Internal Revenue
bulletin

Bulletin No. 2001–49
December 3, 2001

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

REG–126485–01, page 555.
Proposed regulations define the term statutory merger or consolidation as that term is defined in section 368(a)(1)(A) of the Code. This would permit certain transactions involving disregarded entities to qualify as statutory mergers or consolidations. A public hearing is scheduled for March 13, 2002.

REG–137519–01, page 559.
Proposed amendments relate to the consolidated return regulations dealing with the nonapplicability of section 357(c) of the Code in a consolidated group. A public hearing is scheduled for March 21, 2002.

EMPLOYEE PLANS

Rev. Proc. 2001–55, page 552.
Qualified plans; extension of the remedial amendment period. This procedure extends the remedial amendment period under section 401(b) of the Code to February 28, 2002. For plans directly affected by the Terrorist Attack of September 11, 2001, the period is extended to June 30, 2002. Rev. Procs. 2000–20, 2000–27, and 2001–6 modified.

EMPLOYMENT TAX

Notice 2001–72, page 548.
This document proposes rules regarding income tax withholding and reporting obligations upon the sale or disposition of stock acquired pursuant to the exercise of a statutory stock option. This document also requests comments as to the proposed rules, and expresses the intent to issue a notice with final rules to accompany the issuance of final regulations addressing the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and income tax withholding to statutory stock options.

Notice 2001–73, page 549.
This document proposes rules of administrative convenience regarding application of the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) to statutory stock options. This document also requests comments as to the proposed rules, and expresses the intent to issue a notice with final rules to accompany the issuance of final regulations addressing the application of FICA, FUTA, and income tax withholding to statutory stock options.

REG–142686–01, page 561.
Proposed regulations provide that for purposes of the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA), at the time of the exercise of a statutory stock option (i.e., an incentive stock option under section 422 of the Code or an option granted pursuant to an employee stock purchase plan under section 423 of the Code), the individual who was granted the statutory stock option receives wages. Therefore, FICA tax and FUTA tax are applicable at that time; however, income tax withholding is not required. A public hearing is scheduled for March 7, 2002.

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through November begins on page iv.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Notice 2001–67, page 544.
LMSB Fast Track Dispute Resolution Pilot Program. This document announces the LMSB Fast Track Dispute Resolution Pilot Program, under which large and mid-size business taxpayers, with the assistance of the IRS Office of Appeals, may expedite case resolution at the lowest level within the IRS's Large and Mid–Size Business organization (LMSB).

Notice 2001–74, page 551.
Depreciation, mid-quarter convention relief. This document supplements the tax relief granted in Notice 2001–70 (2001–45 I.R.B. 437) published November 5, 2001, by expanding the class of taxpayers entitled to the relief and clarifying the instructions for making the election provided under Notice 2001–70.

Announcement 2001–117, page 567.
This announcement provides relief to partners, shareholders, or beneficiaries of passthrough entities that had income tax returns due on or after September 11, 2001, and on or before November 2, 2001.

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 consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and 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 first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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 401. — Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(b)–1: Certain retroactive changes in plan.

The GUST remedial amendment period is extended to February 28, 2002, where the period would otherwise end before then. In addition, as a result of the incidents of September 11, 2001, for plans directly affected, the period is extended to June 30, 2002. See Rev. Proc. 2001–55, page 552.

Part III. Administrative, Procedural, and Miscellaneous

Notice 2001–67

1. ANNOUNCEMENT OF THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

This Notice announces the LMSB Fast Track Dispute Resolution Pilot Program (LMSB Fast Track) which establishes new opportunities for large and mid-size business taxpayers, with the assistance of the IRS Office of Appeals (Appeals), to expedite case resolution at the lowest level within the IRS's Large and Mid-Size Business organization (LMSB). The purpose of the LMSB Fast Track program is to enable taxpayers and the IRS to work together in a concentrated and expedited fashion to resolve outstanding issues while the case is still in LMSB jurisdiction. The purpose of the pilot phase of the program is to test, measure, and explore whether the process described in this Notice, in fact, reduces cost and time to the parties.

The program is jointly administered by LMSB and Appeals. In the pilot phase, the program is available to large and mid-size businesses under LMSB jurisdiction that currently have unagreed issues in at least one open year under examination. LMSB Fast Track is a collaborative process among the taxpayer, LMSB, and Appeals. LMSB Fast Track is one process with two options for dispute resolution: Fast Track Mediation and Fast Track Settlement. Under Fast Track Mediation, an Appeals Officer or an Appeals Team Case Leader will act in the role of mediator to help the parties resolve factual issues. Under Fast Track Settlement, an Appeals Team Case Leader will facilitate communications to help the taxpayer and LMSB resolve factual and legal issues. During the pilot phase of the program, the program managers for LMSB and Appeals plan to select, from cases for which the taxpayer and the LMSB Team Manager agree that LMSB Fast Track might be beneficial, a minimum of one case from each of the five LMSB industry groups for Fast Track Mediation and a minimum of one case from each of the five LMSB industry groups for Fast Track Settlement.

The IRS believes that LMSB Fast Track has the potential to offer significant benefits for taxpayers as well as the IRS, and invites large and mid–size business taxpayers to participate.

2. DESCRIPTION OF THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

LMSB Fast Track establishes new opportunities designed to expedite case resolution at the lowest level within the LMSB organization. LMSB Fast Track offers two options using Alternative Dispute Resolution (ADR) techniques. The first option, Fast Track Mediation, involves an Appeals Officer or an Appeals Team Case Leader who has been trained in mediation techniques acting as a mediator between the taxpayer and the LMSB audit team.

The second option, Fast Track Settlement, involves an Appeals Team Case Leader who assists the parties to reach a resolution of the disputed issues.

Although the two options have many similarities, Fast Track Settlement is different from Fast Track Mediation because Fast Track Settlement allows the parties to consider both factual and legal issues and to take Appeals' assessment of the hazards of litigation into account in resolving disputes. Both options, Fast Track Settlement and Fast Track Mediation, take place prior to the issuance of the 30–day letter to the taxpayer, and each is designed to be completed in approximately 120 days.

3. SUBJECT MATTER FOR THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

The LMSB Fast Track process will assist taxpayers and Compliance to resolve factual and/or legal issues and is generally available to all LMSB taxpayers. Fast Track Mediation or Fast Track Settlement may be initiated at any time after an issue has been fully developed, the Form 5701 (*Notice of Proposed Adjustment*) has been issued, and a written response has been provided by the taxpayer, but before the issuance of the 30–day letter.

LMSB Fast Track is generally available for all LMSB cases within Compliance's jurisdiction. LMSB Fast Track is appropriate for cases where:

- Issues are fully developed;
- The taxpayer has stated its position in writing; and
- There are a limited number of unagreed issues.

LMSB Fast Track will not be available for:

- Issues designated for litigation by Chief Counsel;
- An issue that is the subject of a request for competent authority assistance;
- An issue for which the taxpayer has requested the simultaneous Appeal/ Competent Authority procedure described in section 8 of Rev. Proc. 96–13 (1996–1 C.B. 616);
- Issues outside LMSB's jurisdiction; or
- Issues outside Appeals' settlement authority (*e.g.,* application of certain international penalty provisions under Chapter 61 of the Internal Revenue Code (Code)).

LMSB Fast Track may not be the appropriate dispute resolution process for all cases. The LMSB Team Manager and the taxpayer will evaluate their individual circumstances to determine if this process meets their needs.

4. PROCEDURES FOR REQUESTING PARTICIPATION IN THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

A taxpayer that is interested in participating in LMSB Fast Track, or that has questions about the program and its suitability for the taxpayer's case, may contact the LMSB Team Manager for the year currently under examination. Taxpayers may also contact Jim Fike, LMSB Fast Track Program Manager, at (202) 283–8353 (not a toll-free number), or

J.W. Wyatt, Appeals Fast Track Acting Program Manager, at (314) 612–4639 (not a toll-free number), for further information about the pilot program.

Initiating the Request for Participation in the Pilot Program

Either the taxpayer or the LMSB Team Manager can suggest the use of LMSB Fast Track procedures. A request to participate in the LMSB Fast Track pilot program must be initiated before a 30–day letter is issued, and both parties must enter into an agreement to participate in the process by executing an LMSB Fast Track Agreement.

Contents of the Request

The LMSB Fast Track Agreement form used to request either Fast Track Mediation or Fast Track Settlement is attached to this Notice. The LMSB Team Manager and the taxpayer together indicate which LMSB Fast Track option, Fast Track Mediation or Fast Track Settlement, they believe is best suited for the case.

The goal is to complete the entire LMSB Fast Track process in approximately 120 days. A projected process ending date is agreed to and documented on the LMSB Fast Track Agreement form. The LMSB Team Manager and the taxpayer will identify a preferred conference site. The Notices of Proposed Adjustment (Forms 5701) and a written response from the taxpayer should be included with the LMSB Fast Track Agreement to complete the package. A formal protest is not required.

If the case is not accepted for inclusion in the LMSB Fast Track pilot program, the LMSB Team Manager will discuss other dispute resolution opportunities with the taxpayer. A taxpayer is not entitled to a conference to appeal a decision not to accept a case into the LMSB Fast Track pilot program.

5. SELECTION OF TAXPAYERS FOR THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

In general, LMSB Fast Track requests will be evaluated and selected for inclusion in the pilot program by applying criteria that include the following:

- LMSB Team Manager and taxpayer: Ensure that the issues identified for the process qualify for inclusion in the program.
- Appeals Officer or Appeals Team Case Leader and the Appeals Fast Track Program Manager: Concur with the taxpayer and LMSB Team Manager that the issues are appropriate for LMSB Fast Track under the option selected, and confirm that a different Appeals Officer will be able to handle any unagreed issues following the LMSB Fast Track process.
- LMSB Fast Track Program Manager and Appeals Fast Track Program Manager: Ensure that a cross-section of taxpayers of varying sizes and representing different industry lines, a geographical dispersion of cases and a variety of issues are included in the program.

6. CONDUCTING THE LMSB FAST TRACK PROCESS

LMSB Fast Track is one process with two options for dispute resolution: Fast Track Mediation and Fast Track Settlement.

Fast Track Mediation is designed to expedite case resolution using mediation techniques. An Appeals Officer or an Appeals Team Case Leader trained in mediation techniques acts as a mediator between the taxpayer and LMSB. The purpose is to facilitate communication and to help the parties resolve factual issues. The mediator will not have settlement authority and will not render a decision regarding any issue subject to the Fast Track Mediation process.

Fast Track Settlement involves an Appeals Team Case Leader who will use various dispute resolution techniques to propose solutions. The Appeals Team Case Leader will first attempt to facilitate an agreement between LMSB and the taxpayer regarding the Fast Track Settlement issues, and may ultimately make a recommendation regarding the settlement of any or all issues (both factual and legal). If the recommendation is acceptable to LMSB and the taxpayer, the settlement proposal may be adopted. The Appeals Team Case Leader will have settlement authority and may exercise that authority to write up the settlement of Fast Track Settlement issues agreed to by the parties.

Participants

During the LMSB Fast Track process, taxpayer and LMSB representatives, including a representative with decision-making authority from both the taxpayer and LMSB, will meet with the Appeals representative. The taxpayer and LMSB representatives should include persons with the information and expertise that will aid the decision-makers for the taxpayer and LMSB as well as the Appeals representative. In some cases, the Appeals representative may ask that the number of participants be limited.

Time Frames

Stringent time frames have been established in order to provide taxpayers an expedited resolution of tax disputes. The LMSB Fast Track process is designed to be completed within an average of 90 to 120 days.

Site, Date and Agenda

The LMSB Fast Track session will be held at a date and location agreeable to the parties. The representatives with decision-making authority for the taxpayer and LMSB must be present during the LMSB Fast Track session. Prior to or during the LMSB Fast Track session, the Appeals representative will advise the participants of the procedures and establish ground rules.

Confidentiality

The LMSB Fast Track process is confidential. IRS employees involved in any way with the LMSB Fast Track process are subject to the confidentiality and disclosure provisions of the Code. By signing the Fast Track Agreement, the taxpayer consents, pursuant to § 6103(c) of the Code, to the disclosure of the taxpayer's returns and return information pertaining to the issues being considered in the LMSB Fast Track process to those persons named on the agreement as participants in the process. If any person will be engaging in practice before the IRS, as defined in Publication 216, *Conferences and Practice Requirements*, a power of attorney, such as IRS Form 2848 (*Power*

of Attorney and Declaration of Representative) will be required in addition to the Fast Track Agreement, unless such person has already been designated as the taxpayer's representative under a valid power of attorney.

IRS employees, the taxpayer and persons invited to participate by the IRS or the taxpayer shall not voluntarily disclose information regarding any communication made during the LMSB Fast Track session, except as provided by statute, such as in § 6103 of the Code and 5 U.S.C. § 574.

Ex Parte

Generally, the prohibition of *ex parte* communications between Appeals Officers and other IRS employees provided by § 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in the LMSB Fast Track process because the Appeals personnel are facilitating an agreement between the taxpayer and LMSB and are not acting in their traditional Appeals' settlement role. In some circumstances, the role the parties are asking Appeals to play may begin to resemble Appeals' traditional settlement role. In that case, Appeals may request that the taxpayer waive the *ex parte* rules if Appeals determines such a waiver is necessary in order for Appeals to fulfill its role in the LMSB Fast Track process. Regardless of whether a waiver is obtained, the LMSB Fast Track process may still continue if the taxpayer is present at any discussion that the Appeals representative has with LMSB.

Closing Procedures

If the parties reach an agreement on all or some issues through the Fast Track Mediation or the Fast Track Settlement process, LMSB or Appeals, as appropriate, will use established issue or case closing procedures, including preparation of a specific matters closing agreement.

7. WITHDRAWAL FROM THE LMSB FAST TRACK DISPUTE RESOLUTION PILOT PROGRAM

The taxpayer may withdraw from the LMSB Fast Track process at any time by notifying the LMSB Team Manager and the Appeals representative in writing. The Appeals representative or the LMSB Team Manager also may terminate the LMSB Fast Track process if it becomes apparent that meaningful progress toward resolution of the issues has stopped.

8. MISCELLANEOUS

Precedent

A resolution reached by the parties through the LMSB Fast Track process will not be binding on the parties for taxable years not covered by the LMSB Fast Track Agreement. Except as provided in the LMSB Fast Track Agreement, Delegation Order 236 (relating to the authority delegated to an Examination Team Manager in a CIC case to settle issues where a settlement has been effected by Appeals in a prior, subsequent or the same tax period on the same issue) and Delegation Order 247 (relating to the authority delegated to an Examination Team Manager for coordinated issues in the Office of Pre-Filing and Technical Guidance for which Appeals has approved settlement guidelines or positions), any such resolution shall not be used as precedent.

Appeals Rights

If any issues remain unresolved after the LMSB Fast Track process, the taxpayer will retain all the usual rights to request Appeals consideration of such unagreed issues. Appeals will assign a different Appeals Officer to handle the unagreed issues unless the taxpayer agrees otherwise.

Term of Pilot Program

The LMSB Fast Track Dispute Resolution Pilot Program will accept applications through November 14, 2002.

9. EFFECTIVE DATE

The LMSB Fast Track Dispute Resolution Pilot Program is effective beginning November 14, 2001.

10. COMMENTS

The IRS invites interested persons to comment on this program. Send submissions to:

Internal Revenue Service
Attn: Jim Fike
Large and Mid-Size Business Division LM:Q
Mint Building, 3rd Floor, M–3–148
1111 Constitution Avenue, NW
Washington, D.C. 20224

11. FURTHER INFORMATION

For further information regarding this notice, contact either: Jim Fike, LMSB Fast Track Program Manager, at (202) 283–8353 (not a toll-free number); or J.W. Wyatt, Appeals Fast Track Acting Program Manager, at (314) 612–4639 (not a toll-free number).

LMSB Fast Track Agreement

To: Local Appeals Office ______________________________ Date ______________

The undersigned request Appeals assistance in the LMSB Fast Track process as described in Notice 2001-67. The issues for which this assistance is requested are described in the Form(s) 5701 and Taxpayer written response thereto attached to this agreement. The following is the option selected for this process:

☐ Fast Track Mediation ☐ Fast Track Settlement

This case is an ☐ Industry, or a ☐ Coordinated Industry case. (check one)

Estimated Fast Track Process End Date ______________ Preferred Conference Site ______________

LMSB Team Manager Name ______________________________

Telephone (____)__________ FAX (____)__________ Industry __________

Taxpayer Name ______________________________

Taxpayer EIN ______________________________ Year(s) ______________

Address ______________________________

____

Corporate Officer ______________________________ Title ______________

Telephone (____) ______________ FAX (____) ______________

Taxpayer Representative ______________________________

Name of Firm ______________________________

Address ______________________________

____

Telephone (____) ______________ FAX (____) ______________

s/ ______________________________ s/ ______________________________
Taxpayer Date LMSB Team Manager Date

s/ ______________________________
Representative Date

Comments and Other Expected Participants (attach additional sheets as necessary)

Name	Position or Affiliation	Phone

Accepted by Appeals ☐ Yes ☐ No Appeals Team Manager ______________ Date __________

Notice of Proposed Rules Regarding Income Tax Withholding and Reporting Obligations Upon the Sale or Disposition of Stock Acquired Pursuant to the Exercise of a Statutory Stock Option

Notice 2001–72

I. Overview and Purpose

This notice provides proposed rules regarding an employer's income tax withholding and reporting obligations upon sale or disposition of stock acquired by an individual pursuant to the exercise of a statutory stock option, *i.e.*, an incentive stock option (ISO) under section 422 or an option granted under an employee stock purchase plan (ESPP) under section 423. This notice is being published at the time of publication of related proposed regulations (REG–142686–01 on page 561) clarifying the application of employment taxes to statutory stock options. This notice solicits comments regarding the proposed rules. Treasury and the Service anticipate issuing a notice with final rules when the final regulations addressing the application of FICA tax, FUTA tax, and income tax withholding with respect to statutory stock options are issued.

II. Comments Received Pursuant to Notice 2001–14

On February 6, 2001, Treasury and the Service issued Notice 2001–14 (2001–6 I.R.B. 416). Notice 2001–14 addresses the application of employment taxes to statutory stock options. Notice 2001–14 announced the intent to issue administrative guidance that would clarify, among other issues, the application of income tax withholding to statutory stock options, and requested comments regarding the anticipated administrative guidance.

In response to Notice 2001–14, commentators stated that determining the occurrence of a disqualifying disposition (*i.e.*, a disposition of stock acquired pursuant to the exercise of a statutory stock option that results in loss of the special income tax treatment provided in section 421) to fulfill the income tax withholding deposit requirements on a timely basis would be burdensome, especially as to former employees.

Commentators also stated that fulfilling the income tax withholding obligations would be difficult as to certain employees, because those employees would not have sufficient other cash compensation from which to fund the withholding. Specifically, the commentators referred to former employees who are no longer receiving other cash compensation, as well as employees with disqualifying dispositions resulting in large income tax withholding obligations whose current other cash compensation would not be sufficient to fund these amounts.

Commentators also pointed out that the current reporting requirements mandate that the amounts be reported to the employees, so that the compensation will not escape Federal income tax. They also noted that employers have an incentive to report these amounts under section 1.83–6(a)(2) of the Income Tax Regulations.

III. Proposed Rule — Income Tax Withholding

In response to these comments, Treasury and the IRS propose the following rule:

An employer would have no income tax withholding obligation when an employee sells or disposes of stock acquired by the employee pursuant to the exercise of an ISO under section 422 or an option granted under an ESPP under section 423.

Example of proposed rule:

(a) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of the stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is $100 per share. X exercises the option later when the fair market value of the Y stock is $120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of $120 per share for $85 per share. X pays cash to acquire the shares of Y stock. Four months later, X sells the shares of Y stock for $160 a share.

(b) In this example, when X sells the shares of Y stock, X recognizes ordinary income under section 421(b) equal to the excess of the fair market value of the Y stock at the time of exercise ($120 per share) over the amount paid for the stock ($85 per share) which equals $35 per share, for a total of $1,750. Under the proposed rule, this $1,750 is remuneration that would not be subject to income tax withholding. X also has capital gain of $40 per share equal to the appreciation in value of the stock from the time of exercise to the time of sale. The capital gain of $40 per share is not remuneration and is not subject to income tax withholding.

IV. Proposed Rules — Reporting

Treasury and the Service propose the following rules:

Section 1.6041–2(a)(1) requires that, under certain circumstances, a payment made by an employer to an employee be reported on Form W–2 even if the payment is not subject to income tax withholding. Specifically, section 1.6041–2(a)(1) generally requires reporting if the total amount of the payment and other payments of remuneration, if any, made to the employee that are required to be reported on Form W–2, aggregate at least $600 in a calendar year. An employer must make reasonable efforts to ascertain whether it must provide a Form W–2 to an employee who has received remuneration not subject to income tax withholding upon a sale or disposition of stock acquired pursuant to the exercise of an ISO or option granted under an ESPP. An employer has not made reasonable efforts in any case in which it claims a deduction under section 83 for payment of the remuneration to an employee but fails to provide a Form W–2 reporting that remuneration to the employee, if the total amount of that payment, along with any other payments of remuneration made to the employee that are required to be reported on Form W–2, aggregate at least $600 in that calendar year. The employer is not required to provide a Form W–2 if the employer has made reasonable efforts and cannot determine whether a payment of remuneration has been made.

V. Former Employees

For purposes of this notice, the term "employee" includes any former employee.

VI. Request for Comments

Comments are requested regarding the proposed rules regarding income tax withholding and reporting obligations upon the sale or disposition of stock acquired pursuant to the exercise of a statutory stock option. All comments will be available for public inspection and

copying. Comments must be submitted by February 14, 2002. Comments should reference Notice 2001–72, and be addressed to:

Associate Chief Counsel
(Tax Exempt and Government Entities)
CC:TEGE
ATTN: Statutory Stock Options and Income Tax Withholding
Room 5214
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

VII. Effective Date

The proposed rules set forth in this notice are not effective until a subsequent notice is issued with final rules. Treasury and the Service anticipate issuing such a notice to accompany the issuance of final regulations addressing the application of FICA tax, FUTA tax, and income tax withholding to statutory stock options.

VIII. Drafting Information

The principal author of this notice is Stephen Tackney of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from Treasury and the Service participated in its development. For further information regarding this notice, contact Stephen Tackney at (202) 622–6040 (not a toll-free call).

Notice of Proposed Rules of Administrative Convenience Regarding Application of the Federal Insurance Contributions Act and Federal Unemployment Tax Act to Statutory Stock Options

Notice 2001–73

I. Overview and Purpose

This notice provides proposed rules of administrative convenience relating to the application of the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) to statutory stock options, *i.e.*, incentive stock options under section 422 (ISOs) and options granted pursuant to an employee stock purchase plan under section 423 (ESPP options). The rules are proposed under the authority to be granted to the Commissioner under the regulations that are currently being proposed (as § 31.3121(a)–1(k) and § 31.3306(b)–1(l)) addressing the application of FICA tax, FUTA tax, and income tax withholding with respect to statutory stock options. This notice solicits comments regarding the proposed rules of administrative convenience. Treasury and the Service anticipate issuing a notice with final rules when the final regulations addressing the application of FICA tax, FUTA tax, and income tax withholding with respect to statutory stock options are issued.

On February 6, 2001, Treasury and the Service issued Notice 2001–14 (2001–6 I.R.B. 561). The notice states that Treasury and the Service anticipate issuing guidance clarifying the application of employment taxes to statutory stock options, and requests comments regarding the guidance. Proposed regulations are now being issued that generally provide that, at the time of the exercise of a statutory stock option, the individual who was granted the statutory stock option receives wages for FICA and FUTA purposes when the stock is transferred to the individual pursuant to the exercise.

To address the concerns raised by certain comments to Notice 2001–14, the proposed regulations would grant the Service authority to prescribe rules of administrative convenience to assist employers and employees in meeting the employment tax obligations that arise upon the exercise of a statutory stock option. To notify taxpayers of the potential rules, this notice describes the proposed rules of administrative convenience.

II. Proposed Rules of Administrative Convenience

Treasury and the Service propose the following rules of administrative convenience:

A. Payment Periods

Under the proposed rules, an employer would be permitted to treat FICA and FUTA wages resulting from the exercise of a statutory stock option as paid on a pay period, quarterly, semiannual, annual, or other basis. An employer also could choose to treat FICA and FUTA wages resulting from the exercise of a statutory stock option as paid over more than one period. The deemed payment or payments could not commence before the exercise occurred and all payments would be required to be treated as paid on or before December 31 of the year of the exercise (except as provided under Section B below). The employer could change the method used at any time. A formal election would not be required, and the employer would not need to notify the Service of the use of any method or change in method used.

Examples

(i) Employer A sponsors an employee stock purchase plan under section 423 that permits the purchase of stock on a quarterly basis (January 1, April 1, July 1, and October 1). Employer A elects to treat the wages resulting from the exercises of ESPP options (*i.e.*, the stock purchases) as paid ratably over the calendar quarter in which the exercises occur, with an automatic acceleration upon the employee's termination of employment.

(ii) Employer B sponsors an incentive stock option plan under section 422. Employer B elects to treat all wages resulting from the exercises of incentive stock options in a calendar year as paid on December 31 of that year.

(iii) Employer C sponsors an incentive stock option plan under section 422 that permits employees to exercise stock options during employment and within the 90–day period following a termination of employment. Employer C chooses to treat the FICA and FUTA wages resulting from an exercise in a calendar year as paid on December 31 of the calendar year, except that if the employee terminates employment before December 31, Employer C treats the wages as paid on the later of the date of termination of employment or the date of exercise of the statutory stock option.

B. Special Accounting Rule

Under the proposed rules, the employer would be permitted to choose to treat the wages resulting from the exercise of a statutory stock option occurring in the last month of the calendar year (December), or any shorter period ending on December 31, as paid in the first calendar quarter of the next following calendar year. However, an employer who treats any or all wages resulting from the exercise of a statutory stock option during the first 11 months of the calendar year as paid, in whole or in part, during the month of December would not then be permitted to treat those wages as paid in the first calendar quarter of the following calendar year. Rather, only the wages

resulting from an actual exercise of a statutory stock option during the month of December could be treated as paid in the next following calendar quarter. Employers that choose to use the special accounting rule would not need to make a formal election, and employers would not need to notify the Service of the use of the rule or any change in the use of the rule.

Examples

(i) Employer A sponsors an employee stock purchase plan under which ESPP options are exercised on a semi-annual basis (June 30 and December 31). Employer A chooses to treat the FICA and FUTA wages resulting from each December 31 exercise as paid on the earlier of March 31 of the subsequent year or the employee's termination of employment.

(ii) Employer B sponsors an incentive stock option plan. Employer B chooses to treat the FICA and FUTA wages resulting from an exercise that occurs during the final seven days of December of any calendar year as paid on the earlier of January 31 of the subsequent year or the employee's termination of employment.

The special accounting rule would only apply for purposes of determining the date on which the FICA and FUTA wages result from the exercise of a statutory stock option. Therefore, the choice would apply for purposes of both the employer portion of FICA tax and the employee portion of FICA tax. If the employer used the special accounting rule, the employee would be required to use the special accounting rule and to use it for the same period as the employer. In addition, the employee would be required to use the special accounting rule and the same period for all purposes. For example, the special accounting rule would apply in determining the calendar year in which the wages were paid for purposes of the credit or refund under section 6413(c) relating to FICA tax and wage payments from multiple employers in the same calendar year.

An employer's choice to use the special accounting rule would be required to apply to all participants in the relevant employee stock purchase plan or incentive stock option plan. An employer that chose to use the special accounting rule would be required to notify the affected employees that the special accounting rule had been used and of the period for which it had been used. The employer would be required to provide the notice directly to each employee at or near the time the employer provided the employee with the Form W–2 for the calendar year in which the exercise occurred; the notice could not be provided earlier than with the employee's last paycheck of that calendar year.

C. Employee Pre-Funding of the Employee Portion of FICA Tax

Under current law, an employer and an employee may contractually arrange for the employee to pre-fund the amount of the employee portion of FICA tax that will arise upon the exercise of a statutory stock option.

Example

(i) Employer A sponsors an employee stock purchase plan under section 423 under which ESPP options are exercised on a quarterly basis (March 31, June 30, September 30, December 31). Employees fund the ESPP option exercise through payroll deductions. The payroll deductions include an additional amount equal to one percent of the payroll deduction deducted each payroll period and the one percent amount is used to fund the employee portion of FICA tax due at the time of the exercise. Any shortfall in funds to pay the employee portion of FICA tax is settled through withholding from the employee's current compensation at the time of the exercise, or such other method as may be available. Any excess over the amount necessary to pay the employee portion of FICA tax is returned to the employee.

Withholding to pre-fund the payment of the employee portion of FICA tax does not affect the taxation of, or the timing of taxation of, compensation. Therefore, the withheld amounts are included as gross income for income tax purposes, as well as wages paid to the employee for FICA tax, FUTA tax, and Federal income tax withholding purposes, as appropriate. In addition, for purposes of sections 3101 and 3102(a), this separate contractual arrangement does not satisfy either the employer's collection obligation or the employee's FICA tax liability until the funds are remitted to the Service. If the employer withholds funds from the employee and does not deposit the funds with the Service in satisfaction of the employee portion of FICA tax, the employee and the employer each remain liable for the tax, and any right of the employee to the pre-funded amounts held by the employer is not enforceable under the Internal Revenue Code.

D. Employer Advance of Employee Portion of FICA Tax

Under current law, an employer may arrange to advance the funds necessary to pay the employee portion of FICA tax and obtain reimbursement of those funds from the employee.

Examples

(i) Employer A sponsors an employee stock purchase plan under section 423 that permits the exercise of ESPP options on a quarterly basis (March 31, June 30, September 30, and December 31). Employees fund the ESPP option exercise price through payroll deductions. When an option is exercised, Employer A advances the funds to pay the employee portion of FICA tax arising from the exercise, and is repaid the advance from the employee's payroll deductions over the following quarter. Any repayment due to Employer A is accelerated upon the employee's termination of employment or termination of participation in the employee stock purchase plan.

(ii) Employer B sponsors an incentive stock option plan under section 422. When an incentive stock option granted under the plan is exercised, Employer B advances the funds to satisfy the employee portion of FICA tax arising from the exercise of the incentive stock option. Employer B is repaid the advance from the employee's future payroll. Any repayment due to Employer B is accelerated upon the employee's termination of employment.

E. Consistency Rule

For purposes of the rules of administrative convenience outlined in Sections A and B, the employer would be required to apply the chosen rule consistently to all employees eligible to participate under the relevant employee stock purchase plan under section 423 or incentive stock option plan under section 422. In addition, the requirements of section 423(b)(5) are applicable to an employee stock purchase plan under section 423. Section 423(b)(5) provides, with certain exceptions, that the terms of an employee stock purchase plan under section 423 must provide the same rights and privileges to all employees granted options under the plan.

Employers could impose conditions under which a chosen method would or would not apply to employees, provided that those conditions and the resulting method were applied consistently to all employees. For example, the employer could accelerate the deemed wage payment if an employee terminated employment, provided that the acceleration rule applied to all employees who terminated of employment. All of the examples provided in Sections A through E above would meet the consistency requirement

of this notice as well as the requirements of section 423(b)(5).

III. Effective Date

The proposed rules are not effective until a subsequent notice is issued with final rules. Treasury and the Service anticipate issuing such a notice to accompany the issuance of final regulations addressing the application of FICA tax, FUTA tax, and income tax withholding to statutory stock options.

IV. Request for Comments

Comments are requested regarding the proposed rules of administrative convenience described in this notice. All comments will be available for public inspection and copying. Comments must be submitted by February 14, 2002. Comments should reference Notice 2001–73, and be addressed to:

Associate Chief Counsel
(Tax Exempt and Government Entities)
CC:TEGE
ATTN: Employment Taxes, Statutory Stock Options and Proposed Rules of Administrative Convenience
Room 5214
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

V. Paperwork Reduction Act

Before final rules of administrative convenience are published, the collection of information contained in the proposed rules of administrative convenience described in this notice will be submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)).

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

The collection of information in the proposed rules of administrative convenience is in section B, requiring employers who choose the special accounting rule to notify employees of the application of the rule. This information is required to inform employees that for purposes of FICA and FUTA, certain wage payments made in December of a calendar year will be deemed paid during some specified period in the first quarter of the following calendar year. This information will be used to explain the wage reporting on the Forms W–2 that the employee receives. The collection of information is required if the employer chooses to use the special accounting rule. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 17,010 hours.

The estimated annual burden per respondent/recordkeeper varies from 1 to 10 hours, depending on individual circumstances, with an estimated average of 3 hours. The estimated number of respondents and/or recordkeepers is 5,670.

The estimated annual frequency of responses (used for reporting requirements only) is once per calendar year.

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

VI. Drafting Information

The principal author of this notice is Stephen Tackney of the Office of Chief Counsel. However, other personnel from Treasury and the Service participated in their development. For further information regarding this notice, contact Stephen Tackney at (202) 622–6040 (not a toll-free call).

Expansion of Notice 2001–70 — Additional Disaster Relief for Taxpayers Following the September 11, 2001, Terrorist Attack — Mid-Quarter Convention Relief

Notice 2001–74

This notice supplements the tax relief granted in Notice 2001–70 (2001–45 I.R.B. 437) published November 5, 2001, by expanding the class of taxpayers entitled to the relief and clarifying the instructions for making the election provided under Notice 2001–70.

In Notice 2001–70, the Treasury Department and the Internal Revenue Service announced their intention to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in § 168(d)(3) of the Internal Revenue Code to certain property placed in service in the taxable year that includes September 11, 2001, if the third quarter of the taxpayer's 2001 taxable year includes September 11, 2001. Notice 2001–70 also provided that an eligible taxpayer that wishes to make the election must write "Election Pursuant to Notice 2001–70" across the top of the taxpayer's Form 4562, *Depreciation and Amortization*, for the taxpayer's taxable year that includes September 11, 2001.

Section 168(d)(3) generally provides that, except as provided in regulations, if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property (other than property described in § 168(d)(3)(B)) placed in service during the taxable year, the applicable depreciation convention for all property (other than property described in § 168(d)(2)) to which § 168 applies placed in service during the taxable year is the mid-quarter convention.

Treasury and the Service have been made aware that certain taxpayers that are not entitled to relief under Notice 2001–70 because the third quarter of their 2001 taxable year does not include September 11, 2001, are purchasing property to replace property destroyed in the September 11, 2001, terrorist attack. As a result of these purchases, some of these taxpayers would be required to apply the mid-quarter convention. Such a result may place these taxpayers at a competitive disadvantage because other similarly situated taxpayers have received relief under Notice 2001–70.

Accordingly, Notice 2001–70 is expanded to provide that if the fourth quarter of a taxpayer's taxable year includes September 11, 2001, then the taxpayer may elect, for purposes of § 168(d), to apply the half-year convention to all property (other than property described in § 168(d)(2)) placed in service during the taxpayer's taxable year that includes September 11, 2001. The

election is made in the same manner provided in Notice 2001–70.

In addition, certain taxpayers are required to file Form 2106, *Employee Business Expenses*, rather than Form 4562, *Depreciation and Amortization*, to report certain depreciation expenses. Accordingly, these taxpayers may make the election provided under Notice 2001–70, as supplemented by this notice, by writing "Election Pursuant to Notice 2001–70" across the top of the taxpayer's Form 2106. Taxpayers filing their returns electronically may make the election provided under Notice 2001–70, as supplemented by this notice, by typing "Election Pursuant to Notice 2001–70" in the Election Explanation (ELC) record when filing the Form 4562 or Form 2106.

Treasury and the Service intend to amend the regulations under § 168 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

The principal author of this notice is Bernard P. Harvey of the Office of Associate Chief Counsel, Passthroughs and Special Industries. For further information regarding this notice, contact Mr. Harvey at (202) 622–3110 (not a toll-free call).

---

26 CFR 601.201: Rulings and determination letters (Also, Part I, §§ 401; 1.401(b)–1.)

Rev. Proc. 2001–55

SECTION 1. PURPOSE

This revenue procedure extends the GUST[1] remedial amendment period under § 401(b) of the Code for qualified retirement plans. First, the revenue procedure extends the GUST remedial amendment period for all plans to February 28, 2002, if the period would otherwise end before then. Second, the revenue procedure provides an additional extension to June 30, 2002, for plans that were directly affected by the September 11, 2001, terrorist attack on the United States (the "Terrorist Attack"). Finally, the revenue procedure provides that in cases of substantial hardship resulting from the Terrorist Attack the Service may, in its discretion, grant additional extensions of the GUST remedial amendment period to particular plans up to December 31, 2002.

SECTION 2. BACKGROUND

.01 Under § 401(b), plan sponsors have a remedial amendment period in which to adopt plan amendments for GUST. The end of the GUST remedial amendment period is the deadline for making all GUST plan amendments and other plan amendments specifically enumerated in Rev. Proc. 99–23 (1999–1 C.B. 920). The GUST remedial amendment period also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

.02 Rev. Proc. 2000–27 (2000–26 I.R.B. 1272) provides that the GUST remedial amendment period for nongovernmental plans ends on the last day of the first plan year beginning on or after January 1, 2001. This is also the end of the remedial amendment period for the Tax Reform Act of 1986 (TRA '86) for nonelecting church plans. The GUST remedial amendment period for governmental plans, as defined in § 414(d), ends on the later of (i) the last day of the first plan year beginning on or after January 1, 2001, or (ii) the last day of the first plan year beginning on or after the "2000 legislative date" (that is, the 90th day after the opening of the first legislative session beginning after December 31, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously). This is also the end of the TRA '86 remedial amendment period for governmental plans.

.03 Rev. Proc. 2000–20 (2000–6 I.R.B. 553), as modified by Rev. Proc. 2000–27 and Notice 2001–42 (2001–30 I.R.B. 70), provides an extension of the GUST remedial amendment period for employers who, by the end of the GUST remedial amendment period (determined without regard to the extension), have adopted a pre-approved plan (that is, a master or prototype or volume submitter plan) or certified their intent to adopt such a plan. If the requirements for the extension are satisfied, the GUST remedial amendment period for the employer's plan will not end before the later of December 31, 2002, or the end of the 12th month beginning after the date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan.

.04 Rev. Proc. 2001–6 (2001–1 I.R.B. 194) contains the Service's procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409, and 4975(e)(7) of the Code and the exempt status of related trusts or custodial accounts under § 501(a).

.05 Section 1.401(b)–1(f) of the Income Tax Regulations provides that, at his discretion, the Commissioner may extend the remedial amendment period or may allow a particular plan to be amended after the expiration of its remedial amendment period and any applicable extension of such period. In determining whether such an extension will be granted, the Commissioner shall consider, among other factors, whether substantial hardship to the employer would result if such an extension were not granted, whether such an extension is in the best interest of plan participants, and whether the granting of the extension is adverse to the interests of the government.

SECTION 3. GENERAL EXTENSION OF REMEDIAL AMENDMENT PERIOD TO FEBRUARY 28, 2002

.01 The GUST remedial amendment period is extended to February 28, 2002, if the period would otherwise end before then. This extension applies to all GUST plan amendments, including all those plan

[1] "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103–465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353;
- the Small Business Job Protection Act of 1996, Pub. L. 104–188;
- the Taxpayer Relief Act of 1997, Pub. L. 105–34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106–554.

amendments specifically enumerated in Rev. Proc. 99–23. In addition, this extension applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

.02 The TRA '86 remedial amendment period for governmental plans and nonelecting church plans is also extended to February 28, 2002, if the period would otherwise end before then.

.03 This extension also applies to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under Rev. Proc. 2000–20, as modified.

SECTION 4. EXTENSION OF REMEDIAL AMENDMENT PERIOD TO JUNE 30, 2002, FOR PLANS DIRECTLY AFFECTED BY THE TERRORIST ATTACK

.01 The extension of the remedial amendment period provided by this section applies only to plans directly affected by the Terrorist Attack, as defined in sections 4.02 and 4.03 of this revenue procedure.

.02 For purposes of the revenue procedure, a plan will be considered to be directly affected by the Terrorist Attack if any of the following were located at the time of the attack in the area of the New York City borough of Manhattan bounded on the north by 14th Street: the principal place of business of any employer that maintains the plan; the office of the plan or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of an attorney, enrolled actuary, certified public accountant, or other advisor retained by the plan (or by the employer with respect to issues involving the plan). A plan will also be considered to be directly affected by the Terrorist Attack if any individual required under the terms of the plan or corporate rules to approve plan amendments, the plan administrator, or an attorney, enrolled actuary, certified public accountant, or other advisor retained by the plan (or by the employer with respect to issues involving the plan) was injured or killed or is missing as a result of the Terrorist Attack.

.03 A plan sponsor of a plan that is not described in section 4.02 may ask the Service to designate the plan as directly affected by the Terrorist Attack if the plan sponsor's ability to amend the plan and file a determination letter application has been severely impaired as a direct result of the Terrorist Attack. Upon a showing of such directly related, severe impairment, as determined by the Service in its discretion, the Service will designate the plan as directly affected by the Terrorist Attack. The plan sponsor's request should be sent to the following address:

Manager, EP Determinations
Attention: RAP Extension Coordinator
550 Main Street
Room 5106
Cincinnati, Ohio 45202

The request must be made by the later of December 31, 2001, or the 60th day preceding the end of the plan's GUST remedial amendment period (determined without regard to the extensions under this revenue procedure). The request must explain how the Terrorist Attack has directly and severely impaired the ability to amend the plan and file a determination letter application. The Service will not designate a plan as directly affected by the Terrorist Attack on account of delays experienced by a significant segment of the nation, such as disruptions in transportation or mail delivery and delays associated with diversion of resources to other activities as a result of the Terrorist Attack. If the request is denied, the GUST remedial amendment period for the plan will end on the later of the date it would otherwise end or the date that is one month after the date of the letter denying the request.

.04 The GUST remedial amendment period for directly affected plans is extended to June 30, 2002, if the period would otherwise end before then.

.05 This extension of the GUST remedial amendment period applies to all GUST plan amendments of directly affected plans, including all those plan amendments specifically enumerated in Rev. Proc. 99–23. In addition, this extension applies with respect to all disqualifying provisions of directly affected new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause a directly affected existing plan to fail to be qualified.

.06 The TRA '86 remedial amendment period for directly affected governmental plans and nonelecting church plans is also extended to June 30, 2002, if the period would otherwise end before then.

.07 Plan sponsors who file determination letter applications utilizing the extension provided by this section must include with their application an attachment, labeled "September 11, 2001 Terrorist Attack," which describes how the plan meets the criteria in section 4.02 (for example, that at the time of the Terrorist Attack the office of the plan administrator was located in the area of Manhattan bounded on the north by 14th Street). This label must be on the attachment and not on the envelope. If the Service has designated the plan as directly affected in response to a request submitted under section 4.03, a copy of the Service's letter so designating the plan should be attached to the determination letter application in place of the attachment.

.08 A plan sponsor of a directly affected plan described in section 4.02 or 4.03 who can show that it will not be able to amend the plan for GUST or file a determination letter application within the plan's GUST remedial amendment period (including the extension under section 4.04) without incurring substantial hardship directly related to the Terrorist Attack may request a further extension under § 1.401(b)–1(f). The request should be addressed to the Manager, EP Determinations, at the address in section 4.03 and must be made by the later of April 30, 2002, or the 60th day preceding the end of the plan's GUST remedial amendment period. A request made under this section 4.08 may be combined with a request made under section 4.03, provided, however, that the combined request is made by the later of December 31, 2001, or the 60th day preceding the end of the plan's GUST remedial amendment period (determined without regard to the extensions under this revenue procedure). A request under this section 4.08 must clearly demonstrate the hardship that will be incurred without a further extension.

For example, if the extension is needed because of delays in obtaining documents and information needed to amend the plan, the request must include a description of such documents and information, an explanation of how these delays are directly related to the Terrorist Attack, an explanation of steps taken to date to amend the plan, and the requested extension date, including specific justification for the extension date. In no event will an extension beyond December 31, 2002, be granted. If the request for a further extension is denied, the GUST remedial amendment period for the plan will end on the later of the date on which it would otherwise end (including the extension under section 4.04) or the date that is one month after the date of the letter denying the request.

.09 This extension does not apply to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under Rev. Proc. 2000–20, as modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective December 3, 2001.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2000–20, 2000–27 and 2001–6 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday. Mr. Flannery may be reached at 1–202–283–9888 (not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Statutory Mergers and Consolidations

REG–126485–01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking and Notice of Public Hearing.

SUMMARY: This document contains proposed regulations that define the term statutory merger or consolidation as that term is used in section 368(a)(1)(A). The proposed regulations permit certain transactions involving entities that are disregarded as entities separate from their corporate owners for Federal tax purposes to qualify as a statutory merger or consolidation. These proposed regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for March 13, 2002, must be received by February 20, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–126485–01), room 5226, 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 5 p.m. to: CC:ITA:RU (REG–126485–01), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Regs option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs.reglist.html*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Reginald Mombrun (202) 622–7750 or Marlene P. Oppenheim (202) 622–7770; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Lanita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. *Section 368(a) Generally*

The Internal Revenue Code of 1986 (the Code) provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term reorganization includes "a statutory merger or consolidation." Section 1.368–2(b)(1) currently provides that a statutory merger or consolidation must be "effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia." A transaction will only qualify as a reorganization under section 368(a)(1)(A), however, if it satisfies certain nonstatutory requirements, including the business purpose requirement of §1.368–1(b), the continuity of business enterprise requirement of §1.368–1(d), and the continuity of interest requirement of §1.368–1(e).

B. *Disregarded Entities Generally*

A business entity (as defined in §301.7701–2(a)) that has only one owner may be disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in §301.7701–2(b)) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

Because qualified REIT subsidiaries and qualified subchapter S subsidiaries are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit a limited liability company to merge with another limited liability company or with a corporation.

C. *Previous Proposal of Regulations*

On May 16, 2000, the IRS and Treasury issued a notice of proposed rulemaking (REG–106186–98, 65 FR 31115) providing guidance under section 368(a)(1)(A), including guidance regarding whether certain mergers involving disregarded entities may qualify as statutory mergers under section 368(a)(1)(A) (hereinafter referred to as the 2000 proposed regulations). The 2000 proposed regulations provided that neither the merger of a disregarded entity into a corporation nor the merger of a target corporation into a disregarded entity was a statutory merger or consolidation qualifying as a reorganization under section 368(a)(1)(A).

A public hearing on the 2000 proposed regulations was held on August 8, 2000. In addition, written comments were received. While commentators generally agreed that the merger of a disregarded entity into a corporation should not qualify as a statutory merger under section 368(a)(1)(A), commentators asserted that the merger of a target corporation into a disregarded entity with a corporate owner should be able to qualify as a statutory merger under section 368(a)(1)(A). Commentators argued that not permitting the merger of a target corporation into a disregarded entity to qualify as a statutory merger under section 368(a)(1)(A) is inconsistent with the general treatment of the disregarded entity as a division of its owner for Federal tax purposes.

Explanation of Provisions

A. *Definitions*

After consideration of the comments received, the IRS and Treasury have decided to withdraw the 2000 proposed regulations and issue new proposed regulations (hereinafter referred to as the 2001 proposed regulations) to provide guidance concerning the definition of the terms

statutory merger and *consolidation* as those terms are used in section 368(a)(1)(A), including as those terms relate to transactions involving disregarded entities.

The 2001 proposed regulations introduce a number of terms that are employed in the definition of statutory merger or consolidation. The term disregarded entity is defined as a business entity (as defined in §301.7701–2(a)) that is disregarded as an entity separate from its owner for Federal tax purposes. The term combining entity is defined as a business entity that is a corporation (as defined in §301.7701–2(b)) that is not a disregarded entity. The term combining unit is defined as a combining entity and all disregarded entities, if any, the assets of which are treated as owned by such combining entity for Federal tax purposes.

The 2001 proposed regulations provide that, for purposes of section 368(a)(1)(A), a statutory merger or consolidation must be effected pursuant to the laws of the United States or a State or the District of Columbia. Pursuant to such laws, the following events must occur simultaneously at the effective time of the transaction: (1) all of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and (2) the combining entity of each transferor unit ceases its separate legal existence for all purposes.

The IRS and Treasury believe that these definitions of statutory merger and consolidation are consistent with the principles of current law. See *Cortland Specialty Co. v. Commissioner,* 60 F.2d 937 (2d Cir. 1932), cert. denied, 288 U.S. 599 (1933); Rev. Rul. 2000–5 (2000–1 C.B. 436). In particular, the IRS and Treasury do not intend for the requirement that all of the assets of one or more transferor units be transferred in the statutory merger or consolidation to be interpreted in the same manner as the "substantially all" requirement of 368(a)(1)(C), 368(a)(1)(D), 368(a)(2)(D), and 368(a)(2)(E). However, the IRS and Treasury do intend this requirement to ensure that divisive transactions do not qualify as statutory mergers or consolidations under section 368(a)(1)(A). See Rev. Rul. 2000–5.

In addition, the 2001 proposed regulations, like the 2000 proposed regulations, remove the word corporation from the requirement that, in order to qualify as a reorganization under section 368(a)(1)(A), a merger or consolidation must be "effected pursuant to the corporation laws." This change conforms the regulations to the IRS's long-standing position that a transaction may qualify as a reorganization under section 368(a)(1)(A) even if it is undertaken pursuant to laws other than the corporation law of the relevant jurisdiction. See Rev. Rul. 84–104 (1984–2 C.B. 94) (treating a consolidation pursuant to the National Banking Act, 12 U.S.C. 215, as a merger for Federal tax purposes).

Finally, the 2001 proposed regulations remove the word "Territory" from the types of jurisdictions pursuant to the laws of which a transaction that qualifies as a reorganization under section 368(a)(1)(A) may be effected to be consistent with the definition of domestic under section 7701(a)(4), which was amended by section 1906(c) of Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1525.

In this guidance project, the IRS and Treasury are not addressing the treatment under section 368(a)(1)(A) of transactions that involve one or more foreign corporations. As discussed below, the IRS and Treasury are considering issuing guidance regarding such transactions as part of a separate regulations project.

B. *Mergers Involving Disregarded Entities*

The 2001 proposed regulations' definition of a statutory merger or consolidation, unlike the approach of the 2000 proposed regulations, permits certain statutory mergers and consolidations involving disregarded entities to qualify as statutory mergers and consolidations under section 368(a)(1)(A). However, the 2001 proposed regulations provide that such a transaction in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit is not a statutory merger or consolidation within the meaning of section 368(a)(1)(A) unless such combining entity, the combining entity of the transferee unit, such disregarded entities, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia.

Permitting certain transactions involving disregarded entities that have a single corporate owner to qualify as statutory mergers and consolidations for purposes of section 368(a)(1)(A) is appropriate because it is consistent with the general treatment of a disregarded entity as a division of its owner. Therefore, under the 2001 proposed regulations, the merger of a target corporation into a disregarded entity may qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A). Consistent with the 2000 proposed regulations, however, the 2001 proposed regulations do not permit the merger of a disregarded entity into a member of a transferee unit, where the owner of the disregarded entity does not also merge into a member of the transferee unit, to qualify as a statutory merger or consolidation under section 368(a)(1)(A). In such a transaction, all of the transferor unit's assets may not be transferred to the transferee unit, with the result that the transferor unit's assets may be divided between the transferor unit and the transferee unit. Moreover, the separate legal existence of the combining entity of the transferor unit does not terminate as a matter of law. Although such a transaction cannot qualify as a statutory merger or consolidation under section 368(a)(1)(A), it may qualify for nonrecognition treatment under other provisions of the Code.

C. *Request for Comments*

Treasury and the IRS are considering further revisions to the regulations under section 368(a)(1)(A) to address statutory mergers and consolidations that involve one or more foreign corporations, including transactions involving a disregarded entity. Comments are requested regarding the appropriate scope for any such revision. Comments also are specifically requested concerning what related changes would be necessary to the regulations under sections 358 (concerning the determination of stock basis in certain

triangular reorganizations), 367, and 897, as well as other international provisions of the Code. Because a revision of the regulations may include revisions related to transactions under foreign merger or consolidation laws, comments are requested on what changes, if any, may be appropriate to the definition of a statutory merger or consolidation to facilitate the application of the definition in the context of the laws of a foreign jurisdiction. Finally, comments are requested regarding what additional reporting requirements may be appropriate to facilitate administration of the rules regarding statutory mergers or consolidations involving foreign entities.

Effective Date

These regulations are proposed to apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register.**

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the Tax Regs option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html*. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 13, 2002, beginning at 10 am in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 20, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Reginald Mombrun and Marlene P. Oppenheim of the office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the Treasury 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. In §1.368–2, paragraph (b)(1) is revised to read as follows:

§1.368–2 Definition of terms.

* * * * *

(b)(1)(i) *Definitions.* For purposes of this paragraph (b)(1), the following terms shall have the following meanings:

(A) *Disregarded entity.* A disregarded entity is a business entity (as defined in §301.7701–2(a) of this chapter) that is disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in §301.7701–2(b) of this chapter) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(B) *Combining entity.* A combining entity is a business entity that is a corporation that is not a disregarded entity.

(C) *Combining unit.* A combining unit is comprised solely of a combining entity and all disregarded entities, if any, the assets of which are treated as owned by such combining entity for Federal tax purposes.

(ii) *Statutory merger or consolidation generally.* For purposes of section 368(a)(1)(A), a statutory merger or consolidation is a transaction effected pursuant to the laws of the United States or a State or the District of Columbia, in which, as a result of the operation of such laws, the following events occur simultaneously at the effective time of the transaction —

(A) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and

(B) The combining entity of each transferor unit ceases its separate legal existence for all purposes.

(iii) *Statutory merger or consolidation involving disregarded entities.* A transaction effected pursuant to the laws of the United States or a State or the District of Columbia in which any of the assets and liabilities of a combining entity of a transferor unit become assets and liabilities of one or more disregarded entities of the transferee unit is not a statutory merger or consolidation within the meaning of section 368(a)(1)(A) and paragraph (b)(1)(ii) of this section unless such combining entity, the combining entity of the transferee unit, such disregarded entities, and each business entity through which the combining entity of the transferee unit holds its interests in such disregarded entities is organized under the laws of the United States or a State or the District of Columbia.

(iv) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section. In each of the examples, except as otherwise provided, each of V, Y, and Z is a domestic corporation. X is a domestic limited liability company. Except as otherwise provided, X is wholly owned by Y and is disregarded as an entity separate from Y for Federal tax purposes. The examples are as follows:

Example 1. Divisive transaction pursuant to a merger statute. (i) Under State W law, Z transfers some of its assets and liabilities to Y, retains the remainder of its assets and liabilities, and remains in existence following the transaction. The transaction qualifies as a merger under state W corporate law. Prior to the transaction, Y is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of Y, the combining entity and sole member of the transferee unit. In addition, the transaction does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because the separate legal existence of Z does not cease. Accordingly, the transaction does not qualify as a statutory merger or consolidation under section 368(a)(1)(A).

Example 2. Merger of a target corporation into a disregarded entity in exchange for stock of the owner. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger, the Z shareholders exchange their stock of Z for stock of Y. Prior to the transaction, Z is not treated as owning any assets of an entity that is disregarded as an entity separate from its owner for Federal tax purposes.

(ii) The transaction meets the requirements of paragraph (b)(1)(ii) of this section because the transaction is effected pursuant to State W law and the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, become the assets and liabilities of one or more members of the transferee unit that is comprised of Y, the combining entity of the transferee unit, and X, a disregarded entity the assets of which Y is treated as owning for Federal tax purposes, and Z ceases its separate legal existence for all purposes. Paragraph (b)(1)(iii) does not apply to prevent the transaction from qualifying as a statutory merger or consolidation for purposes of section 368(a)(1)(A) because each of Z, Y, and X is a domestic entity. Accordingly, the transaction qualifies as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 3. Triangular merger of a target corporation into a disregarded entity. (i) The facts are the same as in *Example 2*, except that V owns 100 percent of the outstanding stock of Y and, in the merger of Z into X, the Z shareholders exchange their stock of Z for stock of V. In the transaction, Z transfers substantially all of its properties to X.

(ii) The transaction is not prevented from qualifying as a statutory merger or consolidation under section 368(a)(1)(A), provided the requirements of section 368(a)(2)(D) are satisfied. Because the assets of X are treated for Federal tax purposes as the assets of Y, Y will be treated as acquiring substantially all of the properties of Z in the merger for purposes of determining whether the merger satisfies the requirements of section 368(a)(2)(D). As a result, the Z shareholders that receive stock of V will be treated as receiving stock of a corporation that is in control of Y, the combining entity of the transferee unit that is the acquiring corporation for purposes of section 368(a)(2)(D). Accordingly, the merger will satisfy the requirements of section 368(a)(2)(D) such that the Z shareholders' receipt of stock of V in the merger will not cause the transaction to fail to qualify as a reorganization under section 368(a)(1)(A).

Example 4. Merger of a target corporation into a disregarded entity owned by a partnership. (i) The facts are the same as in *Example 2*, except that Y is organized as a partnership under the laws of State W and is classified as a partnership for Federal tax purposes.

(ii) The transaction does not meet the requirements of paragraph (b)(1)(ii)(A) of this section. All of the assets and liabilities of Z, the combining entity and sole member of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit because neither X nor Y qualifies as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 5. Merger of a disregarded entity into a corporation. (i) Under State W law, X merges into Z. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of X (but not the assets and liabilities of Y other than those of X) become the assets and liabilities of Z and X's separate legal existence ceases for all purposes.

(ii) The transaction does not satisfy the requirements of paragraph (b)(1)(ii)(A) of this section because all of the assets and liabilities of a transferor unit do not become the assets and liabilities of one or more members of the transferee unit. The transaction also does not satisfy the requirements of paragraph (b)(1)(ii)(B) of this section because X does not qualify as a combining entity. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

Example 6. Merger of a corporation into a disregarded entity in exchange for interests in the disregarded entity. (i) Under State W law, Z merges into X. Pursuant to such law, the following events occur simultaneously at the effective time of the transaction: all of the assets and liabilities of Z become the assets and liabilities of X and Z's separate legal existence ceases for all purposes. In the merger of Z into X, the Z shareholders exchange their stock of Z for interests in X so that, immediately after the merger, X is not disregarded as an entity separate from Y for Federal tax purposes. Following the merger, pursuant to §301.7701–2(b)(1)(i) of this chapter, X is classified as a partnership for Federal tax purposes.

(ii) The transaction does not meet the requirements of paragraph (b)(1)(ii)(A) of this section because immediately after the merger X is not disregarded as an entity separate from Y and, consequently, all of the assets and liabilities of Z, the combining entity of the transferor unit, do not become the assets and liabilities of one or more members of a transferee unit. Accordingly, the transaction cannot qualify as a statutory merger or consolidation for purposes of section 368(a)(1)(A).

* * * * *

(v) *Effective date.* This paragraph (b)(1) applies to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 14, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 15, 2001, 66 F.R. 57400)

Notice of Proposed Rulemaking and Notice of Public Hearing

Consolidated Returns; Applicability of Other Provisions of Law; Non-Applicability of Section 357(c)

REG–137519–01

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document proposes amendments relating to the consolidated return regulations dealing with the non-applicability of section 357(c) in a consolidated group. The proposed amendments clarify that, in certain transfers described in section 351 between members of a consolidated group, a transferee's assumption of certain liabilities described in section 357(c)(3) will not reduce the transferor's basis in the transferee's stock received in the transfer. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for March 21, 2002, must be submitted by February 28, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–137519–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–137519–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at *http:www.irs.ustreas.gov/tax_regs/reglist.html.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, T. Ian Russell of the Office of Associate Chief Counsel (Corporate), (202) 622–7930; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Donna M. Poindexter (202–622–7180) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 357(c)(1) generally provides that, in the case of certain exchanges described in section 351, if the sum of the amount of the liabilities assumed by the transferee corporation exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as gain from the sale or exchange of a capital asset or of property that is not a capital asset. Section 357(c)(3), however, excludes from the computation of liabilities assumed liabilities the payment of which would give rise to a deduction, provided that the incurrence of such liabilities did not result in the creation of, or an increase in, the basis of any property.

Section 358(a) generally provides that, in the case of an exchange to which section 351 applies, the basis of the property permitted to be received without the recognition of gain or loss is decreased by the amount of any money received by the transferor. For this purpose, under section 358(d)(1), the transferee's assumption of a liability of the transferor is treated as money received by the transferor on the exchange. Section 358(d)(2), however, provides an exception for liabilities excluded under section 357(c)(3).

On August 15, 1994, final regulations (T.D. 8560) adding paragraph (d) to §1.1502–80 were published in the **Federal Register** (59 FR 41666). A correcting amendment adding a sentence to the end of paragraph (d) of §1.1502–80 was published in the **Federal Register** for March 14, 1997 (62 FR 12096). As currently in effect, §1.1502–80(d) provides that "[s]ection 357(c) does not apply to any transaction to which §1.1502–13, §1.1502–13T, §1.1502–14, or §1.1502–14T applies, if it occurs in a consolidated return year beginning on or after January 1, 1995." The example in that regulation contemplates that, to the extent that the transferor does not recognize gain under section 357(c) by reason of the rule of §1.1502–80(d), the transferor's basis in the stock of the transferee that it receives in the exchange is reduced, with the result that an excess loss account may arise.

A concern has been raised that, as currently drafted, §1.1502–80(d) may produce an unintended basis result in certain intragroup transfers described in section 351. In particular, it is possible that one might conclude that, because §1.1502–80(d) provides that section 357(c) does not apply to certain intragroup section 351 exchanges, no liabilities can technically be excluded under section 357(c)(3). If that analysis were correct, in the case of a transfer described in section 351 between members of a consolidated group, the transferor's basis in the stock of the transferee received in the transfer would be reduced by liabilities assumed by the transferee, including those liabilities described in section 357(c)(3) that would not have reduced basis had section 357(c) applied. Assuming the transferor and the transferee are members of the consolidated group at the time the liability does in fact give rise to a deduction on the part of the transferee and is taken into account on the consolidated return, the transferor's basis in the stock of the transferee would be reduced a second time under the principles of §1.1502–32. This duplicated basis reduction, *i.e.*, once at the time of the transfer described in section 351 and again at the time the liability is taken into account by the consolidated group, may ultimately cause the transferor to recognize an amount of gain on the sale of the stock of the transferee that does not clearly reflect income.

Explanation of Provisions

These proposed regulations clarify that, in certain transfers described in section 351 between members of a consolidated group, a transferee's assumption of liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), will not reduce the transferor's basis in the transferee's stock received in the exchange.

Proposed Effective Date

These regulations are proposed to apply to transactions occurring in consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register.**

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 21, 2002, beginning at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by February 28, 2002.

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

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is T. Ian Russell, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department 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. In §1.1502–80, paragraph (d) is revised to read as follows:

§1.1502–80 Applicability of other provisions of law.

* * * * *

(d) *Non-applicability of section 357(c)*–(1) *In general.* Section 357(c) does not apply to cause the transferor to recognize gain in any transaction to which §1.1502–13 applies, if such transaction occurs in a consolidated return year beginning on or after the date these regulations are published as final regulations in the **Federal Register.** Notwithstanding the foregoing, for purposes of determining the transferor's basis in property under section 358(a) received in a transfer described in section 351, section 358(d)(2) shall operate to exclude liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), from the computation of the amount of liabilities assumed that is treated as money received under section 358(d)(1), if such transfer occurs in a consolidated return year beginning on or after the date these regulations are published as final regulations in the **Federal Register.** This paragraph (d)(1) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d)(1), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor. For rules regarding the application of section 357(c) to transactions occurring in consolidated return years beginning on or after January 1, 1995, but before the date these regulations are published as final regulations in the **Federal Register**, see §1.1502–80(d) in effect prior to the date these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised April 1, 2001).

(2) *Examples.* The principles of paragraph (d)(1) of this section are illustrated by the following examples:

Example 1. P, S, and T are members of a consolidated group. P owns all of the stock of S and T with bases of $30 and $20, respectively. S has assets with a total fair market value equal to $100 and an aggregate basis of $30 and liabilities of $40. S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)). Section 357(c) does not apply to cause S to recognize gain in the merger. P's basis in T's stock increases to $50 ($30 plus $20), and T succeeds to S's $30 basis in the assets transferred and the $40 of liabilities.

Example 2. P owns all the stock of S1. S1 has assets with a total fair market value equal to $100 and an aggregate basis of $30. S1 has $40 of liabilities, $5 of which are described in section 357(c)(3)(A), but not section 357(c)(3)(B), and $35 of which are not described in section 357(c)(3)(A). S1 transfers its assets to a newly formed subsidiary, S2, in exchange for stock of S2 and S2's assumption of the liabilities of $40 in a transaction to which section 351 applies. Section 357(c) does not apply to cause S1 to recognize gain in connection with the transfer. For purposes of determining S1's basis in the S2 stock it received in the exchange, section 358(d)(2) operates to exclude $5 of the liabilities from the computation of the amount of liabilities assumed that are treated as money received under section 358(d)(1). S1's basis in the S2 stock received in the exchange is a $5 excess loss account (reflecting its $30 basis in the assets transferred reduced by $35, the amount of liabilities assumed that are not described in section 357(c)(3)(A)).

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 13, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 14, 2001, 66 F.R. 57021)

Notice of Proposed Rulemaking and Notice of Public Hearing

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options

REG–142686–01

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to incentive stock options and options granted under employee stock purchase plans. These proposed regulations would provide guidance concerning the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and Collection of Income Tax at Source to these options. These proposed regulations would affect employers that grant these options and employees who exercise these options. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and outlines of topics to be discussed at the public hearing scheduled for March 7, 2002, must be received by February 14, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–142686–01), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–142686–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html*. The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3121(a), 3306(b), and 3401(a) of the Internal Revenue Code of 1986 (Code), and to the Income Tax Regulations (26 CFR part 1) under section 424 of the Code. These regulations would clarify current law regarding FICA tax, FUTA tax, and income tax withholding consequences upon the exercise of statutory stock options, *i.e.*, incentive stock options described in section 422(b) and options granted under an employee stock purchase plan described in section 423(b). FICA tax consequences are determined by sections 3101 through 3128, FUTA tax consequences by sections 3301 through 3311, and income tax withholding consequences by sections 3401 through 3406.

A. *Statutory Stock Options*

Section 422(b) sets forth the requirements for treatment of options as incentive stock options. If certain conditions are met, special tax treatment is provided in section 421(a) for the transfer of stock to an individual pursuant to the exercise of an incentive stock option. These conditions include a requirement that the individual not dispose of the stock within two years from the date of the grant of the option, and a requirement that the individual not dispose of the stock within one year after the transfer of the stock to the individual.

Section 423(b) sets forth the requirements for establishment of an employee stock purchase plan. If certain conditions are met, special tax treatment is provided under section 421(a) for the transfer of stock to an individual pursuant to the exercise of an option granted under an employee stock purchase plan. These conditions include a requirement that the individual not dispose of the stock within two years from the date of the grant of the option, and a requirement that the individual not dispose of the stock within one year after the transfer of the stock to the individual.

Section 421(a) provides that at the time stock is transferred to an individual pursuant to the exercise of an option, if the conditions of section 422(a) or 423(a) are met, then no income to the individual results upon the exercise. Section 421(b) provides that at the time stock is transferred to an individual pursuant to the exercise of an option, if the stock is sold or disposed of by the individual and the holding period requirements of section 422(a)(1) or 423(a)(1) are not met, then any income to the individual which results for the taxable year, in which the option was exercised, attributable to the sale or disposition of the stock is income to the individual in the taxable year, of the individual, in which the sale or disposition occurred.

Section 423(c) provides guidance when the option price of a share of stock acquired by an individual pursuant to the exercise of an option granted under an employee stock purchase plan is less than 100 percent of the fair market value of the share at the time the option was granted. Section 423(c) provides that in the event of either the disposition of the share of stock by the individual which meets the holding period requirements of section 423(a) or in the event of the individual's death while owning the share of stock, that any resulting compensation is

attributable to the individual in the taxable year in which the disposition or death occurred. The compensation attributable to the individual is the amount equal to the lesser of (1) the excess of the fair market value of the share at the time of the disposition or death over the amount paid for the share under the option or (2) the excess of the fair market value of the share at the time the option was granted over the option price.

B. *FICA, FUTA, and Income Tax Withholding*

1. *FICA*

FICA tax is generally imposed on each employer and employee. Under section 3111, FICA tax is imposed on the employer in an amount equal to a percentage of the wages paid by that employer. Under section 3101, FICA tax is also imposed on the employee in an amount equal to a percentage of the wages received by the employee with respect to employment.

FICA tax is composed of a tax for Old-Age, Survivors, and Disability Insurance (OASDI) and a tax for Hospital Insurance (HI). The OASDI portion of FICA tax is imposed separately on the employer and on the employee in an amount equal to 6.2 percent of wages. Under section 3121(a)(1), the wages subject to the OASDI portion of FICA tax are limited to the contribution and benefit base for OASDI for that year ($80,400 for calendar year 2001). The HI portion of FICA tax is separately imposed on the employer and the employee in an amount equal to 1.45 percent of wages. There is no dollar limit on the wages subject to the HI portion of FICA tax.

Under section 3102, the employer is required to collect the employee portion of FICA tax by deducting the amount of the tax from wages, as and when paid, and is liable for payment of the tax required to be collected. Under §31.3102–1(a) of the Employment Tax Regulations, the employer is required to collect the employee portion of FICA tax, notwithstanding that the wages are paid in something other than money, and to pay over the tax in money.

2. *FUTA*

FUTA tax is generally imposed under section 3301 on each employer in an amount equal to a percentage of wages paid by the employer with respect to employment. FUTA tax is imposed on the employer in an amount equal to 6.2 percent of wages. Under section 3306(b), wages of an employee subject to the FUTA tax are limited to $7,000 per calendar year.

3. *Income Tax Withholding*

Income tax withholding is imposed under section 3402(a), which requires employers paying wages to deduct and withhold income tax on those wages. The amount deducted and withheld is determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury.

C. *Wages*

1. *FICA*

For FICA purposes, section 3121(a) provides that the term *wages*, with certain exceptions, means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Similarly, under §31.3121(a)–1(b), the term *wages* means all remuneration for employment unless specifically excepted under section 3121(a) or §31.3121(a)–1(j). Neither the Code nor the regulations contain an exclusion from wages for the value of stock transferred pursuant to the exercise of an option.

Under §31.3121(a)–1(e), in general, the medium in which the remuneration is paid is immaterial. It may be paid in cash or in kind. The amount of non-cash remuneration is based on the fair market value of the non-cash remuneration at the time of payment.

Under §31.3121(a)–2(a), in general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are generally paid by an employer at the time that they are actually or constructively paid.

Under §31.3121(a)–1(i), remuneration for employment, unless specifically excepted under section 3121(a) or §31.3121(a)–1(j), constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

2. *FUTA*

For FUTA purposes, section 3306(b) provides that the term *wages*, with certain exceptions, means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Similarly, under §31.3306(b)–1(b), the term *wages* means all remuneration for employment unless specifically excepted under section 3306(b) or §31.3306(b)–1(j). Neither the Code nor the regulations contain an exclusion from wages for the value of stock transferred pursuant to the exercise of an option.

Under §31.3306(b)–1(e), in general, the medium in which the remuneration is paid is immaterial. It may be paid in cash or in kind. The amount of non-cash remuneration is based on the fair market value of the non-cash remuneration at the time of payment.

Under §31.3301–4, wages are considered paid when actually or constructively paid.

Under §31.3306(b)–1(i), remuneration for employment paid by an employer to an individual for employment, unless specifically excepted under section 3306(b), constitutes wages even though at the time paid the individual is no longer an employee.

3. *Income tax withholding*

For income tax withholding purposes, section 3401(a) provides that the term *wages*, with certain exceptions, means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration

(including benefits) paid in any medium other than cash. Similarly, under §31.3401(a)–1(a), the term *wages* in general means all remuneration for employment for services performed by an employee for his employer unless specifically excepted under section 3401(a) or 3402(e).

Under §31.3401(a)–1(a)(4), in general, the medium in which the remuneration is paid is immaterial. It may be paid in cash or in kind. The amount of non-cash remuneration is based on the fair market value of the non-cash remuneration at the time of payment.

Under §31.3402(a)–1(b), the employer is required to collect the tax by deducting and withholding the amount from the employee's wages as and when paid, either actually or constructively.

Under §31.3401(a)–1(a)(5), remuneration for services, unless specifically excepted by statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

The legislative history of sections 3401 through 3404 indicates that a purpose of income tax withholding is to enable individuals to pay income tax in the year in which the income is earned. H.R. Conf. Rep. No. 78–510 at 1 (1943); H.R. Rep. No. 78–401 at 1 (1943); Rep. No. 78–221 at 1 (1943); and Senate Rep. No. 78–221 at 1 (1943). Therefore, income tax withholding is generally imposed only upon remuneration paid by an employer to the extent that an employee recognizes income. Section 421(a) provides that if a share of stock is transferred to an individual in a transfer which meets the requirements of section 422(a) or 423(a), no income is recognized at the time of the transfer.

As part of the Social Security Amendments of 1983, Public Law 98–21, 97 Stat. 65 (1983), Congress amended sections 3121(a) and 3306(b)[1] to provide specifically that regulations providing an exclusion from wages for income tax withholding purposes are not to be construed to require a similar exclusion from wages for FICA and FUTA purposes. The legislative history to the Social Security Amendments of 1983 at S. Rep. No. 98–23, 42, 98th Cong., 1st Sess. explains as to FICA and income tax withholding that "[S]ince, [however], the [social] security system has objectives which are significantly different from the objective underlying the income tax withholding rules, the committee believes that amounts exempt from income tax withholding should not be exempt from FICA unless Congress provides an explicit FICA tax exclusion." The legislative history further explains that Congress intended to reverse the holding in *Rowan Companies v. U.S.,* 452 U.S. 247 (1981), that the definitions of *wages* for FICA and income tax withholding purposes were the same. Thus, wages for income tax withholding purposes are not always the same as wages for FICA and FUTA purposes.

D. *Application of Law to Statutory Stock Options*

Revenue Ruling 71–52 (1971–1 C.B. 278) which was published before the statutory changes to sections 3121(a) and 3306(b) mentioned immediately above, addressed the FICA, FUTA, and income tax withholding consequences applicable to the exercise of qualified stock options under former section 422[2]. The ruling holds that a taxpayer does not make a payment of *wages* for purposes of FICA, FUTA, and income tax withholding at the time of the exercise of a qualified stock option under former section 422.

Notice 87–49 (1987–2 C.B. 355) addressed potential inconsistencies among and coordination of the proposed regulations under former section 422A (current section 422), section 83, and Rev. Rul. 71–52. Notice 87–49 provided that Rev. Rul. 71–52 was being reconsidered, but, until the results of such reconsideration were announced, the principles of Rev. Rul. 71–52 apply to the disposition of stock, acquired by an individual pursuant to the exercise of an incentive stock option, which does not meet the requirements of former section 422A(a) (current section 422(a)).

Notice 2001–14 (2001–6 I.R.B. 416) addresses the FICA, FUTA, and income tax withholding consequences applicable to the exercise of statutory stock options. Notice 2001–14 provides that in the case of any statutory stock option exercised before January 1, 2003, the IRS will not assess FICA or FUTA tax upon the exercise of the option and will not treat the disposition of stock acquired by an employee pursuant to the exercise of the option as subject to income tax withholding. Notice 2001–14 also provides that Revenue Ruling 71–52 is obsolete and that the holding of Revenue Ruling 71–52 does not apply to the exercise of a statutory stock option or to the disposition of stock acquired pursuant to the exercise of a statutory stock option. Consistent with that conclusion, Notice 2001–14 also provides that the provisions of Notice 87–49 described above no longer apply.

It has long been recognized that the transfer of stock to an employee pursuant to the exercise of a nonstatutory stock option granted in connection with employment constitutes a payment of compensation to the extent that the fair market value of the stock received by the employee pursuant to the exercise of the nonstatutory option exceeds the option exercise price. *Commissioner v. LoBue,* 351 U.S. 243 (1956); *Commissioner v. Smith,* 324 U.S. 177 (1945). The exclusion from gross income for income tax purposes that is provided by section 421(a)(1) for the transfer of stock upon the exercise of a statutory stock option, does not alter the compensatory character of such stock transfers or serve to distinguish statutory stock options from nonstatutory stock options for purposes of sections 3121(a) and 3306(b).

Comments Received Pursuant to Notice 2001–14

Notice 2001–14 announced the intent to issue further administrative guidance clarifying current law with respect to the application of employment taxes to statutory stock options and solicited public

[1] Sections 3121(a) and 3306(b) were amended by section 327(b)(1) and (c)(4), respectively, of the Social Security Amendments of 1983, Public Law 98–21, 97 Stat. 65 (1983).

[2] Section 603 of the Tax Reform Act of 1976, Public Law 94–355, 90 Stat. 1520 (1976), amended former section 422 to provide, generally, that qualified stock options could not be granted after May 20, 1976. Current section 422 (Incentive Stock Options) was added to the Internal Revenue Code of 1954 (Code), as section 422A, by section 251(a) of the Economic Recovery Tax Act of 1981, Public Law 97–34, 95 Stat. 172 (1981). Subsequently, section 11801(c)(9)(A)(i) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388 (1990), repealed former section 422 (Qualified Stock Options) and re-designated former Code section 422A as section 422 of the Internal Revenue Code of 1986.

comments on the anticipated guidance. In response to the request for comments, the IRS received a number of comments addressing a variety of topics pertaining to the application of FICA, FUTA, and income tax withholding to transactions involving statutory stock options. Because the proposed regulations address only the application of the FICA, FUTA, and income tax withholding at the time of exercise of a statutory stock option, only comments relating to these types of transactions are addressed.

The IRS also received comments regarding an employer's income tax withholding and reporting obligations upon the sale or disposition of stock acquired by an individual pursuant to the exercise of a statutory stock option. The IRS intends to publish two notices, discussed more fully below, at the time of publication of these proposed regulations. One notice includes proposed rules addressing an employer's income tax withholding and reporting obligations upon the sale or disposition of stock acquired by an individual pursuant to the exercise of a statutory stock option. That notice discusses the comments received in response to Notice 2001–14 relating to those types of transactions.

Most commentators who addressed the application of FICA and FUTA tax at the time of exercise of a statutory stock option argued that there was no statutory basis for such application. As discussed more fully previously, the applicable Code provisions do not provide an exception from FICA or FUTA tax for wages paid to an employee arising from the exercise of a statutory stock option.

Several comments were received requesting that the IRS's acquiescence on decision in *Sun Microsystems v. Commissioner*, T.C.M. 1995–69, *acq.* 1997–2 C.B. 1, not be affected by the proposed regulations. The proposed regulations address only the application of FICA and FUTA to statutory stock options and do not address the section 41 issues raised in the *Sun Microsystems* decision.

Some commentators also expressed concern about the administrative burden of applying FICA and FUTA tax at the time of exercise, especially as to former employees, because there is often no payment of cash compensation to the employee at that time. As a result, some employees may need to sell some shares of the acquired stock to fund the employment tax obligations, resulting in a disqualifying disposition of the shares sold. In addition, some commentators expressed concern that the administrative burdens stemming from the application of FICA and FUTA tax upon the exercise of statutory stock options would make the use of these options less attractive to employers and employees. However, commentators did not cite applicable Code provisions that provide a statutory basis for excluding this type of compensation from the relevant employment taxes. As discussed below, the proposed regulations would enable the IRS to issue rules of administrative convenience to lessen the administrative burdens that commentators cited.

Explanation of Provisions

These proposed regulations would clarify current law regarding FICA tax, FUTA tax, and income tax withholding on the transfer of stock pursuant to the exercise of statutory stock options. These proposed regulations would provide that at the time of the exercise of a statutory stock option, the individual who was granted the statutory stock option receives wages for FICA and FUTA purposes. These proposed regulations would also provide that the amount of wages received equals the excess of the fair market value of the stock acquired pursuant to the exercise of the statutory stock option over the amount paid for the stock.

The position taken in these regulations is based upon the broad statutory definition of wages for FICA and FUTA purposes and the absence of any statutory exclusion for this form of remuneration. These regulations follow the Congressional directive that no exception from FICA taxes should be created without a specific exclusion and the section 3121(a) and 3306(b) provisions that no exception from FICA and FUTA taxes should be inferred from the fact that income tax withholding does not apply.

These proposed regulations would also provide that income tax withholding is not required when an individual exercises a statutory stock option because no income is recognized at the time of the exercise by reason of section 421(a)(1).

In response to the concerns about administrative burdens, the proposed regulations authorize the IRS to adopt rules of administrative convenience to assist employers and employees in meeting the employment tax obligations. Specifically, the proposed regulations permit the IRS to adopt rules permitting employers to deem the payment of wages resulting from the exercise of a statutory stock option as occurring at a specific date or dates, including over a period of dates, as well as any other appropriate rules of administrative convenience.

Section 424(h) provides that for purposes of the rules governing incentive stock option plans and employee stock purchase plans, if the terms of any option to purchase stock are modified, extended, or renewed, such *modification*, extension, or renewal is considered as the grant of a new option. Section 424(h)(3) generally defines the term *modification* as any change in the terms of the option which gives the employee additional benefits. The proposed regulations clarify that the adoption of any of the rules of administrative convenience that may be prescribed by the IRS pursuant to the proposed regulations, and the application of those rules to outstanding incentive stock options under section 422 or outstanding options under an employee stock purchase plan under section 423, will not constitute a modification for purposes of section 424(h).

These regulations are proposed to apply only upon publication of final regulations in the **Federal Register** and cannot be relied upon prior to publication. These proposed regulations, upon becoming final, would be effective only for the exercise of a statutory stock option that occurs on or after January 1, 2003. If these regulations are finalized as proposed, neither FICA nor FUTA tax will apply to the exercise of a statutory stock option prior to January 1, 2003. Consistent with this proposed position, the IRS will not assert FICA or FUTA tax which is based upon the exercise of a statutory stock option that occurs prior to January 1, 2003.

While neither FICA nor FUTA tax will apply to the exercise of a statutory stock option prior to January 1, 2003, if these regulations are finalized as proposed, an employer will be able to apply the final

regulations to the exercise of a statutory stock option that occurs prior to January 1, 2003, if the employer elects to do so.

Related administrative guidance

As noted above, the IRS is concurrently publishing two notices. One of the two notices sets forth proposed rules of administrative convenience under the authority provided to the IRS in the proposed regulations. These proposed rules would permit employers to deem the payment of wages resulting from the exercise of a statutory stock option as occurring at a specific date or dates, including over a period of dates. The notice also describes certain arrangements available under the current federal tax law that may assist employers and employees, including employee pre-funding of the employee portion of FICA tax and employer advances of funds to satisfy the employee portion of FICA tax.

The IRS is publishing a second notice that proposes rules regarding an employer's income tax withholding and reporting obligations upon the sale or disposition of stock acquired by an individual pursuant to the exercise of a statutory stock option. As indicated above, the proposed rule in this notice would state that the employer has no income tax withholding obligation when an employee sells or disposes of stock acquired by the employee pursuant to the exercise of a statutory stock option.[3]

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Treasury and the IRS specifically request comments on the clarity of the proposed regulations, how they can be made easier to understand, and the administerability of the rules in the proposed regulations. In addition, the proposed regulations do not include special rules for transactions in which an individual exercising a statutory stock option receives stock subject to a restriction, such as a substantial risk of forfeiture. Treasury and the IRS also specifically request comments as to whether the proposed regulations should include such special rules, including comments as to the prevalence of incentive stock option plans or employee stock purchase plans that impose such terms on stock received pursuant to the exercise of a statutory stock option.

A public hearing has been scheduled for March 7, 2002, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 14, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Stephen Tackney, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

Part 1 — INCOME TAXES

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

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

Par. 2. Section 1.425–1, as proposed at 49 FR 4519 (February 7, 1984), is amended by adding a sentence immediately after the third sentence of paragraph (e)(5)(i) to read as follows:

§1.425–1 Definitions and special rules applicable to statutory options.

* * * * *

(e) * * *

(5)(i) * * * In addition, the application to an outstanding option of any of the methods for the payment or withholding of employment taxes under sections

[3] These proposed regulations, along with the two notices, are intended to clarify the application of employment taxes to statutory stock options in a manner that recognizes and addresses the practical burdens that are imposed, including the imposition of withholding when neither the employer nor any other person (other than the employee) has control over a payment of remuneration, while also ensuring that "amounts exempt from income tax withholding should not be exempt from FICA unless Congress provides an explicit FICA tax exclusion." Social Security Amendments of 1983 at S. Rep. No. 98–23, 42, 98th Cong., 1st Sess.

3101, 3111, or 3301 that may be prescribed under §31.3121(a)–1(k)(2) or §31.3306(b)–1(l)(2) of this chapter is not a modification. * * *

* * * * *

Part 31 — EMPLOYMENT TAXES AND COLLECTION OF INCOME TAXES AT THE SOURCE

Par. 3. The authority citation for part 31 continues to read in part as follows:

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

Par. 4. In §31.3121(a)–1, paragraph (k) is added to read as follows:

§31.3121(a)–1 Wages.

* * * * *

(k) *Statutory stock options* — (1) *When an individual receives wages* — (i) *Statutory stock option defined.* For purposes of this section, a statutory stock option is an option that either satisfies the requirements of section 422(b) or is granted under a plan that satisfies the requirements of section 423(b).

(ii) *Wages at exercise*. If an individual is granted a statutory stock option, the individual receives wages when stock is transferred to the individual pursuant to the exercise of the option. The amount of the wages received by the individual is equal to the excess of the fair market value of the stock, determined at the time of exercise, over the amount paid for the stock by the individual. The provisions of this paragraph (k) are illustrated by the following example:

Example. (i) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is $100 per share. X exercises the option later when the fair market value of the Y stock is $120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of $120 per share for $85 per share.

(ii) In this *Example*, at the time of exercise, X has received wages equal to the excess of the fair market value of the stock ($120 per share) over the amount paid for the stock ($85 per share). Thus, for purposes of section 3121, X has received wages equal to $35 per share, for a total of $1,750.

(2) *Rules of administrative convenience*. The Commissioner may prescribe rules of administrative convenience for employers and employees to satisfy obligations under sections 3101 and 3111 that arise with respect to wages received pursuant to the exercise of a statutory stock option. Such rules may include, but are not limited to, permitting employers to deem the payment of wages due to the exercise of the statutory stock option as occurring at a specific date or dates, including over a period of dates.

(3) *Effective date*. This paragraph (k) is applicable to the exercise of a statutory option that occurs on or after January 1, 2003.

Par. 5. In §31.3306(b)–1, paragraph (l) is added to read as follows:

§31.3306(b)–1 Wages.

* * * * *

(l) *Statutory stock options* — (1) *When an individual receives wages* — (i) *Statutory stock option defined*. For purposes of this section, a statutory stock option is an option that either satisfies the requirements of section 422(b) or is granted under a plan that satisfies the requirements of section 423(b).

(ii) *Wages at exercise*. If an individual is granted a statutory stock option, the individual receives wages when stock is transferred to the individual pursuant to the exercise of the option. The amount of the wages received by the individual is equal to the excess of the fair market value of the stock, determined at the time of exercise, over the amount paid for the stock by the individual. The provisions of this paragraph (l) are illustrated by the following example:

Example. (i) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is $100 per share. X exercises the option later when the fair market value of the Y stock is $120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of $120 per share for $85 per share.

(ii) In this *Example*, at the time of exercise, X has received wages equal to the excess of the fair market value of the stock ($120 per share) over the amount paid for the stock ($85 per share). Thus, for purposes of section 3306, X has received wages equal to $35 per share, for a total of $1,750.

(2) *Rules of administrative convenience*. The Commissioner may prescribe rules of administrative convenience for employers to satisfy obligations under section 3301 that arise with respect to wages received pursuant to the exercise of a statutory stock option. Such rules may include, but are not limited to, permitting employers to deem the payment of wages due to the exercise of the statutory stock option as occurring at a specific date or dates, including over a period of dates.

(3) *Effective date*. This paragraph (l) is applicable to the exercise of a statutory option that occurs on or after January 1, 2003.

Par. 6. In §31.3401(a)–1, paragraph (b)(15) is added to read as follows:

§31.3401(a)–1 Wages.

* * * * *

(b) * * *

(15) *Statutory stock options* — (i) *When stock is transferred pursuant to an exercise* — (A) *Statutory stock option defined*. For purposes of this section, a statutory stock option is an option that either satisfies the requirements of section 422(b) or is granted under a plan that satisfies the requirements of section 423(b).

(B) *Withholding at exercise*. If an individual is granted a statutory stock option, withholding is not required when stock is transferred to the individual pursuant to the exercise of the option to the extent that the individual does not recognize income by reason of section 421(a)(1). The provisions of this paragraph (b)(15) are illustrated by the following example:

Example. (i) Individual X is granted an option under a plan that satisfies the requirements of section 423(b). The option allows X to acquire 50 shares of stock of X's employer, Y, at an exercise price equal to 85% of the fair market value of the stock at the time the option is granted. The fair market value of the Y stock at the time the option is granted is $100 per share. X exercises the option later when the fair market value of the Y stock is $120 per share. Thus, at the time of exercise, X acquires 50 shares of Y stock having a fair market value of $120 per share for $85 per share. X continues to hold the Y stock after exercise. Under section 421(a), no income is recognized at the time of exercise.

(ii) In this *Example*, for purposes of section 3401, X has not received wages at the time of exercise.

(ii) *Effective date*. This paragraph (b)(15) is applicable to the exercise of a statutory stock option that occurs on or after January 1, 2003.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on November 13, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 14, 2001, 66 F.R. 56944)

Disaster Relief for Taxpayers With an Interest in Passthrough Entities

Announcement 2001–117

Notice 2001–61 (2001–40 I.R.B. 305) provided filing and paying extensions and postponements for taxpayers affected by the September 11, 2001, Terrorist Attack. An affected taxpayer for purposes of Notice 2001–61 includes, among others, business entities whose principal place of business is located in a covered disaster area, and business entities whose principal place of business is not located in a covered disaster area but whose records necessary to meet a filing or paying deadline are located in a covered disaster area. Affected taxpayers also include trusts and estates whose tax records necessary to meet a filing or paying deadline are located in a covered disaster area. The IRS received a number of inquiries about the scope of Notice 2001–61 with respect to the partners, shareholders and beneficiaries of partnerships, S corporations, trusts and estates (passthrough entities). In response to those inquiries, Notice 2001–68 (2001–47 I.R.B. 504) noted that the deadline for filing of income tax returns of the partners, shareholders, or beneficiaries of passthrough entities is not postponed or extended **solely** because the passthrough entity is an affected taxpayer. Notice 2001–68 also noted the availability of other types of relief for those owners of passthrough entities.

Some taxpayer representatives have informed the IRS that they interpreted Notice 2001–61 as including owners of passthrough entities as affected taxpayers regardless of whether the owners themselves were otherwise affected. Those taxpayer representatives believed that if the records of the passthrough entity necessary to prepare Schedule K–1s were located in a covered disaster area, then the owners who would receive copies of the Schedule K–1s for use in preparing their own returns had records in a covered disaster area within the meaning of Notice 2001–61. Some taxpayers who relied on the advice of these taxpayer representatives missed certain tax deadlines between September 11, 2001, and November 2, 2001, when the IRS issued Notice 2001–68.

Although Notice 2001–61 did not grant the relief that some taxpayer representatives believed it did, the extraordinary circumstances surrounding the September 11, 2001, terrorist attacks justify granting limited additional relief to those taxpayers who missed deadlines in reliance on the interpretation of Notice 2001–61 described above. Accordingly, the IRS grants the following relief to partners, shareholders, or beneficiaries of passthrough entities that had income tax returns due (either originally or on extension) on or after September 11, 2001, and on or before November 2, 2001 (the date the IRS released Notice 2001–68), but did not file the return because the taxpayer believed that the IRS had granted a 120 day postponement solely by virtue of the taxpayer's interest in an affected entity. Those taxpayers will have until December 17, 2001, to file a timely return (and make any election required to be made with a timely filed return). The IRS will waive any failure to file penalty if the taxpayer files the return by December 17, 2001. The IRS will waive any failure to pay penalty that accrues from September 11, 2001, through December 17, 2001, as long as the taxpayer pays any balance due by December 17, 2001. Taxpayers that qualify for relief under this notice should mark "Extended pursuant to Announcement 2001–117" in red ink on the top of their returns or other documents filed with the IRS.

This announcement was drafted by the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this notice, you may call (202) 622–4940 (not a toll-free call).

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 law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance 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.—Intemal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z.—Corporation.

Numerical Finding List[1]

Bulletins 2001–27 through 2001–48

Announcements:

2001–69, 2001–27 I.R.B. *23*
2001–70, 2001–27 I.R.B. *23*
2001–71, 2001–27 I.R.B. *26*
2001–72, 2001–28 I.R.B. *39*
2001–73, 2001–28 I.R.B. *40*
2001–74, 2001–28 I.R.B. *40*
2001–75, 2001–28 I.R.B. *42*
2001–76, 2001–29 I.R.B. *67*
2001–77, 2001–30 I.R.B. *83*
2001–78, 2001–30 I.R.B. *87*
2001–79, 2001–31 I.R.B. *97*
2001–80, 2001–31 I.R.B. *98*
2001–81, 2001–33 I.R.B. *175*
2001–82, 2001–32 I.R.B. *123*
2001–83, 2001–35 I.R.B. *205*
2001–84, 2001–35 I.R.B. *206*
2001–85, 2001–36 I.R.B. *219*
2001–86, 2001–35 I.R.B. *207*
2001–87, 2001–35 I.R.B. *208*
2001–88, 2001–36 I.R.B. *220*
2001–89, 2001–38 I.R.B. *291*
2001–90, 2001–35 I.R.B. *208*
2001–91, 2001–36 I.R.B. *221*
2001–92, 2001–39 I.R.B. *301*
2001–93, 2001–44 I.R.B. *416*
2001–94, 2001–39 I.R.B. *303*
2001–95, 2001–39 I.R.B. *303*
2001–96, 2001–41 I.R.B. *317*
2001–97, 2001–40 I.R.B. *310*
2001–98 2001–41 I.R.B. *317*
2001–99 2001–42 I.R.B. *340*
2001–100, 2001–41 I.R.B. *317*
2001–101, 2001–43 I.R.B. *374*
2001–102, 2001–42 I.R.B. *340*
2001–103, 2001–43 I.R.B. *375*
2001–104, 2001–43 I.R.B. *376*
2001–105, 2001–43 I.R.B. *376*
2001–106, 2001–44 I.R.B. *416*
2001–107, 2001–44 I.R.B. *419*
2001–108, 2001–44 I.R.B. *419*
2001–109, 2001–45 I.R.B. *485*
2001–110, 2001–45 I.R.B. *486*
2001–111, 2001–45 I.R.B. *486*
2001–112, 2001–46 I.R.B. *494*
2001–113, 2001–46 I.R.B. *494*
2001–114, 2001–47 I.R.B. *528*
2001–115, 2001–48 I.R.B. *539*
2001–116, 2001–48 I.R.B. *540*
2001–118, 2001–48 I.R.B. *541*

Court Decisions:

2070, 2001–31 I.R.B. *90*
2071, 2001–44 I.R.B. *385*
2072, 2001–44 I.R.B. *379*

Notices:

2001–39, 2001–27 I.R.B. *3*
2001–41, 2001–27 I.R.B. *2*
2001–42, 2001–30 I.R.B. *70*
2001–43, 2001–30 I.R.B. *72*
2001–44, 2001–30 I.R.B. *77*
2001–45, 2001–33 I.R.B. *129*
2001–46, 2001–32 I.R.B. *122*
2001–47, 2001–36 I.R.B. *212*
2001–48, 2001–33 I.R.B. *130*
2001–49, 2001–34 I.R.B. *188*
2001–50, 2001–34 I.R.B. *189*
2001–51, 2001–34 I.R.B. *190*
2001–52, 2001–35 I.R.B. *203*
2001–53, 2001–37 I.R.B. *225*
2001–54, 2001–37 I.R.B. *225*
2001–55, 2001–39 I.R.B. *299*
2001–56, 2001–38 I.R.B. *277*
2001–57, 2001–38 I.R.B. *279*
2001–58, 2001–39 I.R.B. *299*
2001–59, 2001–41 I.R.B. *315*
2001–60, 2001–40 I.R.B. *304*
2001–61, 2001–40 I.R.B. *305*
2001–62, 2001–40 I.R.B. *307*
2001–63, 2001–40 I.R.B. *308*
2001–64, 2001–41 I.R.B. *316*
2001–65, 2001–43 I.R.B. *369*
2001–66, 2001–44 I.R.B. *396*
2001–68, 2001–47 I.R.B. *504*
2001–69, 2001–46 I.R.B. *491*
2001–70, 2001–45 I.R.B. *437*
2001–71, 2001–48 I.R.B. *530*

Proposed Regulations:

REG–110311–98, 2001–35 I.R.B. *204*
REG–106917–99, 2001–27 I.R.B. *4*
REG–103735–00, 2001–35 I.R.B. *204*
REG–103736–00, 2001–35 I.R.B. *204*
REG–107151–00, 2001–43 I.R.B. *370*
REG–100548–01, 2001–29 I.R.B. *67*
REG–106431–01, 2001–37 I.R.B. *272*
REG–125161–01, 2001–48 I.R.B. *537*
REG–142499–01, 2001–45 I.R.B. *476*

Railroad Retirement Quarterly Rates:

2001–27, I.R.B. *1*
2001–41, I.R.B. *314*

Revenue Procedures:

2001–39, 2001–28 I.R.B. *38*
2001–40, 2001–33 I.R.B. *130*
2001–41, 2001–33 I.R.B. *173*
2001–42, 2001–36 I.R.B. *212*
2001–43, 2001–34 I.R.B. *191*
2001–44, 2001–35 I.R.B. *203*
2001–45, 2001–37 I.R.B. *227*
2001–46, 2001–37 I.R.B. *263*
2001–47, 2001–42 I.R.B. *332*

Revenue Procedures—Continued

2001–48, 2001–40 I.R.B. *308*
2001–49, 2001–39 I.R.B. *300*
2001–50, 2001–43 I.R.B. *437*
2001–51, 2001–43 I.R.B. *369*
2001–52, 2001–46 I.R.B. *491*
2001–53, 2001–47 I.R.B. *506*
2001–54, 2001–48 I.R.B. *530*

Revenue Rulings:

2001–30, 2001–29 I.R.B. *46*
2001–33, 2001–32 I.R.B. *118*
2001–34, 2001–28 I.R.B. *31*
2001–35, 2001–29 I.R.B. *59*
2001–36, 2001–32 I.R.B. *119*
2001–37, 2001–32 I.R.B. *100*
2001–38, 2001–33 I.R.B. *124*
2001–39, 2001–33 I.R.B. *125*
2001–40, 2001–38 I.R.B. *276*
2001–41, 2001–35 I.R.B. *193*
2001–42, 2001–37 I.R.B. *223*
2001–43, 2001–36 I.R.B. *209*
2001–44, 2001–37 I.R.B. *223*
2001–45, 2001–42 I.R.B. *323*
2001–46, 2001–42 I.R.B. *321*
2001–47, 2001–39 I.R.B. *293*
2001–48, 2001–42 I.R.B. *324*
2001–49, 2001–41 I.R.B. *312*
2001–50, 2001–43 I.R.B. *343*
2001–51, 2001–45 I.R.B. *427*
2001–52, 2001–45 I.R.B. *434*
2001–53, 2001–46 I.R.B. *489*
2001–54, 2001–46 I.R.B. *490*
2001–55, 2001–47 I.R.B. *497*
2001–56, 2001–47 I.R.B. *500*
2001–57, 2001–46 I.R.B. *488*

Treasury Decisions:

8947, 2001–28 I.R.B. *36*
8948, 2001–28 I.R.B. *27*
8949, 2001–28 I.R.B. *33*
8950, 2001–28 I.R.B. *34*
8951, 2001–29 I.R.B. *63*
8952, 2001–29 I.R.B. *60*
8953, 2001–29 I.R.B. *44*
8954, 2001–29 I.R.B. *47*
8955, 2001–32 I.R.B. *101*
8956, 2001–32 I.R.B. *112*
8957, 2001–33 I.R.B. *125*
8958, 2001–34 I.R.B. *183*
8959, 2001–34 I.R.B. *185*
8960, 2001–34 I.R.B. *176*
8961, 2001–35 I.R.B. *194*
8962, 2001–35 I.R.B. *201*
8963, 2001–35 I.R.B. *197*
8964, 2001–42 I.R.B. *320*
8965, 2001–43 I.R.B. *344*
8966, 2001–45 I.R.B. *422*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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

Bulletins 2001–27 through 2001–48

Announcements:

2000–48
Modified by
Notice 2001–43, 2001–30 I.R.B. *72*

Notices:

98–52
Modified by
Notice 2001–56, 2001–38 I.R.B. *277*

99–41
Modified and superseded by
Notice 2001–62, 2001–38 I.R.B. *307*

2001–4
Modified by
Notice 2001–43, 2001–30 I.R.B. *72*

2001–9
Modified by
Notice 2001–46, 2001–32 I.R.B. *122*

2001–15
Supplemented by
Notice 2001–51, 2001–34 I.R.B. *190*

2001–42
Modified by
Notice 2001–57, 2001–38 I.R.B. *279*

Proposed Regulations:

LR–97–79
Withdrawn by
REG–100548–01, 2001–29 I.R.B. *67*

LR–107–84
Withdrawn by
REG–100548–01, 2001–29 I.R.B. *67*

REG–110311–98
Supplemented by
T.D. 8961, 2001–35 I.R.B. *194*

REG–106917–99
Corrected by
Ann. 2001–86, 2001–35 I.R.B. *207*

REG–103735–00
Supplemented by
T.D. 8961, 2001–35 I.R.B. *194*

REG–103736–00
Supplemented by
T.D. 8961, 2001–35 I.R.B. *194*

Proposed Regulations—Continued

REG–107186–00
Corrected by
Ann. 2001–71, 2001–27 I.R.B. *26*

REG–130477–00
Supplemented by
Ann. 2001–82, 2001–32 I.R.B. *123*

REG–130481–00
Supplemented by
Ann. 2001–82, 2001–32 I.R.B. *123*

Revenue Procedures:

83–74
Revoked by
Rev. Proc. 2001–49, 2001–39 I.R.B. *300*

84–84
Revoked by
Rev. Proc. 2001–49, 2001–39 I.R.B. *300*

93–27
Clarified by
Rev. Proc. 2001–43, 2001–34 I.R.B. *191*

97–13
Modified by
Rev. Proc. 2001–39, 2001–28 I.R.B. *38*

97–19
Modified by
Notice 2001–62, 2001–40 I.R.B. *307*

98–44
Superseded by
Rev. Proc. 2001–40, 2001–33 I.R.B. *130*

99–27
Superseded by
Rev. Proc. 2001–42, 2001–36 I.R.B. *212*

99–49
Modified and amplified by
Rev. Proc. 2001–46, 2001–37 I.R.B. *263*

2000–20
Modified by
Notice 2001–42, 2001–30 I.R.B. *70*

2000–28
Superseded by
Rev. Proc. 2001–50, 2001–45 I.R.B. *437*

2000–39
Corrected by
Ann. 2001–73, 2001–28 I.R.B. *40*
Superseded by
Rev. Proc. 2001–47, 2001–42 I.R.B. *332*

2000–48
Superseded by
Rev. Proc. 2001–54, 2001-48 I.R.B. *530*

2001–2
Modified by
Rev. Proc. 2001–41, 2001–33 I.R.B. *173*

Revenue Procedures–Continued

2001–3
Modified by
Rev. Proc. 2001–51, 2001–43 I.R.B. *369*

2001–6
Modified by
Notice 2001–42, 2001–30 I.R.B. *70*

Revenue Rulings:

57–589
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

65–316
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

67–274
Amplified by
Rev. Rul. 2001–46, 2001–42 I.R.B. *321*

68–125
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

69–563
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

70–379
Obsoleted by
Rev. Rul. 2001–39, 2001–33 I.R.B. *125*

74–326
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

78–127
Modified by
Rev. Rul. 2001–40, 2001–38 I.R.B. *276*

78–179
Obsoleted by
REG–106917–99, 2001–27 I.R.B. *4*

89–42
Modified and superseded by
Rev. Rul. 2001–48, 2001–42 I.R.B. *324*

90–95
Distinguished by
Rev. Rul. 2001–42, 2001–42 I.R.B. *321*

92–19
Supplemented by
Rev. Rul. 2001–38, 2001–33 I.R.B. *124*

97–31
Modified and superseded by
Rev. Rul. 2001–48, 2001–42 I.R.B. *324*

Treasury Decisions:

8948
Corrected by
Ann. 2001–90, 2001–35 I.R.B. *208*

---

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

INDEX

Internal Revenue Bulletins 2001–27 through 2001–48

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parenthesis refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

EMPLOYEE PLANS

Covered compensation tables for 2002, permitted disparity (RR 55) 47, *497*

Defined benefit pension plan, transfer of excess assets (TD 8948) 28, *27*; correction (Ann 90) 35, *208*

Determination letters:

Application forms revised (Ann 109) 45, *485*

Future of the determination letter program (Ann 83) 35, *205*

Qualified plans, simplifying application procedures (Ann 77) 30, *83*

Family and Medical Leave Act and cafeteria plans (TD 8966) 45, *422*

Forms:

5306-A, Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan), new (Ann 96) 41, *317*

5500 (Schedules B & R), filing relief (Ann 103) 43, *375*

Full funding limitations:

EMPLOYEE PLANS—Cont.

Weighted average interest rate for:

June 2001 (Notice 39) 27, *3*

July 2001 (Notice 48) 33, *130*

August 2001 (Notice 52) 35, *203*

September 2001 (Notice 58) 39, *299*

October 2001 (Notice 65) 43, *369*

November 2001 (Notice 71) 48, *530*

Nondiscrimination requirements and rules:

A defined benefit replacement allocation, cross-testing (RR 30) 29, *46*

Certain defined contribution retirement plans (TD 8954) 29, *47*

Governmental and church plans, relief from (Notice 46) 32, *122*

Proposed Regulations:

26 CFR 1.414(v)–1, added; catch-up contributions for individuals age 50 or over (REG–142499–01) 45, *476*

Qualified retirement plans:

Catch-up contributions (REG–142499–01) 45, *476*

Compensation limit, top-heavy determination, 401(k) hardship distribution (Notice 56) 38, *277*

Individual retirement arrangements (IRAs), saver's tax credit (Ann 106) 44, *416*

Limitations on benefits and contributions (RR 51) 45, *427*

Master & prototype (M&P) and volume submitter specimen plans, opinion letters (Ann 104) 43, *376*

Remedial amendment period under EGTRRA (Notice 42) 30, *70*

Required minimum distribution, alternative model amendment (Ann 82) 32, *123*

Sample amendments for changes to plan qualification requirements (Notice 57) 38, *279*

Regulations:

26 CFR 1.125–3, added; 1.125–4, amended; effect of the Family and Medical Leave Act on the operation of cafeteria plans (TD 8966) 45, *422*

26 CFR 1.401(a)(4)–0, –8, revised; 1.401(a)(4)–9, –12, amended; nondiscrimination requirements for certain defined contribution retirement plans (TD 8954) 29, *47*

EMPLOYEE PLANS—Cont.

26 CFR 1.420–1, added; minimum cost requirement permitting the transfer of excess assets of a defined benefit pension plan to a retiree health account (TD 8948) 28, *27*; correction (Ann 90) 35, *208*

26 CFR 301.7701–7, amended; classification of certain pension and employee benefit trusts, and investment trusts as domestic trusts for federal tax purposes (TD 8962) 35, *201*

Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA), new Form 5306-A (Ann 96) 41, *317*

Trusts, classification of certain pension and employee benefit trusts, and investment trusts as domestic trusts for federal tax purposes (TD 8962) 35, *201*

EMPLOYMENT TAX

Back wages subject to FICA and FUTA taxes, year paid (CD 2070) 31, *90*

Compensation clause, Social Security and Medicare taxes for federal judges (CD 2071) 44, *385*

Electronic furnishing of payee statements, voluntary, hearing (Ann 71) 27, *26*

Employee elective deferral catch-up contributions, reporting on Forms W-2 and 5498 (Ann 93) 44, *416*

Estimated income tax payments, redesignation as deposits (Ann 112) 46, *494*

Federal tax deposits, removal of Federal Reserve banks as depositaries (TD 8952) 29, *60*

Forms W-2, separate reporting of nonstatutory stock option income (Ann 92) 39, *301*

Interest-free adjustments, underpayments of employment taxes (TD 8959) 34, *185*

Penalties for underpayments of deposits and overstated deposit claims (TD 8947) 28, *36*

Railroad retirement, rate determination, quarterly:

July 1, 2001, 27, *1*

October 1, 2001, 41, *314*

Refund or credit of overassessments, date of allowance (RR 40) 38, *276*

EMPLOYMENT TAX—Cont.

Regulations:
26 CFR 31.6205–1(a)(6), revised; interest-free adjustments with respect to underpayments of employment taxes (TD 8959) 34, *185*
26 CFR 31.6302–1, revised; 31.6302(c)–4, revised; 301.6656–1, –2, removed; 301.6656–3, redesignated as 301.6656–1; 602.101, amended; penalties for underpayments of deposits and overstated deposit claims (TD 8947) 28, *36*
26 CFR 31.6302–1, amended; 31.6302(c)–3, amended; 301.6302–1T, removed; removal of Federal Reserve banks as federal depositaries (TD 8952) 29, *60*
26 CFR 301.6323(j)–1, added; withdrawal of notice of federal tax lien in certain circumstances (TD 8951) 29, *63*
Tax liens, federal, circumstances for withdrawal of notice (TD 8951) 29, *63*

ESTATE TAX

Automatic extension of time to file Form 706 (TD 8957) 33, *125*
Filing locations for estate, gift, and generation-skipping transfer tax returns, revised (Ann 74) 28, *40*
Generation-skipping transfer tax, automatic allocation, election (Notice 50) 34, *189*
Regulations:
26 CFR 20.6075–1, revised; 20.6081–1, revised; 602.101, amended; estate tax return, Form 706, extension to file (TD 8957) 33, *125*

EXCISE TAX

Excise tax return filing, payment, and deposit requirements (TD 8963) 35, *197*
Forms:
720, changes to requirements for excise tax returns, payments, and deposits (Ann 98) 41, *317*

EXCISE TAX—Cont.

2290SP, Declaración del Impuesto sobre el Use de Vehículos Pesados en las Carreteras, new (Ann 69) 27, *23*
Gasoline tax claims (Ann 111) 45, *486*
Regulations:
26 CFR 40.0–1, amended; 40.6011(a)–1, –2, amended; 40.6071(a)–1, amended; 40.6071(a)–2, removed; 40.6091–1, amended; 40.6101–1, revised; 40.6109(a)–1, revised; 40.6151(a)–1, revised; 40.6302(c)–1, –2, revised; 40.6302(c)–3, amended; 40.6302(c)–4, removed; 40.9999–1, removed; deposits of excise taxes (TD 8963) 35, *197*

EXEMPT ORGANIZATIONS

Filing locations for estate, gift, and generation-skipping transfer tax returns, revised (Ann 74) 28, *40*
Generation-skipping transfer tax, automatic allocation, election (Notice 50) 34, *189*
List of organizations classified as private foundations (Ann 70) 27, *23*; (Ann 72) 28, *39*; (Ann 76) 29, *67*; (Ann 78) 30, *87*; (Ann 79) 31, *97*; (Ann 84) 35, *206*; (Ann 85) 36, *219*; (Ann 89) 38, *291*; (Ann 94) 39, *301*; (Ann 97) 40, *310*; (Ann 100) 41, *317*; (Ann 102) 42, *340*; (Ann 105) 43, *376*; (Ann 108) 44, *419*; (Ann 113) 46, *494*; (Ann 118) 48, *540*
Qualified state tuition programs, rollovers and change of investments (Notice 55) 39, *299*
Revocations (Ann 81) 33, *175*; (Ann 95) 39, *303*; (Ann 110) 45, *486*

INCOME TAX

Accounting periods, rules and procedures for (REG–106917–99) 27, *4*; correction (Ann 86) 35, *207*
Archer MSAs (Ann 99) 42, *340*
Backup withholding rate for amounts paid after August 6, 2001 (Ann 80) 31, *98*
Base period T-bill rate for 2001 (RR 56) 47, *500*

INCOME TAX—Cont.

Bonds, tax and revenue anticipation, safe harbor (Notice 49) 34, *188*
Business and traveling expenses, *per diem* allowances (Ann 73) 28, *40*; for 2002 (RP 47) 42, *332*
Collapsible corporations, withdrawal of proposed regulations LR–107–84 (REG–100548–01) 29, *67*
Consolidated returns, intercompany transaction regulations (REG–125161–01) 48, *538*
Corporations, consolidated groups:
Special aggregate stock ownership rules (TD 8949) 28, *33*
Tentative carryback adjustments (TD 8950) 28, *34*
Corporations:
Consolidated income tax return filers, withdrawal of proposed regulations LR–97–79 (REG–100548–01) 29, *67*
Corporate reorganizations, mergers and acquisitions, step transactions (RR 46) 42, *321*
Mexican subsidiary formed to comply with foreign law (RR 39) 33, *125*
Credits:
Enhanced oil recovery credit, 2001 inflation adjustment (Notice 54) 37, *225*
Low-income housing credit:
Carryovers to qualified states, 2001 National Pool (RP 44) 35, *203*
Satisfactory bond, "bond factor" amounts for the period:
July through September 2001 (RR 37) 32, *100*
October through December 2001 (RR 53) 46, *498*
Disaster relief for September 11, 2001, terrorist attack for:
Affected taxpayers (Notice 61) 40, *305*; (Notice 68) 47, *504*
Filing deadlines (Notice 63) 40, *308*
Issuers of tax-exempt bonds (Ann 101) 43, *374*
Leave-based donation programs (Notice 69) 46, *491*
Mid-quarter convention relief (Notice 70) 45, *437*
Disclosure of return information, Census of Agriculture (TD 8958) 34, *183*
Earned income credit, eligibility after denial (TD 8953) 29, *44*

Electronic and magnetic media:
Filing, specifications for Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding (RP 40) 33, *130*
Information reporting seminars, Form 1042-S (Ann 87) 35, *208*
Electronic filing for partnerships, exemption from (Ann 75) 28, *42*
Electronic furnishing of payee statements, voluntary, hearing (Ann 71) 27, *26*
Employee elective deferral catch-up contributions, reporting on Forms W-2 and 5498 (Ann 93) 44, *416*
Estimated income tax payments, redesignation as deposits (Ann 112) 46, *494*
Exempt organization revocations (Ann 81) 33, *175*; (Ann 95) 39, *303*; (Ann 110) 45, *486*
Federal tax deposits, removal of Federal Reserve banks as depositaries (TD 8952) 29, *60*
Forms:
W-9, electronic submission by certain intermediaries (Ann 91) 36, *221*
720, Quarterly Federal Excise Tax Return, changes (Ann 98) 41, *317*
1042-S, specifications for filing magnetically or electronically (RP 40) 33, *130*
1042-T, Annual Summary and Transmittal of Forms 1042-S, new (Ann 114) 47, *528*
1096, 1098, 1099, 5498, W-2G, and 1042-S substitute forms specifications (RP 50) 45, *437*
2290SP, Declaración del Impuesto sobre el Uso de Vehículos Pesados en las Carreteras, new (Ann 69) 27, *23*
5306-A, Application for Approval of SEP or SIMPLE IRA Plans (Ann 96) 41, *312*
8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, new (Ann 115) 48, *539*
Gross income, sale of a principal residence (RR 57) 46, *488*
Information reporting call site at Martinsburg Computing Center (Ann 107) 44, *419*

Institute on International Tax Issues (Ann 116) 48, *539*
Insurance companies:
Differential earnings rate and recomputed differential earnings rate for mutual life insurance companies (RR 33) 32, *118*
Foreign companies, minimum effectively connected net investment income (RP 48) 40, *308*
Modified endowment contracts, uniform closing agreement (RP 42) 36, *212*
Prevailing mortality and morbidity tables (RR 38) 33, *124*
Interest:
Allocation, integrated treatment of certain financial transactions, request for comments (Notice 59) 41, *315*
Investment:
Federal short-term, mid-term, and long-term rates for:
July 2001 (RR 34) 28, *31*
August 2001 (RR 36) 32, *119*
September 2001 (RR 43) 36, *209*
October 2001 (RR 49) 41, *312*
November 2001 (RR 52) 45, *434*
Rates:
Underpayments and overpayments, quarter beginning:
October 1, 2001 (RR 47) 39, *293*
International operation of ships and aircraft, income exempt from tax (RR 48) 42, *324*
Inventory:
LIFO:
Price indexes used by department stores for:
May 2001 (RR 35) 29, *59*
June 2001 (RR 41) 35, *193*
July 2001 (RR 44) 37, *223*
August 2001 (RR 45) 42, *323*
September 2001 (RR 54) 46, *490*
Liabilities assumed in certain corporate transactions (TD 8964) 42, *320*
Limitations on passive activity losses and credits (Notice 47) 36, *212*
Marginal properties, oil and gas production, depletion, applicable percentages (Notice 53) 37, *225*

Net operating loss, product liability losses (CD 2072) 44, *379*
Notional principal contract (NPC), contingent nonperiodic payments (Notice 44) 30, *77*
Optional standard mileage rates for 2002 (RP 54) 48, *530*
Partnerships:
Disguised sales of interests, request for comments (Notice 64) 41, *316*
Substitute forms requirements for partner copy of Sch. K-1 of Forms 1065 and 1065-B (Ann 88) 36, *220*
Unvested partnership profits interests (RP 43) 34, *191*
Penalties:
For underpayments of deposits and overstated deposit claims (TD 8947) 28, *36*
Substantial understatement (RP 52) 46, *491*
Presidentially declared disaster or combat zone, reason for postponement of certain acts (RP 53) 47, *506*
Private delivery services, timely filing or payment (Notice 62) 40, *307*
Private foundations, organizations now classified as (Ann 70) 27, *23*; (Ann 72) 28, *39*; (Ann 76) 29, *67*; (Ann 78) 30, *87*; (Ann 79) 31, *97*; (Ann 84) 35, *206*; (Ann 85) 36, *219*; (Ann 89) 38, *291*; (Ann 94) 39, *301*; (Ann 97) 40, *310*; (Ann 100) 41, *317*; (Ann 102) 42, *340*; (Ann 105) 43, *376*; (Ann 108) 44, *419*; (Ann 113) 46, *494*; (Ann 118) 48, *540*
Proposed Regulations:
26 CFR 1.341–1(b), –2, –5, –4(a), –4(c), withdrawn; withdrawal of proposed regulations relating to collapsible corporations (REG–100548–01) 29, *67*
26 CFR 1.441–0 through –4, added; 1.441–1T through –4T, removed; 1.442–1, revised; 1.442–2T, –3T, removed; 1.706–1, amended; 1.706–1T, removed; 1.898–4, amended; 1.1378–1, added; 5c.442–1, removed; 5f.442–1, removed; 18.1378–1, removed; changes in accounting periods (REG–106917–99) 27, *4*; correction (Ann 86) 35, *207*

26 CFR 1.446–1, amended; 1.1502–13, revised; conforming amendments to section 446 (REG–125161–01) 48, *538*
26 CFR 1.1041–1T, amended; 1.1041–2, added; constructive transfers and transfers of property to a third party on behalf of a spouse (REG–107151–00) 43, *370*
26 CFR 1.1361–1, amended; qualified subchapter S trust election for testamentary trusts (REG–106431–01) 37, *272*
26 CFR 1.1502–2, –3, –7, –8, –11, –21, –22, –75, –78, –79, withdrawn; withdrawal of proposed regulations relating to corporations filing consolidated returns (REG–100548–01) 29, *67*
26 CFR 1.6011–4, amended; 301.6111–2, amended; modification of tax shelter rules II (REG–103735–00, REG–110311–98, REG–103736–00) 35, *204*
Publication 1167, substitute forms, general requirements (RP 45) 37, *227*
Qualified intermediaries, audit guidelines, withholding tax on nonresident aliens, foreign financial institutions (Notice 66) 44, *396*
Railroad track maintenance costs, accounting methods (RP 46) 37, *263*
Recognition of gain on:
Certain distributions of stock or securities in connection with an acquisition (TD 8960) 34, *176*
Certain transfers to foreign trusts and estates (TD 8956) 32, *112*
Refund or credit of overassessments, date of allowance (RR 40) 38, *276*
Regulations:
26 CFR 1.32–3, added; 1.32–3T, removed; 602.101(b), amended; eligibility requirements after denial of the earned income credit (TD 8953) 29, *44*
26 CFR 1.301–1, amended; 1.301–1T, removed; liabilities assumed in certain corporate transactions (TD 8964) 42, *320*

INCOME TAX—Cont.

26 CFR 1.355–0, amended; 1.355–7T, added; guidance under section 355(e); recognition of gain on certain distributions of stock or securities in connection with an acquisition (TD 8960) 34, *176*
26 CFR 1.679–0 through –7, added; 1.958–1, revised; 1.958–2, amended; foreign trusts that have U.S. beneficiaries (TD 8955) 32, *101*
26 CFR 1.684–1 through –5, added; recognition of gain on certain transfers to certain foreign trusts and estates (TD 8956) 32, *112*
26 CFR 1.732–3, added; 1.1502–34, amended; special aggregate stock ownership rules (TD 8949) 28, *33*
26 CFR 1.1502–78, amended; 1.1502–78T, removed; guidance on filing an application for a tentative carryback adjustment in a consolidated return context (TD 8950) 28, *34*
26 CFR 1.6011–4T, amended; 301.6111–2T, amended; 301.6112–1T, amended; modification of tax shelter rules II (TD 8961) 35, *194*
26 CFR 1.6302–1, –2, revised; 301.6656–1, –2, removed; 301.6656–3, redesignated as 301.6656–1; 602.101, amended; penalties for underpayments of deposits and overstated deposit claims (TD 8947) 28, *36*
26 CFR 1.6302–1, –2, amended; 1.1461–1, amended; 1.1502–5(a)(1), amended; 1.6151–1(d)(1), amended; removal of Federal Reserve banks as federal depositaries (TD 8952) 29, *60*
26 CFR 301.6103(j)(5)–1, added; 301.6103(j)(5)–1T, removed; disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities, Census of Agriculture (TD 8958) 34, *183*
26 CFR 301.6221 through 301.6233, modified; 602.101, amended; unified partnership audit procedures (TEFRA) (TD 8965) 43, *344*
26 CFR 301.6323(j)–1, added; withdrawal of notice of federal tax lien in certain circumstances (TD 8951) 29, *63*

INCOME TAX—Cont.

26 CFR 301.7701–7, amended; classification of certain pension and employee benefit trusts, and investment trusts as domestic trusts for federal tax purposes (TD 8962) 35, *201*
Sale of a principal residence, gross income (RR 57) 46, *488*
Section 1374 built-in gains:
Tax applied to certain timber, coal, and domestic iron ore transactions (RR 50) 43, *343*
Timber, coal, and domestic iron ore transactions (RP 51) 43, *369*
Standard Industry Fare Level (SIFL) formula (RR 42) 37, *223*
Substitute forms:
General requirements (RP 45) 37, *227*
1096, 1098, 1099, 5498, W-2G, and 1042-S, rules and specifications (RP 50) 45, *437*
Tax consequences of stock redemptions by a spouse or former spouse during marriage or incident to divorce (REG–107151–00) 43, *370*
Tax conventions:
French social security, tax treatment of (Notice 41) 27, *2*
Tax-exempt bonds:
Disaster relief to issuers (Ann 101) 43, *374*
Private activity bonds (RP 39) 28, *38*
Tax liens, federal, circumstances for withdrawal of notice (TD 8951) 29, *63*
Tax shelters:
Basis shifting tax avoidance transactions (Notice 45) 33, *129*
Listed transactions (Notice 51) 34, *190*
Modification of tax shelter rules II (TD 8961) 35, *194*; (REG–103735–00, REG–110311–98, REG–103736–00) 35, *204*
Procedures to investigate abusive promotions (RP 49) 39, *300*
Technical advice, from Associates Chief Counsel and Division Counsel/Associate Chief Counsel (TE/GE), frivolous issues (RP 41) 33, *173*
Trusts:
Classification of certain pension and employee benefit trusts, and investment trusts as domestic trusts for federal tax purposes (TD 8962) 35, *201*

INCOME TAX—Cont.

Foreign trusts that have U.S. beneficiaries (TD 8955) 32, *101*

Qualified subchapter S trust election for testamentary trusts (REG–106431–01) 37, *272*

Unified partnership audit procedures (TEFRA) (TD 8965) 43, *344*

Voluntary closing agreement program for tax-exempt bonds (TEB VCAP) (Notice 60) 40, *304*

Withholdings, payments to nonqualified intermediaries and foreign trusts, U.S. withholding agents (Notice 43) 30, *72*