Division  Telephone: (202) 283-2150 E-mail: <a href="mailto:bill.conlon@irs.gov">bill.conlon@irs.gov</a></p>	<p><b>Submitted by:</b>  National Truck Equipment Association</p>

**Cross Industry**

**Submitter's Issue Description:** Reporting Employment Taxes in Context of Mergers, Consolidations, etc.

The procedures for reporting employment tax in the context of mergers, acquisitions, consolidations, reorganizations and other restructurings are antiquated and cumbersome. Rev. Rul. 62-60 and Rev. Proc. 96-60 need to be updated to reflect current environment and systems capabilities and made more consistent.

**Selected with Modification:**

Guidance on reporting procedures for successor organizations following Rev. Proc. 96-60

**IRS Contact:**

Michael Chesman  
Director, Office of Taxpayer Burden Reduction, Small Business/Self Employed Division  
Telephone: (202) 283-4551 E-mail: [Michael.R.Chesman@irs.gov](mailto:Michael.R.Chesman@irs.gov)

**Submitted by:**

American Society for Payroll Management

National Payroll Reporting Consortium

**ISSUES SUBMISSIONS FOR THE IIR PROGRAM REVIEWED - NOT SELECTED AS AN IIR PROJECT**

**Banking Industry**

**Submitter's Issue Description:** Accrual of Interest on Nonperforming Loans

Uniform, administrable rules are needed for the accrual of interest that are consistent with financial and regulatory accounting methods.

**Submitted by:**  
American Bankers Association

**Submitter's Issue Description:** Determination of Interest Deduction (Treasury Regulation § 1.882-5)

Under Reg. § 1.882-5, non-U.S. banks must determine deductible interest expenses under a three-step formula. Guidance on the three-step formula is needed in regard to (1) computation of the actual ratio of worldwide liabilities to worldwide assets, (2) circumstances in which financial instruments should be netted and (3) easing the burden of determining an interest rate on excess U.S. -connected liabilities.

**Submitted by:**  
Institute of International Bankers

**Submitter's Issue Description:** Deductibility of Bad Debt Reserves Established by International Banks

Whether specific bad debt reserves recorded on the books of U.S. branches of international banks should be treated as charge-offs under IRC § 166, and whether similar treatment should be given to such reserves identified on the worldwide balance sheet for purposes of computing the actual ratio under Reg. § 1.882-5.

**Submitted by**  
Institute of International Bankers

**Communications Industry**

**Submitter's Issue Description:** Universal Service Fund - IRC § 118 Issue

Whether the disbursements received by telecommunications service providers from the federal and state Universal Service Funds (USF) are non-taxable contributions to capital under IRC § 118.

**Submitted by :**  
KPMG on behalf of telecommunications industry taxpayers

**ISSUES SUBMISSIONS FOR THE IIR PROGRAM REVIEWED - NOT SELECTED AS AN IIR PROJECT**

**Construction Industry**

**Submitter's Issue Description:** Per Diem Allowance

Revise rules under IRC § 274 for reimbursement arrangements or establish a "lodging only" per diem allowances for travel expenses incurred by construction employees.

**Submitted by:**

Associated General Contractors of America

Associated Builders and Contractors, Inc.

**Diving Industry**

**Submitter's Issue Description:** Equipment Rental (Diving Gear)

Guidance is requested on the extent to which amounts paid by an employer to an employee for the rental of diving gear should be reported as wages on Form W-2, as employee expense reimbursement subject to the accountable plan rules under Section 62(c), or as rental income reported on Form 1099. If treated as wages, an optional substantiation rule is requested for the rental payments.

**Submitted by:**

Deloitte & Touche on behalf of Assn. of Diving Contractors International

**Logging Industry**

**Submitter's Issue Description:** Equipment Rental (Chain Saw)

Guidance is requested in the form of an optional expense substantiation rule for the treatment of expenses incurred by employee-sawyers with respect to personally owned chainsaws used in the logging industry.

**Submitted by**

Montana Logging Association

**Motor Vehicle Industry**

**Submitter's Issue Description:** Equipment Rental (Automobile Service Technicians)

Clarification is requested for the proper tax treatment of expenditures incurred for, and related to, tools and equipment provided by automobile dealership service technicians in connection with their employment when their employer (the automobile dealership) adopts a Section 62(c) accountable plan.

**Submitted by:**

Willard J. DeFilipps, CPA, PC

**ISSUES SUBMISSIONS FOR THE IIR PROGRAM REVIEWED - NOT SELECTED AS AN IIR PROJECT**

<p>Submitter's Issue Description: Automotive Dealer Reinsurance Transaction</p> <p>Guidance and clarification of the factors determining the propriety of automotive aftermarket reinsurance transactions is requested. Specific issues for IIR consideration include: whether guidance can be provided to allow taxpayers to have certainty as to the propriety of their program; whether brother-sister arrangements constitute risk transfer; to what extent taxpayers can rely upon determinations made by other divisions (TEGE) of the IRS about the propriety of their programs; and what procedures should be in place with regard to tax shelter disclosure requirements, if any.</p>	<p>Submitted by: Benjamin, Weil &amp; Mazer on behalf of Virginia Auto Dealers Association, Guarantee Trust Life Insurance Co. &amp; Others.</p> <p>National Automobile Dealers Assn.</p> <p>Crowe Chizek and Co.</p>
<p><b>Petroleum Industry</b></p>	
<p><b>Submitter's Issue Description:</b> Equipment Rental (Distribution Contractors)</p> <p>Guidance on whether construction companies engaged in the construction of distribution pipelines are eligible for the optional expense substantiation rules set forth in Revenue Procedure 2002-41.</p>	<p><b>Submitted by:</b> Akin Gump Strauss Hauer &amp; Feld LLP on behalf of Distribution Contractors Association</p>
<p><b>Submitter's Issue Description:</b> Equipment Rental (Pipeliners)</p> <p>Revise guidance to increase safe harbor amounts to reflect new welding rig rental rate increases and provide new rules on payments over the safe harbor amounts.</p>	<p><b>Submitted by:</b> UA Local 290 Pipeliners</p>

<b>Trucking Industry</b>	
<p><b>Submitter's Issue Description:</b> Per Diem Limitation for Leased Truck Drivers (IRC § 274 (n))</p> <p>Trucking companies hire a third party to provide leased truck drivers and payroll and employment- related services, including per diem payments. The trucking companies determined when per diem should be paid. From funds received from the trucking companies the third party pays the drivers the per diem. IRC 274(n) limits deductions for meals and related expense to 50% of amounts incurred. The issue is whether the third party or the trucking company is required to limit their deduction for per diem amounts paid for meal and related expenses incurred by leased employees.</p>	<p><b>Submitted by:</b> White &amp; Case</p>
<b>Cross Industry</b>	
<p><b>Submitter's Issue Description:</b> Withholding &amp; Deposit Obligations Associated with Nonstatutory Stock Options</p> <p>Guidance is needed on applicable withholding and deposit requirements associated with nonstatutory stock options.</p>	<p><b>Submitted by:</b> McDermott, Will &amp; Emery</p>
<p><b>Submitter's Issue Description:</b> Amending Forms 941 &amp; 941C Quarterly</p> <p>Guidance is needed to allow quarterly amendment of Forms 941 and 941C and clarify the IRC § 6205 interest free adjustments rules.</p>	<p><b>Submitted by:</b> National Payroll Reporting Consortium</p>
<p><b>Submitter's Issue Description:</b> Independent Contractor Safe Harbor</p> <p>Guidance is requested in the form of a safe harbor provision that would allow classification of a worker as an independent contractor through a written agreement between the parties.</p>	<p><b>Submitted by:</b> Michael J. Knight &amp; Co. CPAs</p>