Internal Revenue
bulletin

Bulletin No. 2006-15
April 10, 2006

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2006–14, page 740.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through June 2006. This ruling provides the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through June 2006.

Rev. Rul. 2006–17, page 748.

Frivolous tax returns; "nunc pro tunc." This ruling emphasizes to taxpayers, promoters, and return preparers that inserting the phrase "nunc pro tunc" on a return or other document submitted to the Service has no legal effect and does not validate an invalid return, make a delinquent return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one's federal tax liability.

Rev. Rul. 2006–18, page 743.

Frivolous tax returns; only certain persons subject to federal income tax. This ruling emphasizes to taxpayers, promoters, and return preparers that all individuals are subject to federal income tax. Any argument that Forms W–2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous.

Rev. Rul. 2006–19, page 749.

Frivolous tax returns; use of sham trusts. This ruling emphasizes that an individual cannot escape taxation by attributing income to a purported trust. The Service will take vigorous enforcement action against frivolous arguments relating to trusts.

Rev. Rul. 2006–20, page 746.

Frivolous tax returns; "Native American Treaty." This ruling emphasizes to taxpayers, promoters, and return preparers that there is no right to exemption from federal income tax for Native Americans under an unspecified "Native American Treaty." Any return position based on an unspecified "Native American Treaty" has no merit and is frivolous. As a general rule, Native Americans are subject to federal income tax just like every other American.

Rev. Rul. 2006–21, page 745.

Frivolous tax returns; reliance on Paperwork Reduction Act. This ruling emphasizes to taxpayers, promoters, and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Code, and the regulations thereunder, and that the Paperwork Reduction Act of 1980 (PRA) does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return has no merit and is frivolous.

T.D. 9255, page 741.
REG–164247–05, page 758.

Final, temporary, and proposed regulations under section 1502 of the Code provide the IRS with the authority to designate a domestic member of a consolidated group as a substitute agent to act as the sole agent for the group where the common parent is a foreign entity that is treated as a domestic corporation pursuant to section 7874(b) or as the result of a section 953(d) election.

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Announcements of Disbarments and Suspensions begin on page 758.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Notice 2006–31, page 751.
This notice sets out some of the most common frivolous arguments and schemes that taxpayers use to avoid their tax obligations. It also identifies civil and criminal penalties that the Service may impose against taxpayers who engage in abusive tax-avoidance schemes. Notice 2005–30 modified and superseded.

Notice 2006–33, page 754.
This notice provides transition guidance on the application of section 409A(b) of the Code to outstanding offshore trusts associated with nonqualified deferred compensation, as well as nonqualified deferred compensation arrangements providing that assets will become restricted to the payment of benefits under the plan in connection with a change in the employer's financial health.

ADMINISTRATIVE

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Notice 2006–36, page 756.
Public comments are requested on recommendations for items that should be included on the 2006–2007 Guidance Priority List. Taxpayers may submit recommendations for guidance at any time during the year. Recommendations submitted by May 15, 2006, will be reviewed for possible inclusion on the original 2006–2007 Guidance Priority List. Recommendations received after May 15, 2006, will be reviewed for inclusion in the next periodic update.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are 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.

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 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through June 2006. This ruling provides the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through June 2006.

Rev. Rul. 2006–14

In Rev. Rul. 90–60, 1990–2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of bond factor amounts for dispositions occurring during each calendar month.

Rev. Proc. 99–11, 1999–1 C.B. 275, established a collateral program as an alternative to providing a surety bond for taxpayers to avoid or defer recapture of the low-income housing tax credits under § 42(j)(6). Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) or the amount of United States Treasury securities to pledge in a Treasury Direct Account under Rev. Proc. 99–11 for dispositions of qualified low-income buildings or interests therein during the period January through June 2006.

Table 1
Rev. Rul. 2006–14
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Jan '06	16.49	30.74	43.01	53.65	62.94	64.28	65.95	67.76	69.76	72.19	74.98
Feb '06	16.49	30.74	43.01	53.65	62.94	64.14	65.81	67.62	69.61	72.03	74.80
Mar '06	16.49	30.74	43.01	53.65	62.94	64.00	65.67	67.47	69.46	71.89	74.63
Apr '06	16.49	30.74	43.01	53.65	62.94	63.87	65.53	67.33	69.32	71.73	74.46
May '06	16.49	30.74	43.01	53.65	62.94	63.73	65.40	67.20	69.18	71.58	74.30
Jun '06	16.49	30.74	43.01	53.65	62.94	63.61	65.27	67.06	69.05	71.44	74.15

Table 1 (cont'd)
Rev. Rul. 2006–14
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	2003	2004	2005	2006							
Jan '06	78.01	81.02	83.60	83.98							
Feb '06	77.81	80.77	83.28	83.98							
Mar '06	77.61	80.53	83.00	83.98							
Apr '06	77.42	80.32	82.76	83.98							
May '06	77.25	80.12	82.54	83.98							
Jun '06	77.08	79.93	82.35	83.98							

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see: Rev. Rul. 98–3, 1998–1 C.B. 248; Rev. Rul. 2001–2, 2001–1 C.B. 255; Rev. Rul. 2001–53, 2001–2 C.B. 488; Rev. Rul. 2002–72, 2002–2 C.B. 759; Rev. Rul. 2003–117, 2003–2 C.B. 1051; Rev. Rul. 2004–100, 2004–2 C.B. 718; and Rev. Rul. 2005–67, 2005–43 I.R.B. 771.

DRAFTING INFORMATION

The principal author of this revenue ruling is David McDonnell of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. McDonnell at (202) 622–3040 (not a toll-free call).

Section 1502.—Regulations

26 CFR 1.1502–77: Agent for the group.

T.D. 9255

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Agent for a Consolidated Group With Foreign Common Parent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that provide the IRS with the authority to designate a domestic member of the consolidated group as a substitute agent to act as the sole agent for the group where a foreign entity is the common parent. The regulations affect corporations that join in the filing of a consolidated Federal income tax return where the common parent of the consolidated group is a foreign entity that is treated as a domestic corporation pursuant to section 7874(b) of the Internal Revenue Code (Code) or as the result of a section 953(d) election. The text of these temporary regulations also serves as the text of the proposed regulations (REG–164247–05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective March 14, 2006.

Applicability Dates: These regulations apply to taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. The applicability of these regulations will expire on or before March 10, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622–7750, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 1504(b)(3) of the Internal Revenue Code of 1986 (Code) excludes foreign corporations from the definition of "includible corporation." As a result, a foreign entity generally cannot be a member of a consolidated group. In certain cases, section 7874 treats a foreign entity as a domestic corporation and section 953(d) allows a foreign insurance company to make an election to be treated as a domestic corporation. As a result, a foreign entity could be the common parent or a subsidiary of a consolidated group if it is treated as a domestic corporation under either section 7874(b) or section 953(d).

Under §1.1502–77(a)(1)(i) of the regulations, the common parent for a consolidated return year is generally the sole agent (agent for the group) that is authorized to act in its own name with respect to all matters relating to the tax liability for that consolidated return year for each member of the group, and any successor of a member (as defined in §1.1502–77(a)(1)(iii)). The common parent's agency for a consolidated return year generally continues until the common parent ceases to exist, regardless of whether any subsidiaries in that year cease to be members of the group, whether the group files a consolidated return in any later year, or whether the common parent ceases to be the common parent or a member of the group in a later year. Section 1.1502–77(d) provides rules for designating a substitute agent if the common parent's existence terminates.

The IRS and Treasury Department believe that it may not always be practical or efficient for tax administration to have a foreign entity act as the agent for the group. Accordingly, where a foreign entity is the common parent because it is treated as a domestic corporation by reason of section 7874 or a section 953(d) election (a Foreign Common Parent), the temporary regulations provide the IRS with the authority to designate a domestic member of the group to be the sole agent (a Domestic Substitute Agent) even though the group's common parent continues in existence.

These temporary regulations provide flexibility in the method of communication the IRS may use to designate a Domestic Substitute Agent, allowing notification by mail or by faxed transmission. In addition, these regulations provide specificity for the determination of the effective date of the designation of a Domestic Substitute Agent: the designation is effective on the earliest of the 14th day following the date of a mailing, the 4th day following a faxed transmission, or the date the Commissioner receives written confirmation of the designation by a duly authorized officer of the designated agent, within the meaning of section 6062.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for dispensing with the notice and public comment procedures and that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to dispense with a delayed effective date. The regulations are necessary to allow the IRS to avoid potentially serious tax administration problems that may arise when a foreign entity is the agent for a consolidated group, and to provide immediate guidance to taxpayers regarding the IRS' authority to designate a substitute agent for the group in such a case. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analysis section of the Notice of Proposed Rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1502–77T also issued under 26 U.S.C. 1502 * * *

Par. 2. Section 1.1502–77 is amended by adding and reserving paragraph (i) and adding paragraph (j) to read as follows:

§1.1502–77 Agent for the group.

* * * * *

(i) [Reserved]

(j) *Designation by Commissioner if common parent is treated as a domestic corporation under section 7874 or section 953(d)* [Reserved]. For further guidance, see §1.1502–77T(j).

Par. 3. Section 1.1502–77T is added to read as follows:

§1.1502–77T Agent for the group (temporary).

(a) through (i) [Reserved]. For further guidance, see §1.1502–77(a) through (i).

(j) *Designation by Commissioner if common parent is treated as a domestic corporation under section 7874 or section 953(d)*—(1) *In general*. If the common parent is an entity created or organized under the law of a foreign country and is treated as a domestic corporation by reason of section 7874 (or regulations thereunder) or a section 953(d) election (a Foreign Common Parent), the Commissioner may at any time, with or without a request from any member of the group, designate another member of the group to act as the agent for the group (a Domestic Substitute Agent) for any taxable year for which the due date (without extensions) for filing returns is after March 14, 2006 and the Foreign Common Parent would otherwise be the agent for the group. For each such year, the Domestic Substitute Agent will be the sole agent for the group even though the Foreign Common Parent remains in existence. The Foreign Common Parent ceases to be the agent for the group when the Commissioner's designation of a Domestic Substitute Agent becomes effective. The Commissioner may designate a Domestic Substitute Agent for the term of a single taxable year, multiple years, or on a continuing basis.

(2) *Domestic Substitute Agent*. The Domestic Substitute Agent, by designation or by succession, shall be a domestic corporation described in §1.1502–77(d)(1)(i)(A) (determined without regard to section 7874, a section 953(d) election, section 269B, or section 1504(d)).

(3) *Designation by the Commissioner*. The Commissioner will notify the Domestic Substitute Agent in writing by mail or faxed transmission of the designation. The Domestic Substitute Agent's designation is effective on the earliest of the 14th day following the date of a mailing, the 4th day following a faxed transmission, or the date the Commissioner receives written confirmation of the designation by a duly authorized officer of the Domestic Substitute Agent (within the meaning of section 6062). The Domestic Substitute Agent must give notice of its designation to the Foreign Common Parent and each corporation that was a member of the group during any part of any consolidated return year for which the Domestic Substitute Agent will be the agent. A failure of the Domestic Substitute Agent to notify the Foreign Common Parent or any member of the group does not invalidate the designation. The Commissioner will send a copy of the notification to the Foreign Common Parent, and if applicable, to any Domestic Substitute Agent the designation replaces; a failure to send a copy of the notification does not invalidate the designation.

(4) *Term of agency*—(i) *In general*. If the Commissioner designates a Domestic Substitute Agent for a taxable year, the Domestic Substitute Agent will remain the agent for such year until the group ceases to exist or the Domestic Substitute Agent ceases to exist, ceases to be a member of the group, is replaced by a successor, or is replaced by the Commissioner. This designee remains the agent for such year regardless of whether one or more corporations that were members of the group during any part of such year cease to be members of the group, whether the group files a consolidated return for any subsequent year, or, except as provided by paragraphs (j)(4)(iv)(B) and (j)(4)(v) of this section, whether the group remains in existence with a new common parent in any subsequent year.

(ii) *Agency of Domestic Substitute Agent upon termination of the group*. If the Domestic Substitute Agent is the agent for the group for a year in which the group terminates, the Domestic Substitute Agent shall be the agent for that taxable year (and any prior taxable year for which it is the agent for the group) so long as the Domestic Substitute Agent continues its corporate existence unless it is replaced by a successor or a new designee by the Commissioner.

(iii) *Replacement of §1.1502–77(d)(1) agent*. If, pursuant to §1.1502–77(d)(1), the common parent of the group designates a Foreign Common Parent as the agent for the group for any taxable year, the Commissioner may, at any time, designate a Domestic Substitute Agent to replace the Foreign Common Parent, even if the Commissioner approved the terminating common parent's designation.

(iv) *Group continues with a new common parent*—(A) *Year the new common parent becomes the common parent*. If subsequent to a transaction to which section 7874 applies or a section 953(d) election, the group remains in existence with a new common parent and such new common parent is a domestic corporation (determined without regard to section 7874, a section 953(d) election, or section 269B), such new common parent will become the agent for the group with respect to the entire consolidated return year (including the portion of the year preceding the date on which the new common parent became the common parent)) and the former Domestic Substitute Agent will no longer be the agent for the group for any part of that year.

(B) *Years preceding the year the new common parent becomes the common parent*. If after the Commissioner's designation of a Domestic Substitute Agent the group remains in existence with a new common parent, and such new common parent is a domestic corporation (determined without regard to section 7874, a section 953(d) election, or section 269B), the Commissioner may designate the new common parent as the agent for the group for any of the group's prior taxable years (for which the due date (without extensions) for filing returns is after March 14, 2006) in which the new common parent was a member of the group. For this purpose, the new common parent is treated as having been a member of the group for any taxable year it is primarily liable for the group's income tax liability.

(v) *Replacement of Domestic Substitute Agent by the Commissioner*. The Commissioner may at any time, with or without a request from any member of the group, designate a replacement for a Domestic Substitute Agent (or a successor to such agent).

(5) *Deemed §1.1502–77(d) designation*—(i) *Section 1.1502–78 adjustments*. If the Commissioner designates a Domestic Substitute Agent under this paragraph (j), it will be treated as a designation of a substitute agent under §1.1502–77(d) for the purposes of §1.1502–78.

(ii) *Default Substitute Agent*. If the Domestic Substitute Agent goes out of existence and has a single successor that is eligible to be a Domestic Substitute Agent, such successor becomes the Domestic Substitute Agent and is treated as a default substitute agent under §1.1502–77(d)(2). See §1.1502–77(d)(4) regarding the consequences of the successor's failure to notify the Commissioner of its status as a default substitute agent. The default substitute agent shall use procedures in section 9 of Rev. Proc. 2002–43, 2002–2 C.B. 99, or a corresponding provision of a successor revenue procedure for notification. (See §601.601(d)(2)(ii) of this chapter.)

(6) *Request that IRS designate a Domestic Substitute Agent*—(i) *Original designation*. If the common parent of the group is a Foreign Common Parent, and the IRS has not designated a Domestic Substitute Agent, one or more members of the group may request the IRS to make a designation for taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. Such request is deemed to be a request under §1.1502–77(d)(3)(i). Members of the group shall use the procedures in section 10 of Rev. Proc. 2002–43, 2002–2 C.B. 99, or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii) of this chapter.)

(ii) *Request that IRS replace a previously designated substitute agent*. If the IRS designates a Domestic Substitute Agent pursuant to this paragraph (j), one or more members of the group may request that the IRS replace the designated Domestic Substitute Agent with another member (or successor to another member). Such a request is deemed to be a request pursuant to §1.1502–77(d)(3)(ii). Members of the group shall use the procedures in section 11 of Rev. Proc. 2002–43, 2002–2 C.B. 99, or a corresponding provision of a successor revenue procedure for this purpose. (See §601.601(d)(2)(ii) of this chapter.)

(7) *Effective Date*. This paragraph (j) applies to taxable years for which the due date (without extensions) for filing returns is after March 14, 2006. The applicability of this paragraph (j) expires on or before March 10, 2009.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved March 9, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on March 9, 2006, 4:15 p.m., and published in the issue of the Federal Register for March 14, 2006, 71 F.R. 13001)

Section 3401.—Definitions

26 CFR 31.3401(c)–1: Employee.
(Also Section 3401(a)–1.)

Frivolous tax returns; only certain persons subject to federal income tax. This ruling emphasizes to taxpayers, promoters, and return preparers that all individuals are subject to federal income tax. Any argument that Forms W–2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous.

Rev. Rul. 2006–18

PURPOSE

The Service is aware that some taxpayers are claiming that only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to federal tax. These taxpayers may attempt to avoid their federal tax liability by submitting a Form 4852 (*Substitute for W–2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*) to the Internal Revenue Service with a zero on the line for the amount of wages received. These taxpayers may also file tax returns showing no income and claiming a refund for withheld income taxes. The Service is also aware that some promoters market a book, package, kit or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that all individuals are subject to federal income tax. This revenue ruling also provides that the terms "employee" and "wages" carry the meanings given to them in the Internal Revenue Code, regulations, and publications of the Internal Revenue Service. Under the Internal Revenue Code, wages include any compensation received due to the performance of services as an employee, and the term employee includes any individual for whom the legal relationship between the individual and the person for whom the individual performs services is the legal relationship of employer and employee. All wages are included in gross income for purposes of determining federal income tax liability, and are also subject to federal employment taxes. Any argument that Forms W–2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service determines whether taxpayers who have taken frivolous positions have filed all required tax returns, and computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to federal income and employment taxes.

FACTS

Taxpayer A either 1) requests, by submitting a Form W–4, *Employee's Withholding Allowance Certificate*, that his employer not withhold any amount of federal tax from wages earned, or 2) prepares a Form 4852 (Substitute for W–2) showing no wages received. In addition, taxpayer A either fails to file a return, or files a return with zero income claiming all withholding as a refund. Taxpayer A claims that he is not an "employee" and does not receive "wages" subject to federal income tax, as those terms are as defined in the Internal Revenue Code. Taxpayer A contends that the federal government can only legally demand an "income" tax from federal employees and persons residing in Washington, D.C. or federal territories and enclaves. Therefore, Taxpayer A claims that he does not have to pay "income" taxes — which Taxpayer A asserts also include employment taxes such as Federal Insurance Contributions Act (FICA) taxes — to the federal government.

LAW AND ANALYSIS

Section 3401(a) provides that "wages" include all remuneration for services performed by an employee for his employer. Section 3121(a) provides a similar definition of wages for FICA tax purposes. The argument that only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to tax is based on a misinterpretation of section 3401(c), which defines "employee" and states that the term "includes an officer, employee or elected official of the United States, a State, or any political subdivision thereof . . . ." Section 31.3401(c)–1 of the Employment Tax Regulations provides that the term "employee" includes every individual performing services if the relationship between that individual and the person for whom he performs such services is the legal relationship of employer and employee. Section 7701(c) states that the use of the word "includes" "shall not be deemed to exclude other things otherwise within the meaning of the term defined." Thus, the word "includes" as used in the definition of "employee" under § 3401(c) is a term of enlargement, not of limitation. Courts have recognized that federal employees and officials are among those within the definition of "employee," which also includes private citizens. *See Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986) (contention that taxpayer was not an "employee" is meritless, section 3401(c) does not limit withholding to the persons listed therein); *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (under section 3401(c), the category of "employee" includes privately employed wage earners; the word "includes" is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others); *Pabon v. Commissioner*, T.C. Memo. 1994–476 (1994) (taxpayer's frivolous position that she was not subject to tax because she was not an employee of the federal or state governments warranted sanctions of $2,500).

The employment tax withholding provisions do not affect whether wages are gross income. Section 61 provides that compensation for services is includable in gross income. Whether the compensation for services is in the form of wages, or in some other form, is irrelevant. The amount is still subject to income tax. All employees, not just federal employees and those living in federal territories and enclaves, are subject to income and employment taxes.

HOLDING

Federal income tax laws do not apply solely to federal employees and persons residing in the District of Columbia, or federal territories and enclaves, and any contrary contention is frivolous. The terms "employee" and "wages" as used by the Internal Revenue Code apply to all employees, unless specifically exempted by the Internal Revenue Code. The income tax withholding provisions do not affect whether an amount is gross income.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on the argument that Forms W–2 only record and report payments made to federal workers, or that only federal employees or residents of federal territories and enclaves earn wages, face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of Federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on this frivolous position also may face criminal prosecution

under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return, the penalty for which is a significant fine and imprisonment for up to a year; (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote this frivolous position and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return, statement or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622–7950 (not a toll-free call).

Section 6012.—Persons Required to Make Returns of Income

26 CFR § 1.6012–1(a): Individuals required to make returns of income.
(Also: 44 U.S.C. § 3501, et seq.)

Frivolous tax returns; reliance on Paperwork Reduction Act. This ruling emphasizes to taxpayers, promoters, and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Code, and the regulations thereunder, and that the Paperwork Reduction Act of 1980 (PRA) does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return has no merit and is frivolous.

Rev. Rul. 2006–21

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by contending that they are not required to file an income tax return because of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 94 Stat. 2812 (codified at 44 U.S.C. § 3501, *et seq.*) ("PRA"). The PRA was enacted, among other reasons, to limit federal agencies' information requests in order to minimize the paperwork burden for the public. The "public protection" provision of the PRA provides that no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved does not display a current control number assigned by the Office of Management and Budget ("OMB"). 44 U.S.C. § 3512. Taxpayers who attempt to rely on the PRA contend that they are not required to file a Form 1040, *U.S. Individual Income Tax Return*, because the instructions and regulations associated with the Form 1040 do not display an OMB control number. The Service is also aware that some promoters, including return preparers, market a package, kit or other materials, advising or recommending that taxpayers take this frivolous position.

This revenue ruling emphasizes to taxpayers, promoters and return preparers that taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code, and the regulations thereunder, and that the PRA does not relieve taxpayers of the duty to file. Any argument that the PRA relieves the taxpayer of the duty to file an income tax return has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether taxpayers may avoid their obligation to file federal income tax returns based on the PRA.

FACTS

Taxpayer A fails to file a federal income tax return, contending that it is not possible to comply with the filing requirement of Internal Revenue Code section 6012, because the Commissioner has not supplied an information collection request form that complies with the PRA.

LAW AND ANALYSIS

No law allows taxpayers to avoid their obligation under the Internal Revenue Code to file a federal tax return through reliance on the PRA. Courts repeatedly have rejected PRA-based arguments on a number of alternative grounds. Some courts have simply noted that the PRA applies to forms themselves, not to the instructions, and, because the Form 1040 does have a control number, there is no PRA violation. Other courts have held that Congress created the duty to file federal income tax returns in section 6012(a) and "Congress did not enact the PRA's public protection provision to allow OMB to abrogate any duty imposed by Congress." *United States v. Neff*, 954 F.2d 698, 699 (11th Cir. 1992);

see also Salberg v. United States, 969 F.2d 379, 383 (7th Cir. 1992) (affirming conviction for tax evasion and failing to file a return, rejecting claims under the PRA); *United States v. Holden*, 963 F.2d 1114, 1116 (8th Cir. 1992) (affirming conviction for failing to file a return and rejecting argument in favor of acquittal premised on the fact that tax instruction booklets fail to comply with the PRA); *United States v. Hicks*, 947 F.2d 1356, 1359 (9th Cir. 1991) (affirming conviction for failing to file a return, finding requirement to provide information is required by statute, not by the Service); *Lonsdale v. United States*, 919 F.2d 1440, 1445 (10th Cir. 1990) (finding the PRA inapplicable to "information collection request" forms issued during an investigation of an individual to determine tax liability); *United States v. Wunder*, 919 F.2d 34, 37 (6th Cir. 1990) (rejecting claim of a PRA violation and affirming conviction for failing to file a return).

HOLDING

Taxpayers are required to file a federal income tax return under section 6012 of the Internal Revenue Code. The PRA does not relieve taxpayers of the duty to file, and any argument to the contrary has no merit and is frivolous.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liabilities. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on frivolous PRA-based arguments face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of Federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on frivolous positions involving the PRA also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return, the penalty for which is a significant fine and imprisonment for up to a year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions were willful, intentional or reckless); (2) a penalty of up to $1,000 under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return, statement or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622–7950 (not a toll-free call).

Section 6662.—Imposition of Accuracy-Related Penalty on Underpayments

Frivolous tax returns; "Native American Treaty." This ruling emphasizes to taxpayers, promoters, and return preparers that there is no right to exemption from federal income tax for Native Americans under an unspecified "Native American Treaty." Any return position based on an unspecified "Native American Treaty" has no merit and is frivolous. As a general rule, Native Americans are subject to federal income tax just like every other American.

Rev. Rul. 2006–20

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by claiming tax exempt status based on a general "Native American Treaty." The Service is also aware that some promoters, including return preparers, are advising or recommending that Native American taxpayers take the frivolous position that they are exempt from federal income tax based on an unspecified Native American treaty. Some promoters market a package, kit or other materials that claim to show taxpayers how they can avoid paying income taxes based on these and other meritless arguments.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that there is no right to exemption from federal income tax for Native Americans under an unspecified "Native American Treaty." Any return position based on an unspecified "Native American Treaty" has no merit and is frivolous. As a general rule, Native Americans are subject to federal income tax just like every other American.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers

who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether taxpayers may avoid their federal income tax liability by claiming tax exempt status based on an unspecified "Native American Treaty."

FACTS

Taxpayer A is a Native American and receives income from a tribal or non-tribal source. The income paid to taxpayer A is reported on an information return (*e.g.*, a Form 1099-MISC, Form W–2. etc.). Taxpayer A then either: 1) fails to report the income shown on the information return on his federal income tax return, claiming an erroneous exemption from federal income tax under an unspecified "Native American Treaty," or 2) wrongly reports a loss offsetting the information return income on the "Other Income" line of his federal income tax return with an explanation that reads, "Less - Native American Treaty" or "Native American Treaty."

LAW AND ANALYSIS

Native Americans are subject to the same income tax laws as other U.S. citizens unless there is an exemption explicitly created by treaty or statute. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956); *Estate of Poletti v. Commissioner*, 99 T.C. 554, 557–58 (1992), *aff'd*, 34 F.3d 742 (9th Cir. 1994); *Doxtator v. Commissioner*, T.C. Memo. 2005–113. Any exemption must be based on clear and unambiguous treaty or statutory language. *Squire*, 351 U.S. at 6; *Ramsey v. United States*, 302 F.3d 1074 (9th Cir. 2002); *Cook v. United States*, 86 F.3d 1095 (Fed. Cir. 1996); *Estate of Peterson v. Commissioner*, 90 T.C. 249, 250 (1988). Under the Internal Revenue Code, all individuals, including Native Americans, are subject to federal income tax. Section 1 imposes a tax on all taxable income. Section 61 provides that gross income includes all income from whatever source derived. Adjustments to income, deductions, and credits must be claimed in accordance with the provisions of the Internal Revenue Code and accompanying Treasury regulations. Although there are certain exemptions and other provisions throughout the Internal Revenue Code that apply to Native Americans, none of these exempt individual Native American taxpayers from federal tax. Moreover, under the Indian Gaming Regulatory Act, any distribution of casino gaming proceeds to individual tribe members is also subject to federal income tax.

Additionally, while there are numerous valid treaties between various Federally Recognized Indian Tribal Governments and the United States government, some of which may contain language providing for narrowly defined tax exemptions, these treaties have limited application to specific tribes. Any exemptions from federal tax are expressly stated in the language of the treaty. Taxpayers who are affected by such treaty language must be a member of a particular tribe having a treaty and must cite that specific treaty in claiming any exemption. There is no general treaty that is applicable to all Native Americans.

HOLDING

Taxpayer A made improper and unfounded claims for exemption from federal income tax by either failing to report his income or reporting it and claiming an offsetting deduction. Any claim that a taxpayer is exempt from federal income tax due to a general "Native American Treaty" is frivolous. Unless a taxpayer can cite a specific treaty or statutory language providing for exemption of income from federal income tax, that taxpayer is subject to all applicable federal income tax laws. Thus, Taxpayer A must report the income shown on the information return and may not report a loss or exemption attributable to a general Native American treaty to offset the income received from the tribal organization.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on the argument that they are exempt from income tax due to a general "Native American Treaty" face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of taxes the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on these frivolous positions also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return under, the penalty for which is a significant fine and imprisonment for up to 1 year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions

were willful, intentional or reckless); (2) a penalty of up to $1,000 under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, resulting in a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return statement or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622–7800 (not a toll-free call).

Section 6673.—Sanctions and Costs Awarded by Courts

Frivolous tax returns; "nunc pro tunc." This ruling emphasizes to taxpayers, promoters, and return preparers that inserting the phrase "nunc pro tunc" on a return or other document submitted to the Service has no legal effect and does not validate an invalid return, make a delinquent return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one's federal tax liability.

Rev. Rul. 2006–17

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal income tax liability by filing a return or submitting documents to the Service with the phrase "nunc pro tunc" written or stamped on the face of the return or document, and asserting that the phrase has some legal effect. The Service is also aware that some promoters, including return preparers, are advising or recommending that taxpayers take this frivolous position. Some promoters market a package, kit or other materials that claim to show taxpayers how they can avoid paying income taxes based on this and other meritless arguments.

This revenue ruling emphasizes to taxpayers, promoters, and return preparers that inserting the phrase "nunc pro tunc" on a return or other document submitted to the Service has no legal effect and does not validate an invalid return, make a delinquent return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one's federal tax liability. Any argument that the inclusion of the phrase "nunc pro tunc" on a return or other document submitted to the Service has any legal effect has no merit and is frivolous.

The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply. The Service also determines whether civil or criminal penalties should apply to return preparers, promoters, and others who assist taxpayers in taking frivolous positions, and recommends whether an injunction should be sought to halt these activities. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether inclusion of the phrase "nunc pro tunc" on a return or other document filed with the Service has any legal effect.

FACTS

Some taxpayers file returns or other documents with the Service that have the phrase "nunc pro tunc" stamped or written on the face of the return or document. These taxpayers assert that the phrase "nunc pro tunc" has some legal effect in reducing, eliminating, or altering in some way their federal income tax liability or other obligations under the tax laws.

LAW AND ANALYSIS

The phrase "nunc pro tunc," a Latin phrase translated as "now for then," denotes that an act has retroactive legal effect through a court's inherent power. *Black's Law Dictionary* 1097 (8th ed. 2004). When a document is signed "nunc pro tunc" as of a specified date, it means that a thing is now done which should have been done on the specified date. 56 Am. Jur. 2d *Motions, Rules, and Orders* § 58, at 45 (2000).

The term "nunc pro tunc" also describes a later record entry of a previous action that is intended to have effect as of the date of the action itself. *Black's Law Dictionary* 1097. The inclusion of the phrase "nunc pro tunc" on the face of the return form or in other documents submitted to the Service has no legal effect, and does not validate an invalid return, make an untimely return timely, invalidate a signature, create a claim for refund of taxes previously paid, or reduce one's federal tax liability.

To the extent taxpayers are attempting to validate an otherwise invalid return by writing or stamping the phrase "nunc pro tunc" on the face of a return or in attached documents, this phrase has no validating effect. For a document to qualify as a valid return, it must contain sufficient data to calculate tax liability, it must purport to be a return, there must be an honest and reasonable attempt to satisfy the requirements of the tax law, and the taxpayer must execute the return under penalties of perjury. *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). The inclusion of the phrase "nunc pro tunc" on the face of the return form or in the attachments does not provide any further information sufficient to calculate tax liability, or to satisfy any other requirements of the tax law. Accordingly, it does not validate an otherwise invalid return.

HOLDING

Inclusion of the phrase "nunc pro tunc" on a return or other document submitted to the Service has no legal effect and is therefore frivolous.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability. In addition to

liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on the argument that the inclusion of the phrase "nunc pro tunc" on the face of their return or other document submitted to the Service has some legal effect, face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of Federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on these frivolous positions also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return under section 7203, the penalty for which is a significant fine and imprisonment for up to a year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years; and (4) any other penalties pursuant to applicable provisions of federal law.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622–7950 (not a toll-free call).

Section 6702.—Frivolous Income Tax Return

Frivolous tax returns; use of sham trusts. This ruling emphasizes that an individual cannot escape taxation by attributing income to a purported trust. The Service will take vigorous enforcement action against frivolous arguments relating to trusts.

Rev. Rul. 2006–19

PURPOSE

The Service is aware that some taxpayers are attempting to reduce their federal tax liability by filing a Form 1041, *U.S. Income Tax Return for Estates and Trusts*, listing income in the amount stated on their W–2, but claiming a deduction on the return for a "fiduciary fee" in the exact amount of that income. These taxpayers then request a refund of the full amount withheld with respect to that income.

This revenue ruling emphasizes that an individual cannot escape taxation by attributing income to a purported trust. The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions, based on arguments relating to trusts. The Service will take vigorous enforcement action against frivolous arguments relating to trusts. The Service processes frivolous returns and other similar documents submitted to the Service through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil and criminal penalties should apply. Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

ISSUE

Whether taxpayers can eliminate their federal income tax liability by attributing income to a trust and claiming expense deductions related to that trust.

FACTS

Individual taxpayer A files a Form 1041 trust income tax return for the 2005 taxable year. On it, taxpayer A lists the full amount of income reported on his W–2, but claims a deduction for a "fiduciary fee" in the same amount. Taxpayer A requests a refund of the full amount of withholding.

LAW AND ANALYSIS

Many frivolous trust schemes involve the purported transfer of income and expenses to a trust, on the theory that the income and expenses then become that of the trust. Such schemes are ignored for federal tax purposes because taxpayers cannot assign personal income to a trust in order to avoid tax, because such trusts are shams for federal tax purposes, and because the grantor trust rules of the Internal Revenue Code (sections 671 through 679) tax the income to the individual grantor and not to the trust. *See*, *e.g.*, *United States v. Krall*, 835 F.2d 711, 714 (8*th* Cir. 1987); *United States v. Buttorff*, 761 F.2d 1056, 1060–61 (5th Cir. 1985).

Income is ordinarily taxed to the person who earned it, and tax liability may not be shifted by assigning the income to another person. *Commissioner v. Culbertson*, 337 U.S. 733, 739–740 (1949); *Helvering v. Eubank*, 311 U.S. 122 (1940); *Lucas v. Earl*, 281 U.S. 111 (1930). The taxpayer is taxable on assigned income even if the income is paid directly to a trust. *Wheeler v. United States*, 768 F.2d 1333 (Fed. Cir. 1985); *Saunders v. Commissioner*, 720 F.2d 871 (5th Cir. 1983); *Armantrout v. Commissioner*, 67 T.C. 996 (1977), *aff'd*,

570 F.2d 210 (7th Cir. 1978). Thus, assignments of personal income and expenses to a trust are not valid for federal income tax purposes.

Even if the taxpayer created a valid trust under state law, the trust would be ignored for federal tax purposes because it is a sham. When the form of the transaction has not, in fact, altered economic relationships, income is taxed according to the substance of the transaction. *Markosian v. Commissioner*, 73 T.C. 1235 (1980). This rule applies regardless of whether the entity has a separate existence recognized under state law (*see Furman v. Commissioner*, 45 T.C. 360 (1966), *aff'd. per curiam* 381 F.2d 22 (5th Cir. 1967)), and regardless of the form of the entity, such as a trust or common law business trust. *See Zmuda v. Commissioner*, 731 F.2d 1417 (9th Cir. 1984).

In addition, the grantor trust provisions of the Internal Revenue Code require the attribution of the income and expenses of the trust to the individual. These provisions provide that all items of income, deduction, and credit of the trust, shall be included in computing the taxable income and credits of the grantors and other persons who have substantial powers of ownership or control over the trust. The power to control the beneficial enjoyment of the corpus or the income of the trust, the power to borrow from or deal with the trust without adequate and full consideration or security, the power to revoke the trust or to have the corpus or income revert to the grantor, the power to use the corpus or income of the trust for the benefit of the grantor, or similar powers, result in the trust being ignored for federal tax purposes and all income and allowable expenses being attributed to the individual grantor. *See* sections 671–679; *Vnuk v. Commissioner*, 621 F.2d 1318 (8th Cir. 1980); Rev. Rul. 75–257, 1975–2 C.B. 251.

Finally, because no trust is deemed to exist for federal tax purposes, there is no fiduciary relationship upon which trustees' fees could be predicated and there is no ordinary and necessary business expense which could validly be claimed for such amounts. Thus, the claimed expense for trustees' fees would be disallowed.

HOLDING

Individual taxpayers must file Form 1040 to report earned income and may not file Form 1041 reporting income through a trust in order to avoid federal income tax liability.

CIVIL AND CRIMINAL PENALTIES

The Service will challenge the claims of individuals who attempt to avoid or evade their federal tax liability. In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on a frivolous argument face substantial civil and criminal penalties. Potentially applicable civil penalties include: (1) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of tax the taxpayer should have paid; (2) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (3) a $500 penalty imposed under section 6702 when the taxpayer files a document that purports to be a return but that contains a frivolous position or suggests a desire by the taxpayer to delay or impede the administration of federal income tax laws; (4) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers relying on these frivolous positions also may face criminal prosecution under the following provisions: (1) section 7201, for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203, for willful failure to file a return, the penalty for which is a significant fine and imprisonment for up to 1 year; and (3) section 7206, for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote these frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face civil and criminal penalties and also may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions were willful, intentional or reckless); (2) a penalty of up to $1,000 under section 6700 for each activity promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, resulting in a significant fine and imprisonment for up to 3 years, for assisting or advising about the preparation of a false return or other document under the internal revenue laws.

DRAFTING INFORMATION

This revenue ruling was authored by the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact that office at (202) 622–7950 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Frivolous Arguments to Avoid When Filing a Return or Claim for Refund

Notice 2006–31

SECTION 1. INTRODUCTION

As April 15 approaches, the Internal Revenue Service reminds taxpayers to steer clear of abusive tax-avoidance schemes that purportedly allow them to reduce or eliminate taxes based on false or frivolous arguments. If an idea to save on taxes seems too good to be true, it probably is.

Many abusive tax-avoidance schemes are based on frivolous arguments that the Service and the courts have repeatedly rejected. These schemes are often sold by promoters for a substantial fee, and may be sold over the Internet, through advertisements in newspapers and magazines and at conferences and seminars.

Section 2 of this notice sets out some of the most common frivolous arguments used by these abusive tax-avoidance schemes. The Service is committed to identifying taxpayers who attempt to avoid their federal tax obligations by taking frivolous positions. The Service will take vigorous enforcement action against these taxpayers and against promoters and return preparers who assist taxpayers in taking these frivolous positions. Frivolous returns and other similar documents submitted to the Service are processed through the Service's Frivolous Return Program. As part of this program, the Service confirms whether taxpayers who take frivolous positions have filed all of their required tax returns, computes the correct amount of tax and interest due, and determines whether civil or criminal penalties should apply.

Section 3 of this notice identifies potential civil and criminal penalties for participation in, or promotion of, abusive tax-avoidance schemes. Taxpayers who engage in abusive tax-avoidance schemes will be liable for unpaid taxes and interest. In addition, the Service will impose civil and criminal penalties against taxpayers where appropriate. The Service also will impose appropriate penalties and consider taking other appropriate action against persons who promote abusive tax-avoidance schemes and who prepare frivolous returns based on those schemes.

SECTION 2. COMMON FRIVOLOUS ARGUMENTS

This section of this notice sets out some of the most common frivolous arguments used by taxpayers to avoid or evade tax. This notice is not intended to be a description of all frivolous arguments used to avoid or evade tax. Accordingly, the fact that an abusive tax-avoidance scheme is not described in this notice does not mean that it is not false and frivolous.

- ***"The only persons subject to federal income and employment taxation are federal employees and persons residing in Washington, D.C., or federal territories."*** Promoters of this scheme incorrectly advise taxpayers who receive wages with respect to employment to file a Form 4852 (*Substitute for Form W–2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*) with the Service and, based on the above theory, include a zero on the line for the amount of wages received. The Internal Revenue Code, however, imposes a federal income tax upon all United States residents and citizens, not just federal employees and those that reside in Washington, D.C., federal territories, and federal enclaves. The Internal Revenue Code also imposes employment tax on all wages paid for employment.

- ***"A taxpayer can avoid tax by filing a return that reports zero income and zero tax liability."*** All taxpayers who meet minimum income thresholds must file returns and pay any tax owed on their taxable income. No law, including the Internal Revenue Code, permits a taxpayer who has received wages or other taxable income to file a return reporting zero income and zero tax liability. If a taxpayer has received income subject to federal tax, a return showing only zeroes for income and tax liability is not a valid return. Further, inclusion of the phrase "nunc pro tunc" or other legal jargon on an income tax return does not serve to validate an otherwise improper return.

- ***"A taxpayer can avoid income tax by referring to a separate 'straw man' entity created by the use of the taxpayer's name in all capital letters, or other variations of a taxpayer's name, in government documents."*** No authority supports the claim that individuals may avoid their federal income tax obligations based on "straw man" arguments. The use of all uppercase letters, italics, abbreviations or other formats of an individual's name in government documents has no significance whatsoever.

- ***"Wages are not taxable income, pursuant to section 1001, because taxpayers have basis in their labor equal to the fair market value of the wages they receive; thus, there is no gain to be taxed."*** With few exceptions, compensation received, no matter what the form of payment, must be included in gross income under section 61. This includes salary or wages paid in cash, as well as the value of property and other economic benefits received as remuneration for services performed or to be performed in the future. Section 1001 governs gain or loss on the disposition of property, and does not apply to compensation for services.

- ***"The 16th Amendment is invalid because it contradicts the original Constitution, was not properly ratified, and lacks an enabling clause."*** The Sixteenth Amendment to the U.S. Constitution, which authorizes the income tax, was properly ratified by the states and is valid. Further, the argument that the Sixteenth Amendment is invalid due to the lack of an enabling clause is without merit because Congress has the power to lay and collect taxes pursuant to Article 1, Section 8, Clause 18 of the Constitution.

- ***"A taxpayer can make a 'claim of right' to exclude the cost of his labor from income."*** There is no "claim of

right" doctrine under any federal law, including the Internal Revenue Code, that permits a taxpayer to deduct or exclude from gross income the value of his labor.

- ***"Only income from a foreign source is taxable under section 861."*** Sections 861 through 865 do not exclude income derived in the U.S. from taxable income. In particular, nothing in these sections or the Treasury regulations under these sections provides that only income earned from certain foreign sources is subject to U.S. income tax.

- ***"I am not a 'citizen' or a 'person' within the meaning of the Internal Revenue Code."*** A citizen of any one of the 50 States (*e.g.*, New York, California) of the United States or of the District of Columbia, including those living abroad, is also a citizen of the United States and is subject to federal tax. The Internal Revenue Code defines a taxpayer as any person subject to any internal revenue tax and further defines a person as an individual, trust, estate, partnership, association, company or corporation.

- ***"Residents of states, such as New York or California, are residents of a foreign country and therefore not subject to U.S. income tax."*** Under its specific conditions and limitations, section 911 permits a taxpayer to elect to exclude income from U.S. taxable income only when the taxpayer earns income abroad and resides outside the geographic boundaries of the United States. For purposes of section 911, each of the 50 states, the District of Columbia, and commonwealths and territories of the United States (*e.g.*, Johnston Atoll), are not foreign countries.

- ***"A taxpayer can escape income tax by putting assets in an offshore bank account."*** A citizen or resident of the United States cannot use an offshore financial arrangement (such as a foreign bank or brokerage account, or a credit card issued by a foreign bank) to avoid his federal tax obligations. Taxpayers are required to disclose foreign financial accounts to the Treasury Department and to report the income earned thereon.

- ***"A taxpayer can eliminate tax by establishing a 'corporation sole.'"*** A taxpayer cannot avoid income tax by establishing a "corporation sole." A corporation sole may be used only by a legitimate religious leader for specific, limited purposes relating to the religious leader's office.

- ***"A taxpayer can place all of his assets in a trust to escape income tax while still retaining control over those assets."*** A taxpayer who places assets in a trust but retains certain powers over or interests in the assets, including the power to control the beneficial enjoyment of the assets, is treated as the owner of the assets for federal tax purposes and is subject to tax on the income from those assets.

- ***"A taxpayer can eliminate tax by attributing his income to a trust and filing a Form 1041, U.S. Income Tax Return for Estates and Trusts, instead of a Form 1040, U.S. Individual Income Tax Return."*** A taxpayer must report income earned as an individual on a Form 1040 and may not attribute the income to a trust created solely for the purpose of tax-avoidance, or claim deductions related to any expenses purportedly incurred by such a trust.

- ***"A taxpayer can deduct amounts paid to maintain his household and for other personal expenses by establishing a home business."*** Business expenses, including expenses related to a home-based business, are not deductible unless the expenses relate to a legitimate profit-seeking trade or business. Promoters of home-based business schemes improperly encourage taxpayers to claim household expenses as business expense deductions when the purported home-based business is not a legitimate trade or business.

- ***"Nothing in the Internal Revenue Code imposes a requirement to file a return."*** Section 6011 expressly authorizes the Service to require, by Treasury regulation, the filing of tax returns. Section 6012 identifies persons who are required to file income tax returns. The Treasury Department has issued regulations requiring taxpayers who meet minimum income thresholds to file income tax returns. Taxpayers also are required to pay any tax owed. Moreover, no provision of the Paperwork Reduction Act serves to exempt taxpayers from the requirement that they file returns.

- ***"Filing a tax return is 'voluntary.'"*** Some people mistake the word "voluntary" for "optional" — but filing a tax return is not optional for those who meet the law's minimum gross income requirements. The word "voluntary," as used in IRS publications, court decisions and elsewhere, refers to the fact that the U.S. tax system is a voluntary *compliance* system. This means only that taxpayers themselves determine the correct amount of tax pursuant to law and complete the appropriate returns, rather than have the government do this for them as is done in some other countries. This system of self-reporting does not make the filing of tax returns or the payment of tax optional. For those who do not comply with this system and fail to self-report their tax liability, the tax law authorizes various enforced compliance measures.

- ***"Because taxes are voluntary, as an employer, I don't have to withhold income or employment taxes for my employees."*** Every taxpayer is responsible for completing and filing required returns and paying the correct amount of tax. An employer is required by law to withhold income and employment taxes from wages paid to employees. Employers also must deposit the amounts withheld with the Service.

- ***"A taxpayer can refuse to pay taxes if the taxpayer disagrees with the government's use of the taxes it collects."*** No law, including the Internal Revenue Code, permits a taxpayer to avoid or evade tax obligations on the grounds that the taxpayer does not agree with the government's use of the taxes collected.

- ***"A taxpayer can escape income taxes or the tax system by submitting a set of documents in lieu of a tax return."***

Taxpayers must file income tax returns using the forms prescribed by the Service. No law, including the Internal Revenue Code, permits taxpayers to submit a document or series of documents to remove themselves from the income tax system.

- ***"A taxpayer can avoid tax by filing a return with an attachment that disclaims tax liability."*** A return with an attached disclaimer of tax liability is not a valid tax return under the law and does not exempt the taxpayer from tax.

- ***"A taxpayer can avoid tax by filing a return with an altered penalties of perjury statement."*** Alterations to the form of an income tax return or to the penalties of perjury statement on the return do not permit a taxpayer to avoid tax. Such alterations may invalidate a return and subject the taxpayer to penalties for failure to file a return.

- ***"Certain taxpayers can claim a 'reparations tax credit' to right wrongs done in the past."*** No law, including the Internal Revenue Code, permits a "reparations tax credit."

- ***"Native American taxpayers can avoid their federal income tax liability by claiming tax exempt status based on an unspecified 'Native American Treaty.'"*** Native Americans are subject to the same income tax laws as other U.S. citizens unless there is an exemption explicitly created by treaty or statute. Although there are numerous valid treaties between various Native American tribes and the U.S. government, any tax exemption under these treaties applies only to the specific tribe. There is no general "Native American Treaty" applicable to all Native Americans.

- ***"By purchasing equipment and services for an inflated price, a taxpayer can use the Disabled Access Credit to reduce tax or generate a refund."*** The section 44 Disabled Access Credit is only applicable to purchases or modifications of equipment and services that are necessary for a small business to comply with the access requirements of the Americans with Disabilities Act. Promoters of this scheme improperly promise eligibility for the credit when they sell equipment or services with questionable ties to the requirements of the Americans with Disabilities Act at inflated prices, often to persons who do not operate legitimate businesses, while not requiring the participating taxpayer to pay the entire price stated in the contract.

- ***"Under section 3121 taxpayers can deduct the amount of Social Security taxes paid or get a refund of those taxes."*** The Internal Revenue Code imposes Social Security tax on wages as defined in section 3121. Aside from the narrow exception for a religious exemption under section 3127, a taxpayer may not exclude wages from Social Security taxation on the basis that the taxpayer is waiving the right to receive Social Security benefits. The Code does not authorize a deduction for, or refund of, Social Security taxes paid.

- ***"A taxpayer can sell or purchase the right to claim a child as a qualifying child for purposes of the EIC."*** A taxpayer may not purchase or sell the right to claim a child as a qualifying child for purposes of the earned income credit (EIC). In order to be claimed as a qualifying child for purposes of the EIC, the child must meet specific relationship, residency and age requirements.

The Service and the courts have repeatedly rejected these arguments and variations on them, and have rejected numerous other tax-avoidance schemes and frivolous arguments used by taxpayers to avoid or evade taxes.

SECTION 3. CIVIL AND CRIMINAL PENALTIES

Civil and criminal penalties may apply to taxpayers who make frivolous arguments. Potentially applicable civil penalties include: (1) the section 6651 additions to tax for failure to file a return, failure to pay the tax owed, and fraudulent failure to file a return; (2) the section 6662 accuracy-related penalties, which are generally equal to 20 percent of the amount of taxes the taxpayer should have paid; (3) the section 6663 penalty for civil fraud, which is equal to 75 percent of the amount of taxes the taxpayer should have paid; (4) a $500 penalty under section 6702 for filing a frivolous income tax return; and (5) a penalty of up to $25,000 under section 6673 if the taxpayer makes frivolous arguments in the United States Tax Court.

Taxpayers who take frivolous positions also may face criminal prosecution under: (1) section 7201 for attempting to evade or defeat tax, the penalty for which is a significant fine and imprisonment for up to 5 years; (2) section 7203 for willful failure to file a return, the penalty for which is a fine of up to $25,000 and imprisonment for up to one year; and (3) section 7206 for making false statements on a return, statement, or other document, the penalty for which is a significant fine and imprisonment for up to 3 years.

Persons, including return preparers, who promote frivolous positions and those who assist taxpayers in claiming tax benefits based on frivolous positions may face penalties and may be enjoined by a court pursuant to sections 7407 and 7408. Potential penalties include: (1) a $250 penalty under section 6694 for each return or claim for refund prepared by an income tax return preparer who knew or should have known that the taxpayer's position was frivolous (or $1,000 for each return or claim for refund if the return preparer's actions were willful, intentional or reckless); (2) a penalty under section 6700 for promoting abusive tax shelters; (3) a $1,000 penalty under section 6701 for aiding and abetting the understatement of tax; and (4) criminal prosecution under section 7206, for which the penalty is a significant fine and imprisonment for up to 3 years for assisting or advising about the preparation of a false return, statement or other document under the internal revenue laws.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2005–30 is modified and superseded.

SECTION 5. ADDITIONAL INFORMATION

Other information about frivolous tax positions is available on the Service website at *www.irs.gov*.

This notice was authored by the Office of Associate Chief Counsel (Procedure & Administration). For further information

regarding this notice, contact that office at (202) 622–7800 (not a toll-free call).

Transition Relief Regarding the Application of Section 409A(b) to Nonqualified Deferred Compensation Plans

Notice 2006–33

I. PURPOSE

This notice provides transition relief with respect to the application of section 409A(b) of the Internal Revenue Code to nonqualified deferred compensation plans. Pursuant to section 403(hh)(3)(B) of the Gulf Opportunity Zone Act of 2005, P.L. 109–135 (GOZA), this transition relief includes a limited period for certain nonqualified deferred compensation plans that are in violation of the requirements of section 409A(b) to come into compliance with such requirements.

Section 409A(b) generally applies to the use of offshore trusts in connection with amounts payable under a nonqualified deferred compensation plan, and also the use of restrictions on assets to protect the payment of benefits under a nonqualified deferred compensation plan in connection with a change in the service recipient's financial health. The use of such offshore trusts or restrictions on assets in connection with a change in the financial health of the service recipient generally triggers the income inclusion and additional tax provisions of section 409A. This notice addresses the application of certain technical corrections made to these provisions in GOZA, (which was enacted on December 21, 2005), including the requirement that sponsors of certain plans be given a limited period during which the arrangements may be made compliant with section 409A(b).

II. BACKGROUND

A. Section 885 of the American Jobs Creation Act of 2004

1. General Provisions Regarding Nonqualified Deferred Compensation Plans

Section 409A was added to the Code by section 885 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418). Section 409A(a) generally provides that unless certain requirements are met, amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a) also provides rules under which deferrals of compensation will not result in such immediate and additional tax liability, including rules about the timing of initial elections to defer compensation, payments of deferred compensation, and changes to the time or form of a scheduled payment of previously deferred amounts.

2. Income Inclusion Required if an Offshore Trust is used in Connection with a Nonqualified Deferred Compensation Plan

Section 409A(b)(1) provides that in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors — (A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or (B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States. Section 409A(b)(1) provides further that these provisions do not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

3. Income Inclusion Required if Assets Become Restricted Upon a Change in the Employer's Financial Health

Section 409A(b)(2) provides that in the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of — (A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or (B) the date on which assets are so restricted, whether or not such assets are available to satisfy claims of general creditors.

4. Additional Tax Imposed on Amounts Includible under Sections 409A(b)(1) and 409A(b)(2)

Section 409A(b)(4) provides that in the event amounts are required to be included in income under section 409A(b)(1) (due to use of an offshore trust or similar arrangement) or section 409A(b)(2) (due to a restriction on assets in connection with a change in the financial health of the service recipient), the tax imposed on such inclusion is increased by the sum of the amount equal to 20% of the amount required to be included in income, plus an interest charge based on the underpayment interest rate plus 1% determined on the underpayments of tax that would have occurred if the affected deferred amounts had been includible in income for the taxable year when first deferred.

5. Effective Date of Section 409A

Section 885(d) of the American Jobs Creation Act of 2004 (AJCA) provides that section 409A of the Code generally applies to amounts deferred after December 31, 2004. Section 885(d) further provides that section 409A applies to earnings on deferred compensation only to the extent that section 409A would apply to the deferred compensation. Section 885(d) also provides, however, that amounts deferred in taxable years beginning before January 1, 2005 are treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, except as permitted under transition guidance.

Many taxpayers interpreted the provisions of section 885(d) of the AJCA, in combination with section 409A(b) of the Code, to mean that the restrictions of section 409A(b) applied only with respect to deferred compensation subject to section 409A(a), and that the section 409A(b) restrictions did not apply with respect to amounts of deferred compensation that were not subject to section 409A(a).

B. Section 403(hh) of the Gulf Opportunity Zone Act of 2005 — Clarification of the Effective Date of Section 409A(b)

Section 403(hh)(3)(A) of the Gulf Opportunity Zone Act of 2005 (GOZA) provides that notwithstanding section 885(d)(1) of the AJCA, section 409A(b) shall take effect on January 1, 2005. As stated in the legislative history, this provision is intended to clarify that the effective date of the provisions relating to offshore trusts and financial health triggers is January 1, 2005, including amounts set aside or restricted with respect to deferrals of compensation that were earned and vested on or before December 31, 2004. Thus, for example, amounts set aside in an offshore trust before January 1, 2005 for the purpose of paying deferred compensation and plans providing, before January 1, 2005, for the restriction of assets in connection with a change in the employer's financial health are subject to section 409A(b) on and after January 1, 2005. See Staff of the Joint Committee on Taxation, 109th Cong., Technical Explanations of the Revenue Provisions of H.R. 4440, The "Gulf Opportunity Zone Act of 2005" as Passed by the House of Representatives and the Senate (Dec. 16, 2005), at 89.

Section 403(hh)(3)(B) of GOZA provides that not later than 90 days after the date of the enactment of GOZA, the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance. This notice is intended to provide such guidance.

III. APPLICATION OF SECTION 409A(b)

A. Transition Relief; Limited Period to Come Into Compliance

The Treasury Department and the IRS intend to issue further guidance regarding the application of section 409A(b). Until further guidance is issued, taxpayers may rely upon a reasonable, good faith interpretation of section 409A(b) to determine whether the use of a trust or other arrangement causes an amount to be included in income under section 409A(b). Notwithstanding the foregoing, with respect to assets set aside, transferred or restricted on or before March 21, 2006 so as to be subject to inclusion under sections 409A(b)(1) or 409A(b)(2) (hereinafter "grace period assets"), taxpayers shall be treated as not having triggered the inclusion or additional tax provisions of section 409A(b) if the nonqualified deferred compensation plan comes into conformity on or before December 31, 2007, with the requirements of section 409A(b) and any guidance issued before such date.

For this purpose, grace period assets include actual earnings on such assets (or trust or other arrangement), including actual earnings credited on such assets after March 21, 2006. However, grace period assets do not include assets located outside of the United States as of March 21, 2006 that have not been set aside, transferred or restricted as of March 21, 2006. Accordingly, any subsequent setting aside, transfer or restriction of such assets is not eligible for the transition relief. In addition, grace period assets located in the United States on or after March 21, 2006 that are subsequently transferred outside of the United States, and grace period assets that are subjected, after March 21, 2006 to a new restriction triggered in connection with a change in the financial health of the service recipient, will no longer be treated as grace period assets effective as of the date of the transfer or the addition of such restriction, as applicable. For example, grace period assets that were located outside of the United States as of December 31, 2004, and that were subsequently transferred to the United States and were within the United States as of March 21, 2006, will no longer be considered grace period assets if the assets are subsequently transferred outside of the United States.

For purposes of the transitional relief, with respect to grace period assets used to make any payment of nonqualified deferred compensation on or before December 31, 2007, including the payment of such compensation upon the termination of a nonqualified deferred compensation plan, such that any payment is included in income on or before December 31, 2007, a plan will be treated as having complied with section 409A(b) during periods before the payment. For this purpose, if an amount is paid from a trust or other arrangement, where some of the assets of the trust or other arrangement are grace period assets described above and some are not, the payment shall be treated as made first from grace period assets.

In addition, if as of a date on or before December 31, 2007, grace period assets are no longer associated with the payment of nonqualified deferred compensation, either under the terms of the plan or through the dissolution of a trust or desegregation of assets, the plan will be treated as having complied with section 409A(b) with respect to those assets through the date such action is taken.

B. Definition of a Nonqualified Deferred Compensation Plan Subject to Section 409A(b)

The same definitions of a nonqualified deferred compensation plan and of deferred compensation are applicable for purposes of applying section 409A(a) and section 409A(b), except that the effective date provisions in section 885(d) of the AJCA that operate to grandfather certain nonqualified deferred compensation arrangements for purposes of section 409A(a) are not applicable for purposes of section 409A(b). Accordingly, until further guidance is issued defining a nonqualified deferred compensation plan, the definition of a nonqualified deferred compensation plan provided in Notice 2005–1, Q&A–3 is applicable for purposes of the application of section 409A(b). In addition, until further guidance is issued defining a nonqualified deferred compensation plan, taxpayers may rely upon the definition of a nonqualified deferred compensation plan provided in the proposed regulations § 1.409A–1(a). See 49 FR 57930 (Oct. 4, 2005).

IV. APPLICATION OF OTHER CODE PROVISIONS AND TAX DOCTRINES

This notice is intended solely to address the requirements under section 409A(b), and nothing in this notice should be construed to affect the requirements of, or any potential liability under, section 409A(a).

In addition, section 409A(c) provides that nothing in section 409A shall be construed to prevent the inclusion of amounts in gross income under any other provisions

of this chapter or any other rule of law earlier than the time provided in section 409A. Accordingly, a participant in a nonqualified deferred compensation plan may be required to include amounts in income due to the application to the plan (or to any trust or assets associated with the plan) of section 83, section 451, the economic benefit doctrine, or other applicable law even though the plan (and any associated trust or assets) complies with this notice or section 409A(b).

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments as to the application of this notice, as well as all aspects of the application of section 409A(b). Because section 409A(b) only applies to the use of a trust, restriction or other arrangement determined by the Secretary in connection with a deferred compensation plan as defined for purposes of section 409A, commentators should consider the impact of any guidance with respect to the definition of a deferred compensation plan for purposes of section 409A, including Notice 2005–1, 2005–2 I.R.B. 274, and any proposed or final regulations issued under section 409A.

Comments may be submitted through June 21, 2006 to Internal Revenue Service, CC:PA:LPD:RU (Notice 2006–33), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2006–33), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.comments@irscounsel.treas.gov*. Include the notice number (Notice 2006–33) in the subject line.

VI. DRAFTING INFORMATION

The principal author of this notice is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Stephen Tackney at (202) 927–9639 (not a toll-free call), or for further information regarding the submission of comments, contact Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov*.

Public Comment Invited on Recommendations for 2006–2007 Guidance Priority List

Notice 2006–36

The Department of Treasury and Internal Revenue Service invite public comment on recommendations for items that should be included on the 2006–2007 Guidance Priority List.

Treasury's Office of Tax Policy and the Service use the Guidance Priority List each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2006–2007 Guidance Priority List will establish the guidance that the Treasury Department and the Service intend to issue from July 1, 2006, through June 30, 2007. The Treasury Department and the Service recognize the importance of public input to formulate a Guidance Priority List that focuses resources on guidance items that are most important to taxpayers and tax administration.

As is the case whenever significant legislation is enacted, the Treasury Department and the Service have dedicated substantial resources during the previous (2004–2005) and current plan years to published guidance projects necessary to implement the provisions of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418, which was enacted on October 22, 2004. Similarly, the Treasury Department and the Service have devoted resources to published guidance projects necessary to implement the provisions of additional tax legislation that has been enacted during the current plan year, such as the Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594, which was enacted on August 8, 2005; the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109–73, 119 Stat. 2016, which was enacted on September 23, 2005; and the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109–135, 119 Stat. 2577, which was enacted on December 21, 2005. The Treasury Department and the Service will continue to evaluate the priority of each guidance project in light of the above-mentioned tax legislation and other developments occurring during the 2006–2007 plan year.

In reviewing recommendations and selecting projects for inclusion on the 2006–2007 Guidance Priority List, the Treasury Department and the Service will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to many taxpayers;

2. Whether the recommended guidance promotes sound tax administration;

3. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance;

4. Whether the Service can administer the recommended guidance on a uniform basis; and

5. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the Service.

Taxpayers may submit recommendations for guidance at any time during the year. Please submit recommendations by May 15, 2006, for possible inclusion on the original 2006–2007 Guidance Priority List. The Service plans to update the 2006–2007 Guidance Priority List periodically to reflect additional guidance that the Treasury Department and the Service intend to publish during the plan year. The periodic updates allow the Treasury Department and the Service to respond to the need for additional guidance that may arise during the plan year. Recommendations for guidance received after May 15, 2006, will be reviewed for inclusion in the next periodic update.

Taxpayers are not required to submit recommendations for guidance in any particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. It would be helpful if taxpayers suggesting more than one guidance project

would prioritize the projects by order of importance. If a large number of projects are being suggested, it also would be helpful if the projects were grouped in terms of high, medium or low priority.

Taxpayers should send written comments to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2006–36)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2006–36)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, taxpayers may submit comments electronically via e-mail to the following address: *Notice.Comments@irscounsel.treas.gov*. Taxpayers should include "Notice 2006–36" in the subject line. All comments will be available for public inspection and copying in their entirety.

For further information regarding this notice, contact Crystal Foster of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622–7198 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Agent for a Consolidated Group With Foreign Common Parent

REG–164247–05

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing regulations (T.D. 9255) that provide the IRS with the authority to designate a domestic member of the consolidated group as a substitute agent to act as the sole agent for the group where a foreign entity is the common parent. These regulations affect corporations that join in the filing of a consolidated Federal income tax return where the common parent of the consolidated group is treated as a domestic corporation pursuant to section 7874(b) of the Internal Revenue Code (Code) or as a result of a section 953(d) election. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments, and a request for a public hearing, must be received by June 12, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–164247–05), 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–164247–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS-REG–164247–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 622–7750, concerning submissions of comments, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary Regulations in this issue of the Bulletin amends 26 CFR Part 1 relating to section 1502. The temporary regulations add §1.1502–77T. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulation merely grants authority to the IRS to change the agent for the consolidated group, that members of consolidated groups are generally large corporations rather than small businesses, and few small businesses are likely to be members of a consolidated group with a foreign common parent as a result of a transaction subject to section 7874 or a section 953(d) election. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1502–77 is amended by adding paragraph (j) to read as follows:

§1.1502–77 Agent for the group

* * * * *

(j) [The text of the proposed amendment to §1.1502–77(j) is the same as the text of §1.1502–77T(j) published elsewhere in this issue of the Bulletin.].

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on March 9, 2006, 4:15 p.m., and published in the issue of the Federal Register for March 14, 2006, 71 F.R. 13062)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2006-23

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Hoft, James D.	Nutley, NJ	CPA	Indefinite from August 10, 2005
Salver, Isaac	Bay Harber Islands, FL	CPA	September 19, 2005 to June 18, 2007
Woods, Dalton C.	Carrollton, TX	Enrolled Agent	Indefinite from October 15, 2005
Morrissette, Doris G.	Lowell, MA	Enrolled Agent	Indefinite from November 1, 2005
Dale, Edward R.	Stockton, CA	CPA	Indefinite from November 1, 2005
Grossman, Israel G.	New York, NY	Attorney	November 15, 2005 to May 14, 2007

Name	Address	Designation	Date of Suspension
Edmonds, Joseph M.	Charlotte, NC	Enrolled Actuary	November 16, 2005 to March 15, 2006
Rubin, Stuart L.	Coral Springs, FL	CPA	Indefinite from December 7, 2005
Sanger, Brett D.	Oklahoma City, OK	Attorney	Indefinite from January 1, 2006
Berkowitz, Ira T.	Simi Valley, CA	CPA	Indefinite from January 9, 2006
Caylor, John D.	Long Lake, MN	CPA	Indefinite from January 12, 2006
Saldana, Oscar M.	Laredo, TX	CPA	Indefinite from January 15, 2006
Bruck, Lawrence S.	Newton, PA	CPA	Indefinite from January 16, 2006
Sneathen, Lowell D.	Orange, CA	CPA	Indefinite from January 18, 2006
Roberson, George	Leesburg, VA	CPA	Indefinite from January 17, 2006
Dugan, Lawrence E.	Alta, IA	Attorney	Indefinite from February 1, 2006
Frascella, Russell	Pound Ridge, NY	CPA	Indefinite from February 1, 2006
Smith, David B.	Kettering, OH	Enrolled Agent	Indefinite from February 13, 2006
Whiteside, Thomas L.	Atlanta, GA	Attorney	Indefinite from February 13, 2006
Bednarz, Jr., Michael	Framingham, MA	Attorney	Indefinite from February 13, 2006
Alexander, Herald J.A.	Atlanta, GA	Attorney	Indefinite from February 20, 2006

Name	Address	Designation	Date of Suspension
Bartels, Kyle	North Salem, NY	Enrolled Agent	Indefinite from February 21, 2006
Baker, Jibade A.	Indianapolis, IN	CPA	March 13, 2006 to March 12, 2008
Morris, R. Scott	Corpus Christi, TX	CPA	Indefinite from March 16, 2006
Kenny, Stan M.	Wichita, KS	Attorney	Indefinite from May 1, 2006

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Haugabrook, Earl	Upper Montclair, NJ	CPA	Indefinite from September 27, 2005
Patterson, Kenneth R.	Plano, TX	CPA	Indefinite from October 19, 2005
Blackburn, Randall D.	Laurinburg, NC	CPA	Indefinite from October 19, 2005
Coe, Sean M.	Sahuarita, AZ	Attorney	Indefinite from October 12, 2005
Lim, Ricarda L.	Sacramento, CA	Attorney	Indefinite from November 1, 2005
Bridges, Lynden P.	Golden, CO	CPA	Indefinite from November 14, 2005
Curcio, Gregory J.	New York, NY	Attorney	Indefinite from November 14, 2005

Name	Address	Designation	Date of Suspension
Silverton, Ronald R.	Pacific Palisades, CA	Attorney	Indefinite from November 14, 2005
Hartigan, Seth P.	Minneapolis, MN	Attorney	Indefinite from November 14, 2005
Carlson, Richard E.	Chappell, NE	Attorney	Indefinite from November 14, 2005
Veres, Robert D.	Phoenix, AZ	CPA	Indefinite from November 14, 2005
Noble, Gregory P.	Corvallis, OR	Attorney	Indefinite from December 2, 2005
Parker, Oscie K.	Thomasville, NC	Attorney	Indefinite from December 15, 2005
Connor, Jr. William J.	Kernersville, NC	Attorney	Indefinite from December 15, 2005
Cassidy, Maureen E.	Murphy, ID	Attorney	Indefinite from December 15, 2005
Harrison, Rodney L.	Urbana, IL	Attorney	Indefinite from December 15, 2005
Cagle, Carol L.	Alton, IL	Attorney	Indefinite from December 15, 2005
Knaff, Philip J.	Burr Ridge, IL	Attorney	Indefinite from December 15, 2005
Pence, Thomas R.	Cedar Rapids, IA	Attorney	Indefinite from December 15, 2005
Tunney, John A.	Freehold, NJ	Attorney	Indefinite from December 15, 2005
Dasent, Carlton	Mattapoisett, MA	Attorney	Indefinite from December 15, 2005
Robeznieks, John O.	Palatine, IL	Attorney	Indefinite from December 15, 2005

Name	Address	Designation	Date of Suspension
Landman, Nathaniel M.	St. Peters, MO	Attorney	Indefinite from December 15, 2005
Levin, Herbert M.	Bolingbrook, IL	Attorney	Indefinite from December 15, 2005
Wade, Jeffrey L.	Louisville, KY	Attorney	Indefinite from December 15, 2005
Cozzarelli, Frank J.	North Caldwell, NJ	Attorney	Indefinite from December 15, 2005
Brooks, Jane E.	St. Paul, MN	Attorney	Indefinite from December 15, 2005
Mulvahill, James P.	Plymouth, MN	Attorney	Indefinite from December 15, 2005
Bernstein, Ralph	Chicago, IL	Attorney	Indefinite from December 15, 2005
Tousey, Robert R.	Ellicott City, MD	Attorney	Indefinite from December 15, 2005
Schatz, Allen E.	Shorewood, WI	Attorney	Indefinite from December 16, 2005
Olson, David E.	New Port Richey, FL	Attorney	Indefinite from December 16, 2005
Shagory, Edward J.	Boston, MA	Attorney	Indefinite from December 20, 2005
Wintroub, Edward L.	Omaha, NE	Attorney	Indefinite from December 20, 2005
Johnson, Jr. Walter T.	Greensboro, NC	Attorney	Indefinite from December 27, 2005
Szaro, Stanley J.	New York, NY	Attorney	Indefinite from December 27, 2005
Recchione, Louis	Woodcliff Lake, NJ	Attorney	Indefinite from December 27, 2005
Pepper, Louis	Great Neck, NY	Attorney	Indefinite from January 2, 2006

Name	Address	Designation	Date of Suspension
Fritzshall, Robert S.	Skokie, IL	Attorney	Indefinite from January 9, 2006
DiCaprio, Joseph A.	Cherry Valley, IL	Attorney	Indefinite from January 9, 2006
Rosenberg, Keith A.	N. Bethesda, MD	Attorney	Indefinite from January 9, 2006
Boudreau, Patricia L.	Lexington, MA	Attorney	Indefinite from January 9, 2006
Webb, Daniel F.	Milwaukee, WI	Attorney	Indefinite from January 9, 2006
Miranda, Jesse R.	Phoenix, AZ	Attorney	Indefinite from January 9, 2006
Kuzel, Gary	Plainfield, IL	CPA	Indefinite from January 9, 2006
Nomura, Edmund Y.	Phoenix, AZ	Attorney	Indefinite from January 9, 2006
Mason, Robert J.	Colorado Springs, CO	Attorney	Indefinite from January 9, 2006
Land, Janet P.	Stedman, NC	Attorney	Indefinite from January 9, 2006
Fitzgerald, Maurice	Lexington, MA	Attorney	Indefinite from January 9, 2006
Valadez, Librado R.	San Antonio, TX	CPA	Indefinite from January 9, 2006
Williams, Frank C.	Houston, TX	Attorney	Indefinite from January 9, 2006
LaGrand, Tara	Naples, FL	CPA	Indefinite from January 9, 2006
Harris, Susan L.	Houston, TX	Attorney	Indefinite from January 9, 2006
Hobbs, James B.	Amherst, NH	Attorney	Indefinite from January 9, 2006

Name	Address	Designation	Date of Suspension
Momsen, Joel	Napa, CA	Attorney	Indefinite from January 10, 2006
Lambert, Brett J.	Fort Collins, CO	Attorney	Indefinite from January 10, 2006
Lefevre, Keith H.	Longwood, FL	Attorney	Indefinite from January 13, 2006
Bronner, Bernard	Great Neck, NY	Attorney	Indefinite from January 18, 2006
Kuhnreich, Robert M.	New York, NY	Attorney	Indefinite from January 20, 2006
Walser, Vicki L.	Valencia, CA	Attorney	Indefinite from January 20, 2006
Menter, Jeffrey	Centennial, CO	Attorney	Indefinite from January 23, 2006
Catagnus, Patricia A.	Richardson, TX	CPA	Indefinite from January 23, 2006
Matthews, Elizabeth B.	Denver, CO	Attorney	Indefinite from January 23, 2006
Sisselman, Barry A.	Temecula, CA	Attorney	Indefinite from January 23, 2006
Armstrong, Thomas I.	Irvine, CA	Attorney	Indefinite from January 23, 2006
Chestnut, A. Johnson	Fayetteville, NC	CPA	Indefinite from January 24, 2006
Kerby, John C.	Desoto, TX	CPA	Indefinite from February 2, 2006
Phillips, John D.	Albuquerque, NM	Attorney	Indefinite from February 2, 2006
Broomas, James	Baytown, TX	Attorney	Indefinite from February 2, 2006
Wilson, Joel M.	Denver, NC	CPA	Indefinite from February 2, 2006

Name	Address	Designation	Date of Suspension
Olivieri Jr., Robert C.	Bensalem, PA	CPA	Indefinite from February 7, 2006
Scher, Robert A.	Port Washington, NY	Attorney	Indefinite from February 15, 2006
Mintz, David J.	Evergreen, CO	Attorney	Indefinite from February 15, 2006
Abelson, Richard H.	White Plains, NY	Attorney	Indefinite from February 15, 2006
Drum, Joel A.	Van Nuys, CA	Attorney	Indefinite from February 17, 2006
Nissenbaum, Susan	Grafton, MA	Attorney	Indefinite from February 22, 2006
Mahon, Edward J.	Warenville, IL	Attorney	Indefinite from February 22, 2006
Nash, Bruce	Chicago, IL	Attorney	Indefinite from February 22, 2006
Duru, Ike E.	Powder Springs, GA	Attorney	Indefinite from February 22, 2006
Hirth, Gary E.	Phoenix, AZ	Attorney	Indefinite from February 22, 2006
Madden, James G.	Hudson, IL	Attorney	Indefinite from February 22, 2006
Thomas, Robert C.	Chicago, IL	Attorney	Indefinite from February 22, 2006
Moore, Jr. William D.	Libertyville, IL	Attorney	Indefinite from February 22, 2006
Weit Jr., John V.	Homewood, IL	Attorney	Indefinite from February 22, 2006
Berlin, Marc D.	Chicago, IL	Attorney	Indefinite from February 22, 2006
Lebensbaum, Henry	Andover, MD	Attorney	Indefinite from February 22, 2006

Name	Address	Designation	Date of Suspension
Leonhart, Georgia L.	Ocean View, DE	Attorney	Indefinite from February 22, 2006
Wolf, Marvin H.	Boynton Beach, FL	Attorney	Indefinite from February 22, 2006
Dorsa, Lawrence R.	Oceanside, CA	Attorney	Indefinite from February 23, 2006
Battista Jr., Gerard F.	Norwell, MA	Attorney	Indefinite from February 27, 2006
Koehn, Charles R.	Green Bay, WI	Attorney	Indefinite from February 28, 2006
Phillips, Claudia L.	Oak Park, CA	Attorney	Indefinite from March 9, 2006
Zarate, Gustavo A.	Pasadena, CA	Attorney	Indefinite from March 9, 2006
Schorling, Douglas D.	Fresno, CA	Attorney	Indefinite from March 9, 2006
Bowman Jr., John J.	Gibsonia, PA	Enrolled Agent	Indefinite from March 9, 2006
Jordan, Richard W.	Austin, TX	CPA	Indefinite from March 9, 2006
Rothenberg, Steven G.	Kingston, NY	Attorney	Indefinite from March 24, 2006
Osterloh, Douglas D.	Boring, OR	Attorney	Indefinite from March 24, 2006
Benevenia, Eugene	Tucson, AZ	Attorney	Indefinite from March 24, 2006
Krombach, Charles	Brookfield, WI	Attorney	Indefinite from March 24, 2006
Caldwell, David G.	Austin, TX	Attorney	Indefinite from March 24, 2006

Name	Address	Designation	Date of Suspension
Zwibel, David	Lawrence, NY	CPA	Indefinite from March 31, 2006

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Fitzpatrick, Pamela	Arroyo Grande, CA	CPA	November 14, 2005 to November 13, 2009

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Edgar, Richard A.	Los Angeles, CA	CPA	October 3, 2005

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Porter, Donald E.	Burleson, TX	CPA	February 10, 2006

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Casagna, Ronald M.	Tustin, CA	November 25, 2005

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[1]

Bulletin 2006–1 through 2006–15

Announcements:

Court Decisions:

Notices:

Notices— Continued:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Revenue Rulings— Continued:

Tax Conventions:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2006–1 through 2006–15

Announcements:

2000-48
Modified by
Notice 2006-35, 2006-14 I.R.B. *708*

Notices:

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

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