

## **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**

#### **T.D. 9528, page 38.**

Final regulations under section 41 of the Code implement changes to the credit for increasing research activities made by the Tax Relief and Health Care Act of 2006.

#### **REG-137128-08, page 43.**

Proposed regulations under section 6402 of the Code provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund.

#### **Announcement 2011-38, page 45.**

This document provides notice of a public hearing on proposed regulations (REG-118761-09, 2011-21 I.R.B. 803) providing guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group. A public hearing is scheduled for August 3, 2011.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2011-39, page 46.**

The IRS has revoked its determination that A Family Budget Counseling, Inc., of Huntington City, NY; A Free Helpline, Inc., of Aliso Viejo, CA; Assisting a Non-Profit Corporation of Sacramento, CA; Building Affordable Communities and Housing Foundation of Camden, NJ; Credit Counseling of California of Roseville, MN; DebtScape, Inc., of Linthicum, MD; Educational Assistance Foundation for Descendants of Hungarian Immigrants in the Performing Arts, Inc., of Aventura, FL; Eyes for the World Eunice K. Fiorito Foundation, Ltd., of Washington, DC; Korean Senior Citizens Mutual Club of Los Angeles, CA; Northeast Family Care Center of North Canton, OH; Pulmonary Protection of Ohio of Canton, OH;

Pulmonary Protection of Ohio of Findlay, OH; T Town, Inc., of Corona, CA; and Wellspring Renewal Center of Philo, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

### **EMPLOYMENT TAX**

#### **REG-137128-08, page 43.**

Proposed regulations under section 6402 of the Code provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund.

### **ADMINISTRATIVE**

#### **REG-137128-08, page 43.**

Proposed regulations under section 6402 of the Code provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund.

Announcements of Disbarments and Suspensions begin on page 47.  
Finding Lists begin on page ii.



# The IRS Mission

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

force the 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 compiled 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 procedures 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 Other Related Items, 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 last 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 last Bulletin of each semiannual period.

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

## Section 41.—Credit for Increasing Research Activities

26 CFR 1.41–6: Aggregation of expenditures.

T.D. 9528

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Alternative Simplified Credit Under Section 41(c)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the election and calculation of the alternative simplified credit under section 41(c)(5) of the Internal Revenue Code (Code). The final regulations affect certain taxpayers claiming the credit under section 41. These final regulations implement changes to the credit for increasing research activities under section 41 made by the Tax Relief and Health Care Act of 2006.

DATES: *Effective Date:* These regulations are effective on June 9, 2011.

*Applicability Date:* For dates of applicability, see §§1.41–6(j)(3), 1.41–8(b)(5), and 1.41–9(d).

FOR FURTHER INFORMATION CONTACT: David Selig (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

On June 17, 2008, the Treasury Department and the IRS published final and temporary regulations (T.D. 9401, 2008–27 I.R.B. 1) in the **Federal Register** (73 FR 34185) relating to the election and calculation of the alternative simplified credit (ASC) under section 41(c)(5).

The ASC was added by the Tax Relief and Health Care Act of 2006 (Public Law 109–432, 120 Stat. 2922, December 20, 2006). A notice of proposed rulemaking cross-referencing the temporary regulations was also published in the same issue of the **Federal Register** (73 FR 34237). Written and electronic comments responding to these regulations (collectively, the 2008 regulations) were received and a public hearing was held on the 2008 regulations on September 25, 2008. After consideration of the comments received and the statements made at the public hearing, the 2008 regulations are adopted as revised by this Treasury decision.

#### Summary of Comments and Explanation of Changes

The 2008 regulations were issued primarily to provide guidance on the election and calculation of the ASC. Section 1.41–9T(b) of the 2008 regulations provide that an election to make or revoke the provisions of the ASC under section 41(c)(5) must be made on a timely filed (including extensions) original return for the taxable year and may not be made on an amended return. Before the issuance of the 2008 regulations, identical election procedures existed for the alternative incremental research credit (AIRC) under §1.41–8. The 2008 regulations extended these election procedures to the ASC under §1.41–9T. The 2008 regulations also provided that extensions of time to make or revoke the election for both the AIRC and the ASC will not be granted under §301.9100–3. In the case of the AIRC, the 2008 regulations are of limited duration as section 41(h)(2) provides that no election under section 41(c)(4) shall apply to taxable years beginning after December 31, 2008.

Commenters stated that these provisions of the 2008 regulations are restrictive and asked that they be excluded from the final regulations.

The Treasury Department and the IRS believe that both tax administration and fairness are best served by adopting the same election procedures for the ASC that are used for the AIRC under §1.41–8. A

taxpayer may make or revoke an election each taxable year by obtaining the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to make or revoke an election if the taxpayer completes the portion of Form 6765, “*Credit for Increasing Research Activities*,” (or successor form) relating to the credit determined under section 41(a)(1), the AIRC, or the ASC, as appropriate, and attaches the completed form to the taxpayer’s timely filed (including extensions) original return for the year to which it applies. As is the case with a revocation of an AIRC election under §1.41–8, an ASC election under section 41(c)(5) may not be made or revoked on an amended return. Consistent with this position, the final regulations also provide that an extension of time to make or revoke an election under sections 41(c)(4) and 41(c)(5) will not be granted under §301.9100–3.

One commenter suggested changing the ASC short taxable year rules in the 2008 regulations to prorate short years by the number of days in the year instead of the number of months in the year. The Treasury Department and the IRS agree that calculating the ASC for short taxable years on a daily rather than a monthly basis provides a more accurate calculation and removes uncertainty as to whether and how to include a partial month in making the monthly calculation. Accordingly, the final regulations generally require that short taxable years be prorated by the number of days in the year instead of the number of months in the year for taxable years ending after June 9, 2011. Recognizing that some taxpayers may have already filed returns using a monthly calculation for a short taxable year, the final regulations also provide that returns filed for taxable years ending within a specified time period may, at the taxpayer’s option, be amended to reflect the daily calculation.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment

is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities may make an election under these regulations, any economic impact is minimal. This certification is based upon the fact that the information required by these regulations is already required to be maintained under the statute and current regulations. These regulations add little or no new burden to the existing requirements. Additionally, an election under these regulations generally will simplify the calculation of the credit and may result in a benefit to the taxpayer. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing §1.41–0T to read in part as follows:

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

Section 1.41–8 also issued under 26 U.S.C. 41(c)(4)(B).

Section 1.41–9 also issued under 26 U.S.C. 41(c)(5)(C). \* \* \*

Par. 2. Section 1.41–0 is amended as follows:

1. In §1.41–6, the entries for paragraphs (j) and (j)(3) are revised.
2. In §1.41–8, the section title is revised and entries for paragraphs (b)(4)(i) and (b)(4)(ii) are added.
3. Adding entries for §1.41–9.

The revisions and additions read as follows:

#### §1.41–0 Table of contents.

\* \* \* \* \*

#### §1.41–6 Aggregation of expenditures.

\* \* \* \* \*

- (j) Effective/applicability dates.

\* \* \*

- (3) Taxable years ending after June 9, 2011.

\* \* \* \* \*

#### §1.41–8 Alternative incremental credit applicable for taxable years beginning on or before December 31, 2008.

\* \* \* \* \*

- (b) \* \* \*

- (4) \* \* \*

- (i) In general.

- (ii) Designated member.

\* \* \* \* \*

#### §1.41–9 Alternative simplified credit.

- (a) Determination of credit.

- (b) Election.

- (1) In general.

- (2) Time and manner of election.

- (3) Revocation.

- (4) Special rules for controlled groups.

- (i) In general.

- (ii) Designated member.

- (c) Special rules.

- (1) Qualified research expenditures (QREs) required in all years.

- (2) Section 41(c)(6) applicability.

- (3) Short taxable years

- (i) General rule.

- (ii) Limited exception.

- (4) Controlled groups.

- (d) Effective/applicability dates.

#### §1.41–0T [Removed]

Par. 3. Section 1.41–0T is removed.

Par. 4. Section 1.41–6 is amended as follows:

1. Paragraphs (b)(1), (c)(2), (e), (j)(3), and paragraph heading (j) are revised.

2. Adding new *Example 7* to paragraph (e).

The revisions and addition read as follows:

#### §1.41–6 Aggregation of expenditures.

\* \* \* \* \*

(b) *Computation of the group credit*—(1) *In general*. All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation: the method described in section 41(a)(1), the alternative incremental credit (AIRC) method described in section 41(c)(4) (available for years beginning on or before December 31, 2008), or the alternative simplified credit (ASC) method described in section 41(c)(5), in computing the group credit for a credit year.

\* \* \* \* \*

- (c) \* \* \*

(2) *Stand-alone entity credit*. The term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 41(f)(1) did not apply, except that the member must apply the rules provided in §1.41–6(d)(1) (relating to consolidated groups) and §1.41–6(i) (relating to intra-group transactions). Each member's stand-alone entity credit for any credit year must be computed under whichever available method (the method described in section 41(a)(1), the method described in section 41(c)(4), or the method described in section 41(c)(5)) results in the greatest stand-alone entity credit for that member, without regard to the method used to compute the group credit.

\* \* \* \* \*

(e) *Examples*. The following examples illustrate the provisions of this section. Unless otherwise stated, no members of a controlled group are members of a consolidated group, no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium, and the group has not made

an AIRC election (except as provided in *Example 6*) or an ASC election (except as provided in *Example 7*).

\* \* \* \* \*

*Example 7. Group alternative simplified credit.* The following example illustrates a group computation in a year for which the ASC method under section 41(c)(5) is in effect. No members of the controlled

group are members of a consolidated group and no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium.

(i) *Facts.* Q, R, and S, all of which are calendar-year taxpayers, are members of a controlled group. The research credit under section 41(a)(1) is not allowable to the group for the 2011 taxable year (the credit year) because the group's aggregate QREs for

the credit year are less than the group's base amount. The group does not use the AIRC method of section 41(c)(4) because it is unavailable for taxable years beginning after December 31, 2008. The group credit is computed using the ASC rules of section 41(c)(5). Assume that each member of the group had QREs in each of the three years preceding the credit year. For purposes of computing the group credit for the credit year, Q, R, and S had the following:

	Q	R	S	Group Aggregate
Credit Year QREs	\$0x	\$20x	\$30x	\$50x
Average QREs for 3 Years Preceding the Credit Year	\$10x	\$20x	\$10x	\$40x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if Q, R, and S are one taxpayer. The group credit is equal to 14 percent of so much of the QREs for the credit year as exceeds 50 percent of the average QREs for the three taxable years preceding the credit year. The group credit is  $0.14 \times (\$50x - (0.5 \times \$40x))$ , which equals \$4.2x.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity

credit for each member of the group must be computed using the method that results in the greatest stand-alone entity credit for that member. The stand-alone entity credit for Q is zero under the regular or ASC methods. Assume that the stand-alone entity credit for each of R (\$1.4x) and S (\$3.5x) is greatest using the ASC method. Therefore, the stand-alone entity credits for each of R and S must be computed using the ASC method. The sum of the stand-alone entity credits of the members of the group is \$4.9x.

Because the group credit of \$4.2x is less than the sum of the stand-alone entity credits of all the members of the group (\$4.9x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The \$4.2x group credit is allocated as follows:

	Q	R	S	Total
Stand-Alone Entity Credit	\$0x	\$1.4x	\$3.5x	\$4.9x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.9	1.4/4.9	3.5/4.9	
Multiplied by: Group Credit	\$4.2x	\$4.2x	\$4.2x	
Equals: Credit Allocated to Member	\$0x	\$1.2x	\$3x	\$4.2x

\* \* \* \* \*

(j) *Effective/applicability dates.* \* \* \*

\* \* \* \* \*

(3) *Taxable years ending after June 9, 2011.* Paragraphs (b)(1), (c)(2), and (e) of this section are applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see §§1.41-6T and 1.41-6 as contained in 26 CFR part 1, revised April 1, 2011.

**§1.41-6T [Removed]**

Par. 5. Section 1.41-6T is removed.

Par. 6. In §1.41-8, the section heading and paragraphs (b)(2), (b)(3), (b)(4)(ii), and (b)(5) are revised to read as follows:

*§1.41-8 Alternative incremental credit applicable for taxable years beginning on or before December 31, 2008.*

\* \* \* \* \*

(b) \* \* \*

(2) *Time and manner of election.* An election under section 41(c)(4) is made

by completing the portion of Form 6765, "Credit for Increasing Research Activities," (or successor form) relating to the election of the AIRC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(4) may not be made on an amended return. An extension of time to make an election under section 41(c)(4) will not be granted under §301.9100-3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(4) if the taxpayer completes the portion of Form 6765, "Credit For Increasing Research Activities," (or successor form) relating to the amount determined under section 41(a)(1) (the regular credit) or the alternative simplified credit (ASC) and attaches the completed form to the taxpayer's timely filed (including

extensions) original return for the year to which the revocation applies. An election under section 41(c)(4) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(4) will not be granted under §301.9100-3 of this chapter.

(4) \* \* \*

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under §1.41-6(c) based on the amount of credit reported on the taxpayer's timely filed (including extensions) original Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC method of section 41(c)(4) (available for years beginning on or before December 31, 2008), or the ASC method of section 41(c)(5)) and at least two members of the group

qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2008 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the AIRC method is \$15x. Under the AIRC method, B would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the AIRC method. For the credit year, the group credit using the ASC method is \$10x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the AIRC method and B is allocated the greatest amount of credit under that method, B is the designated member. Therefore, if B makes a section 41(c)(4) election on its original timely filed return for the credit year, that election is binding on all members of the group for the credit year.

(5) *Effective/applicability dates.* This section is applicable for taxable years ending after June 9, 2011. For taxable years ending on or before June 9, 2011, see §§1.41–8 and 1.41–8T, as contained in 26 CFR part 1, revised April 1, 2011.

#### §1.41–8T [Removed]

Par. 7. Section 1.41–8T is removed.

Par. 8. Section 1.41–9 is added to read as follows:

#### §1.41–9 *Alternative simplified credit.*

(a) *Determination of credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(5).

(b) *Election—(1) In general.* A taxpayer may elect to apply the provisions of the alternative simplified credit (ASC) in section 41(c)(5) for any taxable year of the taxpayer ending after December 31, 2006. If a taxpayer makes an election under section 41(c)(5), the election applies to the

taxable year for which made and all subsequent taxable years unless revoked in the manner prescribed in paragraph (b)(3) of this section.

(2) *Time and manner of election.* An election under section 41(c)(5) is made by completing the portion of Form 6765, “*Credit for Increasing Research Activities*,” (or successor form) relating to the election of the ASC, and attaching the completed form to the taxpayer’s timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(5) may not be made on an amended return. An extension of time to make an election under section 41(c)(5) will not be granted under §301.9100–3 of this chapter.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(5) if the taxpayer completes the portion of Form 6765 (or successor form) relating to the credit determined under section 41(a)(1) (the regular credit) or the alternative incremental credit (AIRC) and attaches the completed form to the taxpayer’s timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(5) may not be revoked on an amended return. An extension of time to revoke an election under section 41(c)(5) will not be granted under §301.9100–3 of this chapter.

(4) *Special rules for controlled groups—(i) In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraphs (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4), for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under §1.41–6(c) based on the amount of credit reported on the taxpayer’s timely filed (including extensions) original Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (the method described in section 41(a)(1), the AIRC method of section 41(c)(4), or the ASC method of section 41(c)(5)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greatest group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2011 taxable year (the credit year), the group credit using the method described in section 41(a)(1) is \$10x. Under this method, A would be allocated \$5x of the group credit, which would be the largest share of the group credit under this method. For the credit year, the group credit using the ASC method is \$15x. Under the ASC method, C would be allocated \$5x of the group credit, which is the largest share of the group credit computed using the ASC method. Because the group credit is greatest using the ASC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, if C makes a section 41(c)(5) election on its timely filed (including extensions) original return for the credit year, that election is binding on all members of the group for the credit year.

(c) *Special rules—(1) Qualified research expenses (QREs) required in all years.* Unless a taxpayer has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the credit equals that percentage of the QREs for the taxable year provided by section 41(c)(5)(B)(ii).

(2) *Section 41(c)(6) applicability.* QREs for the three taxable years preceding the credit year must be determined on a basis consistent with the definition of QREs for the credit year, without regard to the law in effect for the three taxable years

preceding the credit year. This consistency requirement applies even if the period for filing a claim for credit or refund has expired for any of the three taxable years preceding the credit year.

(3) *Short taxable years*—(i) *General rule*. If one or more of the three taxable years preceding the credit year is a short taxable year, then the QREs for such year are deemed to be equal to the QREs actually paid or incurred in that year multiplied by 365 and divided by the number of days in that year. If a credit year is a short taxable year, then the average QREs for the three taxable years preceding the credit year are modified by multiplying that amount by the number of days in the short taxable year and dividing the result by 365.

(ii) *Limited exception*. Returns filed for taxable years ending af-

ter December 31, 2006, and before June 9, 2011, and for which the period of limitations has not expired, may be amended to apply the daily calculation for short taxable years provided in paragraph (3)(i) of this section in lieu of the monthly calculation for short taxable years provided in §1.41-9T(c)(4).

(4) *Controlled groups*. For purposes of computing the group credit under §1.41-6, a controlled group must apply the rules of this paragraph (c) on an aggregate basis. For example, if the controlled group has QREs in each of the three taxable years preceding the taxable year for which the credit is being determined, the controlled group applies the credit computation provided by section 41(c)(5)(A) rather than section 41(c)(5)(B)(ii).

(d) *Effective/applicability dates*. This section is applicable for taxable years end-

ing after June 9, 2011. For taxable years ending on or before June 9, 2011, see §1.41-9T as contained in 26 CFR part 1, revised April 1, 2011.

**§1.41-9T [Removed]**

Par. 9. Section 1.41-9T is removed.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved June 2, 2011.

Emily McMahon,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on June 9, 2011, 8:45 a.m., and published in the issue of the Federal Register for June 10, 2011, 76 F.R. 33994)

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Claims for Credit or Refund

#### REG-137128-08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations for filing a claim for credit or refund. The regulations provide guidance to taxpayers generally as to the proper place to file a claim for credit or refund. The regulations are updated to reflect changes made by the enactment of the Tax Reform Act of 1976, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000. The regulations further are updated to reflect that the IRS may prescribe additional claim forms.

DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-137128-08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-137128-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-137128-08).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments or request for a hearing, [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov), (202) 622-7180 (not a toll-free number); concerning the proposed regulations, Micah A. Levy, (202) 622-3630 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background

This document contains proposed amendments to 26 CFR part 301 under section 6402 of the Internal Revenue Code (Code). Section 6402 of the Code authorizes the Secretary to make credits or refunds. Section 6511 provides the limitations period within which a taxpayer must file a claim for credit or refund and restricts the ability of the Secretary to issue a credit or refund unless the claim is filed by the taxpayer within that period. Section 7422 prohibits the maintenance of a suit for refund until a claim has been duly filed with the Secretary. Currently, §301.6402-2(a)(2) provides generally that a claim for credit or refund needs to be filed with the service center serving the internal revenue district in which the tax was paid. The proposed regulations clarify that, unless otherwise directed, the proper place to file a claim for credit or refund is with the service center at which the taxpayer currently would be required to file a tax return for the type of tax to which the claim relates, irrespective of where the tax was paid or was required to have been paid.

This document also removes outdated portions of §§301.6402-2 and 301.6402-3 and revises the reference in §301.6402-4 to the Joint Committee on Taxation threshold referral amount under section 6405.

### Explanation of Provisions

#### I. *The Proper Place to File a Claim for Credit or Refund*

If a taxpayer is required to file a claim for credit or refund on a particular form, then the claim must be filed in a manner consistent with that form and the related instructions. For example, to correct an amount reported on a Form 1040, “*U.S. Individual Income Tax Return*,” Treasury regulation §301.6402-3(a)(2) requires that the taxpayer file the claim on a Form 1040X, “*Amended U.S. Individual Income Tax Return*.” Accordingly, a claim for refund of an overpayment of individual income taxes would need to be filed on a Form 1040X at the location specified in the instructions provided for the form. If

filing instructions are not otherwise provided, a claim for credit or refund must be filed with the service center at which the taxpayer would be required to file a current tax return for the type of tax to which the claim relates. Section 301.6402-2(a)(2) is revised to clarify that claims should not be filed at a different location based upon where the tax either was paid or was required to have been paid. Nor would it be relevant if the tax was properly paid at a different location in a prior year because the taxpayer had a change in residence.

#### II. *The Proper Form for Filing a Claim for Credit or Refund*

The IRS has prescribed various forms that must be used to file a claim for credit or refund for a particular tax. For example, as explained in this preamble, an individual taxpayer must use a Form 1040X to file a claim for refund of income tax. The proposed regulations would revise §301.6402-2(c) to provide that taxpayers must use the form prescribed for filing a particular claim for credit or refund. When there is no alternative form prescribed, a claim for credit or refund is to be filed on a Form 843, “*Claim for Refund and Request for Abatement*.”

#### III. *Claims for Employment Taxes*

On July 1, 2008, final regulations (T.D. 9405, 2008-32 I.R.B. 293) relating to employment tax adjustments and employment tax refund claims were published in the **Federal Register** (73 FR 37371). Those final regulations modify the process for making claims for refund of overpayments of employment taxes under section 6402. To file a claim to correct errors discovered on or after January 1, 2009, an employer now uses the form that corresponds to the return being corrected. The new forms correspond with Form 941, “*Employer's QUARTERLY Federal Tax Return*”; Form 943, “*Employer's Annual Federal Tax Return for Agricultural Employees*”; Form 944, “*Employer's ANNUAL Federal Tax Return*”; Form 945, “*Annual Return of Withheld Federal Income Tax*”; and Form CT-1, “*Employer's Annual Railroad Retirement Tax Return*.” For example,

Form 941-X, “Adjusted Employer’s QUARTERLY Federal Tax Return or Claim for Refund,” is used by employers instead of Form 843, “Claim for Refund and Request for Abatement.” The new “X” forms are used to claim refunds, make adjustments, and request abatements of employment taxes. In addition, §301.6402-2(d) is revised to provide that when filing a claim for employment taxes, a separate claim must be made for each taxable period. For example, if an employer overpaid social security taxes on Forms 941 filed for the third and fourth quarters in 2009, then the employer must file a separate Form 941-X for each quarter.

#### IV. Internal Revenue Districts

The proposed regulations make technical revisions that remove the reference to “internal revenue districts” in §301.6402-2(a)(2), because such reference has been made obsolete by the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685. The technical revisions also remove the references to a district director or director of the regional service center in §§301.6402-3 and 301.6402-4, as those positions no longer exist within the IRS.

#### V. Outdated Provisions

Treasury Decision 6950, 1968-1 C.B. 528 (33 FR 5354) (Aug. 4, 1968), revised paragraph (a)(2) of §301.6402-2 to distinguish between claims filed before and claims filed on or after April 15, 1968. Those revisions provided that claims filed before April 15, 1968 must be filed in the office of the internal revenue officer to whom the tax was paid. For claims filed on or after April 15, 1968, claims were directed to be filed with the service center serving the internal revenue district in which the tax was paid.

Treasury Decision 7410, 1976-1 C.B. 384 (41 FR 11019) (Mar. 16, 1976), revised paragraph (c) of §301.6402-2 to distinguish between claims filed before and claims filed on or after July 1, 1976. Those revisions provided that, except for claims for the refund of overpayments of income taxes filed on or after July 1, 1976, all refund claims for taxes, interest, penalties, and additions to tax needed to be

filed on Form 843, “Claim for Refund and Request for Abatement.” Treasury Decision 7410 also revised paragraphs (a) and (b) of §301.6402-3 to prescribe different form requirements for claims for the refund of overpayments of income taxes depending on whether the claim was filed before July 1, 1976, or would be filed on or after July 1, 1976.

The regulations are revised to remove the outdated guidance regarding the varying requirements based on these dates.

#### VI. Section 6405

Section 6405 requires the advance referral of a report to the Joint Committee on Taxation regarding specified types of refunds or credits in excess of a threshold amount (currently \$2,000,000). Section 1907(a)(1) of the Tax Reform Act of 1976, Public Law 94-455, 90 Stat. 1520, 1835, amended section 6405 to reference the “Joint Committee on Taxation,” instead of the “Joint Committee on Internal Revenue Taxation.” The proposed regulations would update the reference to the “Joint Committee on Internal Revenue Taxation” in §301.6402-4 with a reference to the “Joint Committee on Taxation.” Section 305(a) of the Community Renewal Tax Relief Act of 2000, Public Law 106-554, 114 Stat. 2763, 2763A-634, section 11834(a) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388, 1388-560, and section 1210(a) of the Tax Reform Act of 1976, 90 Stat. 1520, 1522, revised the threshold referral amount in section 6405 by replacing \$100,000 with \$2,000,000. To avoid the need to revise this regulation again to reflect any future change in the threshold amount, the parenthetical reference to the specific amount required for the section 6405 threshold referral is removed.

#### Proposed Effective Date

These rules, when they are promulgated as final regulations, will apply to claims for credit or refund filed on or after the date that the final regulations are published in the **Federal Register**. The rules in these proposed regulations may be relied upon by taxpayers making claims for credit or refund before publication of the Treasury decision.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 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 the regulations, and, therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of the proposed regulations is Micah A. Levy, Office of the Associate Chief Counsel (Procedure & Administration).

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#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

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

Par. 2. Section 301.6402-2 is amended by revising paragraphs (a)(2), (b)(2), (c), and (d) and adding paragraph (g) to read as follows:

*§301.6402-2. Claims for credit or refund.*

(a) \*\*\*

(2) Except as provided in paragraph (b) of §301.6091-1 (relating to hand-carried documents), the claim, together with appropriate supporting evidence, generally must be filed with the service center at which the taxpayer currently would be required to file a tax return for the type of tax to which the claim relates. Notwithstanding the preceding sentence, if a taxpayer is required to file a claim for credit or refund on a particular form, then the claim must be filed in a manner consistent with such form and form instructions. If a taxpayer is filing a claim in response to an IRS notice or correspondence, then the claim must be filed in accordance with the specific instructions contained in the notice or correspondence regarding the proper address for filing. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing, and section 7503 for the time for filing a claim when the last day falls on Saturday, Sunday, or a legal holiday.

(b) \*\*\*

(2) The IRS does not have the authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* Unless the IRS otherwise has prescribed a particular form on which the claim must be filed, in which case the claim shall be made on such other form, all claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 843, “*Claim for Refund and Request for Abatement.*” For special rules applicable to income taxes, see §301.6402-3. For provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.

(d) *Separate claims for separate taxable periods.* In the case of income and gift taxes, income tax withheld, taxes under the Federal Insurance Contributions Act, taxes under the Railroad Retirement Tax Act, and taxes under the Federal Unemployment Tax Act, a separate claim shall

be made for each return for each taxable period.

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(g) *Effective/Applicability date.* This section is applicable on the date that the final regulations are published in the **Federal Register**.

Par. 3. Section 301.6402-3 is amended by revising paragraph (a), introductory text, removing paragraph (b), redesignating paragraphs (c), (d), (e) and (f), as (b), (c), (d) and (e), respectively, and revising paragraphs (b) and (e) to read as follows:

*§301.6402-3. Special rules applicable to income tax.*

(a) In the case of a claim for credit or refund of income tax—

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(b) The filing of a properly executed income tax return shall, in any case in which the taxpayer is not required to show the tax on the form (see section 6014 and the regulations), be treated as a claim for refund and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the computation of the tax made by the Secretary on the basis of the return. Whether such claim is timely filed within the limitations period prescribed by section 6511 will be governed by the date on which the return is considered filed, except that if the requirements of §301.7502-1 (relating to timely mailing treated as timely filing) are met, the claim shall be considered to have been filed on the date of the postmark stamped on the cover in which the return was mailed.

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(e) *Effective/Applicability date.* This section is applicable on the date that the final regulations are published in the **Federal Register**, except that references in paragraph (d) of this section to Form 8805 or other statements required under §1.1446-3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

Par. 4. Section 301.6402-4 is revised to read as follows:

*§301.6402-4. Payments in excess of amounts shown on return.*

In certain cases, a taxpayer’s payments in respect of a tax liability, made before the filing of the return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of income tax if the estimated tax payments or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or if the installment payments based on a corporation’s estimate of its tax liability on an application for an extension of time to file its return exceeds the tax liability shown on the return subsequently filed. In any case in which the Secretary determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the Secretary may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. The provisions of §§301.6402-2 and 301.6402-3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in §301.6402-3) to protect themselves in the event the Secretary fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds in excess of the statutorily prescribed threshold referral amount to the Joint Committee on Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely filed return.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 9, 2011, 8:45 p.m., and published in the issue of the Federal Register for June 10, 2011, 76 F.R. 34017)

**Controlled Groups; Deferral of Losses; Hearings**

**Announcement 2011-38**

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of public hearing on a notice of proposed rulemaking (REG-118761-09, 2011-21 I.R.B. 803) providing guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group.

**DATES:** The public hearing is being held on Wednesday, August 3, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Thursday, July 21, 2011.

**ADDRESSES:** The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Send submissions to: CC:PA:LPD:PR (REG-118761-09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-118761-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Bruce A. Decker at (202) 622-7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-118761-09) that was published in the **Federal Register** on Thursday, April 21, 2011 (76 FR 22336).

Persons, who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Thursday, July 21, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11<sup>th</sup> and Pennsylvania Avenue NW entrance, 1111 Constitution Avenue, NW, Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,  
*Chief, Publications and  
Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).*

(Filed by the Office of the Federal Register on May 31, 2010, 8:45 p.m., and published in the issue of the Federal Register for June 1, 2011, 76 F.R. 31543)

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## **Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code**

### **Announcement 2011-39**

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had

knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin July 11, 2011, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

A Family Budget Counseling, Inc.  
Huntington City, NY  
A Free Helpline, Inc.  
Aliso Viejo, CA  
Assisting a Non-Profit Corporation  
Sacramento, CA  
Building Affordable Communities and  
Housing Foundation  
Camden, NJ  
Credit Counseling of California  
Roseville, MN  
DebtScape, Inc.  
Linthicum, MD  
Educational Assistance Foundation for  
Descendants of Hungarian Immigrants  
in the Performing Arts, Inc.  
Aventura, FL  
Eyes for the World Eunice K. Fiorito  
Foundation, Ltd.  
Washington, DC  
Korean Senior Citizens Mutual Club  
Los Angeles, CA  
Northeast Family Care Center  
North Canton, OH  
Pulmonary Protection of Ohio  
Canton, OH  
Pulmonary Protection of Ohio  
Findlay, OH  
T Town, Inc.  
Corona, CA  
Wellspring Renewal Center  
Philo, CA

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# Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

## Announcement 2011-41

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

**Censured in practice before the IRS**—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

**Disqualification of appraiser**—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement

plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

**Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing**—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

**Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision**—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR

accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

**Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding**—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.* §10.51) refer to the regulations.

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Alabama</b>				
Pelham	Poff Jr., Richard G.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from March 22, 2011
<b>Arizona</b>				
Mesa	Allen, Steven W.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 18 U.S.C. §371, conspiracy to defraud the United States)	Indefinite from February 7, 2011
<b>California</b>				
Newport Beach	Agajanian, Roger J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 8, 2011
Los Angeles	Burkenroad, David	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from February 17, 2011
Calabasas	Geyer, Mark M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 22, 2011
San Francisco	Martin, Craig K.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011
<b>Colorado</b>				
	Riebesell, Harold F., See Nevada			
<b>Florida</b>				
Ft. Lauderdale	Legel, Lawrence	CPA	Suspended by decision on appeal for violations of §10.51 (conviction under 26 U.S.C. §7203, aiding and abetting in the failure to pay income tax)	January 13, 2009 — January 13, 2012
Boca Raton	Rizzo, Vincent D.	Enrolled Agent		Reinstated to practice before the IRS, March 7, 2011

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Idaho</b>				
Pocatello	Adamson, Dannis M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7202, willful failure to pay over taxes)	Indefinite from January 11, 2011
<b>Illinois</b>				
Lansing	Clausing, Robert J.	Enrolled Agent		Reinstated to practice before the IRS, March 9, 2011
<b>Iowa</b>				
Iowa City	Fields, Jeffrey	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from March 22, 2011
<b>Kentucky</b>				
Harrodsburg	Pope, Lisa A.	Enrolled Agent	Suspended by consent for admitted violation of §10.51 (failure to file or timely file Federal individual income tax returns for tax years 2006-2008, and failure to timely file and pay taxes due on employer's quarterly Federal tax returns for 11 quarters 2005-2007)	Indefinite from March 25, 2011, but at least 18 months
<b>Maryland</b>				
Baltimore	Hunt, Mark E.	Attorney	Suspended by decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7213, unauthorized disclosure of returns and return information)	Indefinite from April 11, 2011
<b>Massachusetts</b>				
Taunton	Martin, Craig J.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
Tewksbury	Paczkowski, Raymond J.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011
<b>Michigan</b>				
Traverse City	Tuttle, Wallace H.	Attorney	Disbarred by ALJ on summary judgment motion for violation of §10.51 (willful failure to file Federal individual income tax returns for 2007 and 2008)	At least 5 years from April 9, 2011
<b>Minnesota</b>				
Minneapolis	Biber, Aaron F.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011
<b>Nevada</b>				
Reno	Riebesell, Harold F.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license in Colorado)	Indefinite from March 4, 2011
<b>New Jersey</b>				
South Orange	Hersh, Bruce D.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011
<b>New York</b>				
Bronx	Daniel, Cleavan	Enrolled Agent	Censured by consent for admitted violation of §10.22(a) (failure to exercise due diligence in the preparation of client tax returns filed with the Internal Revenue Service)	July 2, 2009
Williamsville	Rickard II, Michael W.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from March 4, 2011

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Ohio</b>				
Lewis Center	Salisbury, Kirk G.	CPA	Disbarred by decision on appeal in proceeding under §10.60 for violation of §10.51 (failure to file Federal individual income tax returns for tax years 2004-2007, failure to timely file Federal individual income tax returns for tax years 2002 and 2003, and failure to timely pay Federal individual income tax return liabilities for tax years 2002 and 2003)	At least 5 years from February 2, 2010
<b>Oregon</b>				
Beaverton	Burroughs, Gary S.	CPA	Suspended by consent for admitted violation of §10.22 (failure to exercise due diligence in the determination of the validity of credits and deductions under §44 of the Internal Revenue Code)	Indefinite from December 31, 2010
<b>Pennsylvania</b>				
Royersford	Kozelsky, Joseph G.	CPA	Disbarred by decision on appeal for violations of §10.51 (failure to timely file Federal individual income tax returns for tax years 2001-2007)	At least 5 years from December 17, 2010
<b>Tennessee</b>				
Knoxville	Lockett, William S.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 26 U.S.C. §7203, willful failure to file a Federal income tax return)	Indefinite from January 11, 2011
<b>Texas</b>				
Houston	Aneji, Patrick E.	CPA		Reinstated to practice before the IRS, February 17, 2011

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
Dallas	Larue, Lauren C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from January 11, 2011
The Woodlands	Petrillo, Donald J.	Attorney	Disbarred by decision on appeal for violations of §10.51 (willful failure to file, or timely file, Federal individual tax returns for 2004-2007)	At least 5 years from April 22, 2011

# 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 applies 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 laws 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 a 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 Contributions 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.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

Bulletins 2011–27 through 2011–28

### **Announcements:**

2011-37, 2011-27 I.R.B. 37

2011-38, 2011-28 I.R.B. 45

2011-39, 2011-28 I.R.B. 46

2011-41, 2011-28 I.R.B. 47

### **Notices:**

2011-47, 2011-27 I.R.B. 34

2011-50, 2011-27 I.R.B. 35

2011-51, 2011-27 I.R.B. 36

### **Proposed Regulations:**

REG-137128-08, 2011-28 I.R.B. 43

### **Revenue Rulings:**

2011-14, 2011-27 I.R.B. 31

### **Treasury Decisions:**

9527, 2011-27 I.R.B. 1

9528, 2011-28 I.R.B. 38

---

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletins 2011–27 through 2011–28

### **Proposed Regulations:**

#### **REG-118761-09**

Hearing scheduled by

Ann. 2011-38, 2011-28 I.R.B. 45

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–1 through 2011–26 is in Internal Revenue Bulletin 2011–26, dated June 27, 2011.







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