Approved August 31, 1995.

Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.

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Section 4682.—Definitions and Special Rules

Final regulations relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilants or propellants in metered-dose inhalers, and floor taxes on OCDs. See T.D. 8622, page 237.

Chapter 42.—Private Foundations and Certain Other Tax-Exempt Organizations

Subchapter C.—Political Expenditures of Section 501(c)(3) Organizations

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Section 4955.—Taxes on Political Expenditures of Section 501(c)(3) Organizations

26 CFR 53.4955–1: Tax on political expenditures.

T.D. 8628

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 53 and 301

Political Expenditures by Section 501(c)(3) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding excise taxes, accelerated tax assessments, and injunctions imposed for certain political expenditures made by organizations that (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a). These regulations reflect changes to the law that were enacted as part of the Revenue Act of 1987.

EFFECTIVE DATE: These regulations are effective December 5, 1995.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1994, proposed regulations §§53.4955–1, 301.6852–1, and 301.7409–1 under sections 4955, 6852 and 7409 were published in the Federal Register (59 FR 64359 [EE–48–90, 1995–1 C.B. 847]). In addition, amendments were made to regulations under other sections in order to reflect the effects of sections 4955, 6852, and 7409. Proposed regulation amendments in §§1.6091–2, 53.4963–1, 53.6011–1, 53.6071–1, 53.6091–1, 301.6211–1, 301.6212–1, 301.6213–1, 301.6861–1, 301.6863–1, 301.6863-2, 301.7422–1, and 301.7611–1 were also published in the Federal Register (59 FR 64359). No public hearing was requested or held. The IRS received two comments on the proposed regulations, only one of which offered substantive suggestions. The IRS and the Treasury Department have considered the public comments on the proposed regulations, and the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The regulations provide guidance with respect to sections 4955, 6852 and 7409. The sanctions in these sections apply to all organizations described in section 501(c)(3). Before sections 4955, 6852 and 7409 were enacted in 1987, revocation of recognition of exemption was the sole sanction available against political intervention by public charities. Section 4955 was modeled on the section 4945 excise tax on political expenditures (taxable expenditures) by private foundations, while sections 6852 and 7409 provide new sanctions against flagrant political expenditures and flagrant political intervention, respectively.

One comment on the proposed regulations requested that the regulations define in additional detail the term *political expenditure* and provide specific examples of activities that constitute intervention or participation in a political campaign for or against a candidate. Section 53.4955–1(c)(1) of the proposed regulations provides that any expenditure that would cause an organization that makes the expenditure to be classified as an action organization in accordance with §1.501(c)(3)–1(c)(3)(iii) is a political expenditure within the meaning of section 4955(d)(1). By referring to the long standing action organization regulations, §53.4955–1(c)(1) of the proposed regulations ties the definition of *political expenditure* in section 4955 to existing IRS and judicial interpretations of when an organization participates or intervenes in a political campaign on behalf of or in opposition to any candidate for public office in violation of the requirements of section 501(c)(3). The IRS and the Treasury Department believe this direct connection between section 4955 and section 501(c)(3) correctly implements the intent of Congress as expressed in the statute and the legislative history. To the extent that further guidance is needed on the interpretation of the terms political expenditure under section 4955 and intervening in political campaigns under section 501(c)(3), the IRS and the Treasury Department believe such guidance should be given in connection with the requirements for tax exemption under section 501(c)(3). Therefore, the final regulations have not revised §53.4955–1(c)(1).

Another comment suggested that the regulations specify whether there were circumstances under which conduct would result in the imposition of a tax under section 4955 but not in revocation of exemption under section 501(c)(3). According to the statutory language and the legislative history of section 4955, the addition of that section to the Internal Revenue Code did not affect the substantive standards for tax exemption under section 501(c)(3). To be exempt from income tax as an organization described in section 501(c)(3), an organization may not intervene in any political campaign on behalf of any candidate for public office. Consistent with this requirement, section 4955 does not permit a de minimis amount of political intervention. Therefore, the final regulations have not been revised. However, there may be individual cases where, based on the facts and circumstances such as the nature of the political intervention and the measures that have been taken by the organization to prevent a recurrence, the IRS may exercise its discretion to impose a tax under section 4955 but not to seek revocation of the organization's tax-exempt status.

One comment raised questions about the interpretation of section 4955(d)(2), which relates to organizations formed primarily to promote the candidacy of a

particular individual. The comment requested clarification of the standard for determining whether an organization ''is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office'' under section 4955(d)(2). The comment also requested clarification of the meaning of the phrase ''availed of'' in the section 4955(d)(2) reference to organizations availed of primarily to promote an individual's candidacy for public office. The comment further requested examples of expenses which have the primary effect of promoting public recognition or otherwise primarily accruing to the benefit of a candidate or a prospective candidate.

The legislative history of section 4955 provides that the determination of whether an organization's primary purpose is the promotion of the candidacy or prospective candidacy of an individual for public office is based on all relevant facts and circumstances. The proposed regulations follow the legislative history. The IRS and the Treasury Department believe that, if more detailed guidance is necessary, it would be more appropriate to provide it in a form that allows for the consideration of a fuller range of facts and circumstances. Therefore, the final regulations have not been revised.

The comment also asked whether section 4955(d)(2) adds anything to the range of activities that would already be deemed political expenditures under section 4955(d)(1). The plain language of the statute makes it clear that the expenditures described in section 4955(d)(2) are included within the general category of political expenditures that is described in section 4955(d)(1). Furthermore, the legislative history states that section 4955(d)(2) ''enumerates certain expenditures as political expenditures for purposes of the excise tax.... '' The IRS and the Treasury Department believe that organizations described in section 4955(d)-(2) are subject to the same restrictions on political expenditures as all other section 501(c)(3) organizations. Therefore, the final regulations have not been revised.

One comment concluded that §53.4955–1(b) of the proposed regulations, affecting organization managers under section 4955, imposed tax on a larger group of employees and officers than are subject to tax under chapter 42 because the section did not include language contained in §53.4946–1(f)-(1)(ii) and in §53.4946–1(f)(2). The IRS and the Treasury Department agree that the definition of foundation manager under section 4946(b) should be incorporated into the definition of organization manager when applying section 4955(f)(2). Therefore, we have clarified the final regulations to make them consistent with the interpretation in §53.4946–1(f)(1)(ii) and in §53.4946–1(f)(2) by adding a sentence at the end of §53.4955–1(b)(2)(ii)(B) and at the end of §53.4955–1(b)(2)(iii).

One comment noted that §53.4955–1(b)(7) of the proposed regulations provides that, in certain circumstances, if an organization manager relies on a reasoned legal opinion from legal counsel, the act of the organization manager will not be considered knowing or willful and will be considered due to reasonable cause for purposes of section 4955(a)(2). The commentator requested consideration of whether the same reasoned legal opinion would protect the organization from tax under section 4955(a)(1). Section 53.4955–1(b)(7) interprets whether an act is not willful and is due to reasonable cause for purposes of section 4955(a)(2). Unlike section 4955(a)(2), section 4955(a)(1) taxes an organization without regard to whether its act of making a political expenditure was willful or due to reasonable cause. Therefore, the final regulations have not been revised. A reasoned legal opinion from legal counsel received by the organization prior to making a political expenditure may be a factor that the IRS takes into account in determining what action to take in an individual case. Section 53.4955–1(d) and (e) of the final regulations are also relevant where an organization has corrected a political expenditure that was not willful and flagrant.

One comment requested that the regulations provide more detail on the type of behavior that would be considered flagrant under sections 6852 and 7409. Since a determination of when a specific act or acts by an organization is flagrant depends on the facts and circumstances in individual cases, the IRS and the Treasury Department believe that, to the extent guidance is necessary on this issue, it is better rendered in a form other than through regulations. Therefore, the final regulations do not expand on the definition of flagrant.

One comment suggested that §301.7409–1 of the proposed regulations should be modified to allow the IRS, where appropriate, to provide an organization with less than the 10 days notice required under the proposed regulations before the Commissioner would recommend that a petition for injunctive relief be filed. In light of the important considerations involved when contemplating an injunction of this sort, the IRS and the Treasury Department believe that an organization should be allowed a reasonable amount of time to respond before the IRS takes action. Therefore, the final regulations retain the 10 day notice period.

Special Analysis

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

* * * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In §1.6091–2, paragraph (g) is added to read as follows:

§1.6091–2 Place for filing income tax returns.

* * * * * *

(g) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assess-

ment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 53.4955–1 is added to Subpart K to read as follows:

§53.4955–1 Tax on political expenditures.

(a) *Relationship between section 4955 excise taxes and substantive standards for exemption under section 501(c)(3).* The excise taxes imposed by section 4955 do not affect the substantive standards for tax exemption under section 501(c)(3), under which an organization is described in section 501(c)(3) only if it does not participate or intervene in any political campaign on behalf of any candidate for public office.

(b) *Imposition of initial taxes on organization managers*—(1) *In general.* The excise tax under section 4955(a)(2) on the agreement of any organization manager to the making of a political expenditure by a section 501(c)(3) organization is imposed only in cases where—

(i) A tax is imposed by section 4955(a)(1);

(ii) The organization manager knows that the expenditure to which the manager agrees is a political expenditure; and

(iii) The agreement is willful and is not due to reasonable cause.

(2) *Type of organization managers covered*—(i) *In general.* The tax under section 4955(a)(2) is imposed only on those organization managers who are authorized to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization and on those organization managers who are members of a group (such as the organization's board of directors or trustees) which is so authorized.

(ii) *Officer.* For purposes of section 4955(f)(2)(A), a person is an officer of an organization if—

(A) That person is specifically so designated under the certificate of incorporation, bylaws, or other constitutive documents of the foundation; or

(B) That person regularly exercises general authority to make administrative or policy decisions on behalf of the organization. Independent contractors, acting in a capacity as attorneys, accountants, and investment managers and advisors, are not officers. With respect to any expenditure, any person described in this paragraph (b)(2)(ii)(B) who has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior, is not an officer.

(iii) *Employee.* For purposes of section 4955(f)(2)(B), an individual rendering services to an organization is an employee of the organization only if that individual is an employee within the meaning of section 3121(d)(2). With respect to any expenditure, an employee (other than an officer, director, or trustee of the organization) is described in section 4955(f)(2)(B) only if he or she has final authority or responsibility (either officially or effectively) with respect to such expenditure.

(3) *Type of agreement required.* An organization manager agrees to the making of a political expenditure if the manager manifests approval of the expenditure which is sufficient to constitute an exercise of the organization manager's authority to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization. The manifestation of approval need not be the final or decisive approval on behalf of the organization.

(4) *Knowing*—(i) *General rule.* For purposes of section 4955, an organization manager is considered to have agreed to an expenditure *knowing* that it is a political expenditure only if—

(A) The manager has actual knowledge of sufficient facts so that, based solely upon these facts, the expenditure would be a political expenditure;

(B) The manager is aware that such an expenditure under these circumstances may violate the provisions of federal tax law governing political expenditures; and

(C) The manager negligently fails to make reasonable attempts to ascertain whether the expenditure is a political expenditure, or the manager is aware that it is a political expenditure.

(ii) *Amplification of general rule.* For purposes of section 4955, knowing does not mean having reason to know. However, evidence tending to show that an organization manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of the fact or rule. Thus, for example, evidence tending to show that an organization manager has reason to know of sufficient facts so that, based solely upon those facts, an expenditure would be a political expenditure is relevant in determining whether the manager has actual knowledge of the facts.

(5) *Willful.* An organization manager's agreement to a political expenditure is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an agreement willful. However, an organization manager's agreement to a political expenditure is not willful if the manager does not know that it is a political expenditure.

(6) *Due to reasonable cause.* An organization manager's actions are due to reasonable cause if the manager has exercised his or her responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Advice of counsel.* An organization manager's agreement to an expenditure is ordinarily not considered knowing or willful and is ordinarily considered due to reasonable cause if the manager, after full disclosure of the factual situation to legal counsel (including house counsel), relies on the advice of counsel expressed in a reasoned written legal opinion that an expenditure is not a political expenditure under section 4955 (or that expenditures conforming to certain guidelines are not political expenditures). For this purpose, a written legal opinion is considered reasoned even if it reaches a conclusion which is subsequently determined to be incorrect, so long as the opinion addresses itself to the facts and applicable law. A written legal opinion is not considered reasoned if it does nothing more than recite the facts and express a conclusion. However, the absence of advice of counsel with respect to an expenditure does not, by itself, give rise to any inference that an organization manager agreed to the making of the expenditure knowingly, willfully, or without reasonable cause.

(8) *Cross reference.* For provisions relating to the burden of proof in cases

involving the issue of whether an organization manager has knowingly agreed to the making of a political expenditure, see section 7454(b).

(c) *Amplification of political expenditure definition*—(1) *General rule*. Any expenditure that would cause an organization that makes the expenditure to be classified as an action organization by reason of §1.501(c)(3)–1(c)(3)(iii) of this chapter is a political expenditure within the meaning of section 4955(d)(1).

(2) *Other political expenditures*—(i) For purposes of section 4955(d)(2), an organization is effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization. An organization is not effectively controlled by a candidate or a prospective candidate merely because it is affiliated with the candidate, or merely because the candidate knows the directors, officers, or employees of the organization. The effectively controlled test is not met merely because the organization carries on its research, study, or other educational activities with respect to subject matter or issues in which the individual is interested or with which the individual is associated.

(ii) For purposes of section 4955(d)-(2), a determination of whether the primary purpose of an organization is promoting the candidacy or prospective candidacy of an individual for public office is made on the basis of all the facts and circumstances. The factors to be considered include whether the surveys, studies, materials, etc. prepared by the organization are made available only to the candidate or are made available to the general public; and whether the organization pays for speeches and travel expenses for only one individual, or for speeches or travel expenses of several persons. The fact that a candidate or prospective candidate utilizes studies, papers, materials, etc., prepared by the organization (such as in a speech by the candidate) is not to be considered as a factor indicating that the organization has a purpose of promoting the candidacy or prospective candidacy of that individual where such studies, papers, materials, etc. are not made available only to that individual.

(iii) Expenditures for voter registration, voter turnout, or voter education constitute other expenses, treated as political expenditures by reason of section 4955(d)(2)(E), only if the expenditures violate the prohibition on political activity provided in section 501(c)(3).

(d) *Abatement, refund, or no assessment of initial tax*. No initial (first-tier) tax will be imposed under section 4955(a), or the initial tax will be abated or refunded, if the organization or an organization manager establishes to the satisfaction of the IRS that—

(1) The political expenditure was not willful and flagrant; and

(2) The political expenditure was corrected.

(e) *Correction*—(1) *Recovery of Expenditure*. For purposes of section 4955(f)(3) and this section, correction of a political expenditure is accomplished by recovering part or all of the expenditure to the extent recovery is possible, and, where full recovery cannot be accomplished, by any additional corrective action which the Commissioner may prescribe. The organization making the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.

(2) *Establishing safeguards*. Correction of a political expenditure must also involve the establishment of sufficient safeguards to prevent future political expenditures by the organization. The determination of whether safeguards are sufficient to prevent future political expenditures by the
organization is made by the District Director.

(f) *Effective date*. This section is effective December 5, 1995.

§53.4963–1 [Amended]

Par. 5. In §53.4963–1, paragraphs (a), (b), and (c) are amended by adding the reference ''4955,'' immediately after the reference ''4952,'' in each place it appears.

§53.6011–1 [Amended]

Par. 6. In §53.6011–1, paragraph (b) is amended as follows:

1. In the first sentence, the language ''or 4945(a),'' is removed and '', 4945(a) or 4955(a),'' is added in its place.

2. In the last sentence, the language ''or 4955(a)'' is added immediately following the language ''section 4945(a)''.

Par. 7. In §53.6071–1, paragraph (e) is added to read as follows:

§53.6071–1 Time for filing returns.

* * * * * *

(e) *Taxes related to political expenditures of organizations described in section 501(c)(3) of the Internal Revenue Code*. A Form 4720 required to be filed by §53.6011–1(b) for an organization liable for tax imposed by section 4955(a) must be filed by the unextended due date for filing its annual information return under section 6033 or, if the organization is exempt from filing, the date the organization would be required to file an annual information return if it was not exempt from filing. The Form 4720 of a person whose taxable year ends on a date other than that on which the taxable year of the organization described in section 501(c)(3) ends must be filed on or before the 15th day of the fifth month following the close of the person's taxable year.

Par. 8. In §53.6091–1, the section heading is revised and paragraph (d) is added to read as follows:

§53.6091–1 Place for filing chapter 42 tax returns.

* * * * * *

(d) *Returns of persons subject to a termination assessment*. Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom a chapter 42 tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

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

§301.6211–1 [Amended]

Par. 10. In §301.6211–1, the last sentence of paragraph (b) is amended by adding ''or 6852'' immediately after ''section 6851''.

§301.6212–1 [Amended]

Par. 11. In §301.6212–1, the second sentence of paragraph (c) is amended by adding ''termination assessments in section 6851 or 6852,'' immediately after ''section 6213(b)(1),''.

§301.6213–1 [Amended]

Par. 12. Section 301.6213–1 is amended as follows:

1. Paragraph (a)(2), first sentence, is amended by adding '', 6852,'' immediately after ''section 6851''.

2. Paragraph (e), first sentence, is amended by adding ''4955,'' immediately after ''4952,''.

Par. 13. Section 301.6852–1 is added to read as follows:

§301.6852–1 Termination assessments of tax in the case of flagrant political expenditures of section 501(c)(3) organizations.

(a) *Authority for making*. Any assessment under section 6852 as a result of a flagrant violation by a section 501(c)(3) organization of the prohibition against making political expenditures must be authorized by the District Director.

(b) *Determination of income tax*. An organization shall be subject to an assessment of income tax under section 6852 only if the flagrant violation of the prohibition against making political expenditures results in revocation of the organization's tax exemption under section 501(a) because it is not described in section 501(c)(3). An organization subject to such an assessment is not liable for income taxes for any period prior to the effective date of the revocation of the organization's tax exemption.

(c) *Payment*. Where a District Director has made a determination of income tax under paragraph (b) of this section or of section 4955 excise tax, notwithstanding any other provision of law, any tax will become immediately due and payable. The taxpayer is required to pay the amount of the assessment within 10 days after the District Director sends the notice and demand for immediate payment regardless of the filing of an administrative appeal or of a court petition. Regardless of filing an administrative appeal or of petitioning a court, enforced collection action may proceed after the 10-day payment period unless the taxpayer posts the bond described in section 6863. For purposes of collection procedures such as section 6331 (regarding levy), assessments under the authority of paragraph (a) of this section do not constitute situations in which the collection of such tax is in jeopardy and, therefore, do not suspend normal collection procedures.

(d) *Effective date*. This section is effective December 5, 1995.

§301.6861–1 [Amended]

Par. 14. In §301.6861–1, paragraph (g) is amended by:

1. Adding the language ''4955(a),'' immediately after ''4952(a),''.

2. Adding the language ''4955(b),'' immediately after ''4952(b),''.

§301.6863–1 [Amended]

Par. 15. Section 301.6863–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding the language '', or under section 6852 (referred to as a political assessment for purposes of this section)'' immediately after ''for purposes of this section)''.

2. Paragraphs (a)(3) first sentence, (a)(4) last sentence, and (b) first sentence are amended by adding the language ''or political assessment'' immediately after ''jeopardy assessment'' in each place it appears.

3. Paragraph (b) is amended by adding the language ''(or political assessment)'' immediately after ''jeopardy'' in the last sentence.

§301.6863–2 [Amended]

Par. 16. In §301.6863–2, paragraph (a) introductory text, the first sentence is amended by adding the language ''6852,'' immediately after ''section 6851,''.

Par. 17. Section 301.7409–1 is added under the undesignated centerheading ''Civil Actions by the United States'' to read as follows:

§301.7409–1 Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.

(a) *Letter to organization*. When the Assistant Commissioner (Employee Plans and Exempt Organizations) concludes that a section 501(c)(3) organization has engaged in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures, the Assistant Commissioner (Employee Plans and Exempt Organizations) shall send a letter to the organization providing it with the facts based on which the Service believes that the organization has been engaging in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures. The organization will have 10 calendar days after the letter is sent to respond by establishing that it will immediately cease engaging in political intervention, or by providing the Service with sufficient information to refute the Service's evidence that it has been engaged in flagrant political intervention. The Internal Revenue Service will not proceed to seek an injunction under section 7409 until after the close of this 10-day response period.

(b) *Determination by Commissioner*. If the organization does not respond within 10 calendar days to the letter under paragraph (a) of this section in a manner sufficient to dissuade the Assistant Commissioner (Employee Plans and Exempt Organizations) of the need for an injunction, the file will be forwarded to the Commissioner of Internal Revenue. The Commissioner of Internal Revenue will personally determine whether to forward to the Department of Justice a recommendation that it immediately bring an action to enjoin the organization from making further political expenditures. The Commissioner may also recommend that the court action include any other action that is appropriate in ensuring that the assets of the section 501(c)(3) organization are preserved for section 501(c)(3) purposes. The authority of the Commissioner to make the determinations described in this paragraph may not be delegated to any other persons.

(c) *Flagrant political intervention*. For purposes of this section, *flagrant political intervention* is defined as participation in, or intervention in (including the publication and distribution of statements), any political campaign by a section 501(c)(3) organization on behalf of (or in opposition to) any candidate for public office in violation of the prohibition on such participation or intervention in section 501(c)(3) and the regulations there-

under if the participation or intervention is flagrant.

(d) *Effective date*. This section is effective December 5, 1995.

§301.7422–1 [Amended]

Par. 18. In §301.7422–1, paragraphs (a) introductory text, (c) introductory text and (d) are amended by adding the language ''4955,'' immediately after ''4952,''.

§301.7611–1 [Amended]

Par. 19. In §301.7611–1, A–6, the first sentence is amended by adding the language ''or 6852,'' immediately after ''section 6851''.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved October 26, 1995.

Leslie Samuel,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 4, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 5, 1995, 60 F.R. 62209)

Chapter 43.—Qualified Pension, etc., Plans

Section 4972.—Tax On Nondeductible Contributions To Qualified Employer Plans

A procedure is provided whereby an employer and a trustee may request a closing agreement on the application of § 4972 of the Code to certain payments to a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 95–52, page 439.

Section 4975.—Tax On Prohibited Transactions

A procedure is provided whereby an employer and a trustee that receive an individual exemption from the prohibited transaction rules from the Department of Labor or meet the criteria of a class exemption from the prohibited transaction rules issued by the Department of Labor may request a closing agreement pertaining to payments to a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 95–52, page 439.

Section 4980.—Tax On Reversion Of Qualified Plan Assets To Employer

A procedure is provided whereby an employer and a trustee may request a closing agreement on the application of § 4980 of the Code to the return of certain payments from a defined contribution plan that has assets invested in certain products of a life insurance company in state insurer delinquency proceedings. See Rev. Proc. 95–52, page 439.

Subtitle F.—Procedure and Administration
Chapter 61.—Information and Returns
Subchapter A.—Returns and Records
Part II.—Tax Returns or Statements
Subpart A.—General Requirements

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

26 CFR 31.6011(a)–4: Returns of income tax withheld.

T.D. 8624

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 31 and 602

Reporting of Nonpayroll Withheld Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The temporary regulations remove the requirement that a person file Form 945, Annual Return of Withheld Federal Income Tax, for each calendar year, whether or not the person is required to withhold the taxes reported on Form 945 in a particular calendar year. The temporary regulations require that a person file Form 945 only for a calendar year in which the person is required to withhold taxes required to be reported on Form 945. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in *** [IA–30–95, page 479, this Bulletin].

EFFECTIVE DATE: These regulations are effective October 16, 1995.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1413. Responses to this collection of information are required to monitor compliance with the federal tax laws related to the reporting and deposit of nonpayroll withheld taxes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in *** [IA–30–95, page 479, this Bulletin].

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

On December 23, 1993, the IRS published final regulations (TD 8504 [1994–1 C.B. 276]) in the Federal Register (58 FR 68033) relating to both the reporting and depositing of Federal employment taxes. Those regulations simplify reporting requirements by removing all ''nonpayroll'' withheld taxes from reporting on Form 941, Employer's Quarterly Federal Tax Return (or Form 941E, Quarterly Return of Withheld Federal Income Tax and Medicare Tax) and requiring those taxes to be reported on Form 945. Those final regulations were effective December 23, 1993.

Section 31.6011(a)–4(b) of those regulations provides that every person