

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 interpretation.

SPECIAL ANNOUNCEMENT

Announcement 2001-116, page 539.

The Fourteenth Annual Institute on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and The George Washington University, will be held on December 13 and 14, 2001, at the J.W. Marriott Hotel in Washington, D.C.

INCOME TAX

REG-125161-01, page 538.

Proposed regulations under section 446 of the Code confirm that the timing rules of the intercompany transaction regulations are a method of accounting.

EMPLOYEE PLANS

Notice 2001-71, page 530.

Weighted average interest rate update. The weighted average interest rate for November 2001 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

EXEMPT ORGANIZATIONS

Announcement 2001-118, page 540.

A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

Rev. Proc. 2001-54, page 530.

Optional standard mileage rates. This procedure announces 36.5 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 13 cents as the optional rate for use of an automobile as a medical or moving expense for 2002. It provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 2000-48 superseded.

Announcement 2001-115, page 539.

The Service announces the availability of new Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*. This form replaces the procedures of Rev. Proc. 92-83. (1992-2 C.B. 487).

Finding Lists begin on page ii.



The IRS Mission

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

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

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

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules under which a reimbursement or other expense allowance arrangement for the cost of operating an automobile for business purposes will satisfy the requirements of section 62(c) of the Code as to business connection, substantiation, and returning amounts in excess of expenses are provided. See Rev. Proc. 2001–54, page 530.

Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Rules are set forth for substantiating the amount of a deduction for an expense for business use of an automobile that most nearly represents current costs. See Rev. Proc. 2001–54, page 530.

Section 170.—Charitable, etc., Contributions and Gifts

26 CFR 1.170A–1: Charitable, etc., contributions and gifts; allowance of deduction.

Rules are set forth for substantiating the amount of a deduction for an expense for charitable use of an automobile. See Rev. Proc. 2001–54, page 530.

Section 213.—Medical, Dental, etc., Expenses

26 CFR 1.213–1: Medical, dental, etc., expenses.

Rules are set forth for substantiating the amount of a deduction for an expense for use of an automobile to obtain medical services. See Rev. Proc. 2001–54, page 530.

Section 217.—Moving Expenses

26 CFR 1.217–2: Moving expenses.

Rules are set forth for substantiating the amount of a deduction for an expense for use of an automobile as part of a move. See Rev. Proc. 2001–54, page 530.

Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

Rules are set forth for an optional method for substantiating the amount of ordinary and necessary business expenses of an employee for automobile expenses when a payor provides a mileage allowance for such expenses. Rules are also set forth for an optional method for employees and self-employed individuals to use in substantiating a trade or business deduction for automobile expenses. See Rev. Proc. 2001–54, page 530.

Section 1016.—Adjustments to Basis

26 CFR 1.1016–3: Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

Rules are set forth for substantiation of expenses relating to the business use of an automobile using a standard mileage rate, one component of which is depreciation, which will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. See Rev. Proc. 2001–54, page 530.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2001-71

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of

interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for October 2001 is 5.32 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
November	2001	5.74	5.17 to 6.03	5.17 to 6.32

DRAFTING INFORMATION

The principal author of this notice is Todd Newman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call Mr. Newman at (202) 283-9888 (not a toll-free number).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Sections 62, 162, 170, 213, 217, 274, 1016; 1.62-2, 1.162-17, 1.170A-1, 1.213-1, 1.217-2, 1.274-5, 1.1016-3.)

Rev. Proc. 2001-54

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2000-48 (2000-49 I.R.B. 570) by providing optional standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under § 1.274-5 of the Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Use of a method of substantia-

tion described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation.

SECTION 2. SUMMARY OF STANDARD MILEAGE RATES

.01 Standard mileage rates.

- (1) Business (section 5 below)
36.5 cents per mile
- (2) Charitable (section 7 below)
14 cents per mile
- (3) Medical and Moving (section 7 below)
13 cents per mile

.02 *Determination of standard mileage rates.* The business, medical, and moving standard mileage rates reflected in this revenue procedure are based on an annual study of the fixed and variable costs of operating an automobile conducted on behalf of the Internal Revenue Service by an independent contractor, and the charitable standard mileage rate is provided in § 170(i) of the Internal Revenue Code.

SECTION 3. BACKGROUND

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct the cost of operating an automobile to the extent that it is used in a trade or business. However, under § 262, no portion of

the cost of operating an automobile that is attributable to personal use is deductible.

.02 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 with respect to any listed property (as defined in § 280F(d)(4) to include passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.03 Section 1.274-5(j), in part, grants the Commissioner of Internal Revenue the authority to establish a method under which a taxpayer may use mileage rates to substantiate, for purposes of § 274(d), the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home.

.04 Section 1.274-5(g), in part, grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of such travel and transportation

expenses for purposes of § 1.274-5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of such expenses for purposes of § 1.274-5(f).

.05 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement. Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.07 Under § 1.62-2(c)(1), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62-2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274-5(g) will be treated as substantiation of the amount of such expenses for purposes of § 1.62-2. Under § 1.62-2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to miles of travel substantiated and that exceeds the amount of the employee's expenses deemed sub-

stantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance that relates to miles of travel not substantiated.

.08 Section 1.62-2(h)(2)(i)(B) provides that if a payor pays a mileage allowance under an arrangement that meets the requirements of § 1.62-2(c)(1), the portion, if any, of the allowance that relates to miles of travel substantiated in accordance with § 1.62-2(e), that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under § 274(d) and § 1.274-5(g), and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the Employment Tax Regulations. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62-2(g) (relating to the return of excess amounts) do not apply to this excess portion.

.09 Under § 1.62-2(h)(2)(i)(B)(4), the Commissioner may, in his or her discretion, prescribe special rules regarding the timing of withholding and payment of employment taxes on mileage allowances.

SECTION 4. DEFINITIONS

.01 *Standard mileage rate.* The term "standard mileage rate" means the applicable amount provided by the Service for optional use by employees or self-employed individuals in computing the deductible costs of operating automobiles (including vans, pickups, or panel trucks) owned or leased for business purposes, or by taxpayers in computing the deductible costs of operating automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses.* The term "transportation expenses" means the expenses of operating an automobile for local travel or transportation away from home.

.03 *Mileage allowance.* The term "mileage allowance" means a payment under a reimbursement or other expense

allowance arrangement that meets the requirements specified in § 1.62-2(c)(1) and that is

(1) paid with respect to the ordinary and necessary business expenses incurred, or which the payor reasonably anticipates will be incurred, by an employee for transportation expenses in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at the applicable standard mileage rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.04 *Flat rate or stated schedule.* A mileage allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 4.03 of this revenue procedure. Such allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving an automobile in connection with the performance of services as an employee of the employer, coupled with a periodic payment at a cents-per-mile rate to cover the operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of using an automobile for such purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locales to cover the costs of driving an automobile in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

SECTION 5. BUSINESS STANDARD MILEAGE RATE

.01 *In general.* The standard mileage rate for transportation expenses is 36.5 cents per mile for all miles of use for business purposes. This business standard

mileage rate will be adjusted annually (to the extent warranted) by the Service, and any such adjustment will be applied prospectively.

.02 Use of the business standard mileage rate. A taxpayer may use the business standard mileage rate with respect to an automobile that is either owned or leased by the taxpayer. A taxpayer generally may deduct an amount equal to either the business standard mileage rate times the number of business miles traveled or the actual costs (both operating and fixed) paid or incurred by the taxpayer that are allocable to traveling those business miles.

.03 Business standard mileage rate in lieu of operating and fixed costs. A deduction using the standard mileage rate for business miles is computed on a yearly basis and is in lieu of all operating and fixed costs of the automobile allocable to business purposes (except as provided in section 9.06 of this revenue procedure). Such items as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, and license and registration fees are included in operating and fixed costs for this purpose.

.04 Parking fees, tolls, interest, and taxes. Parking fees and tolls attributable to use of the automobile for business purposes may be deducted as separate items. Likewise, interest relating to the purchase of the automobile as well as state and local personal property taxes may be deducted as separate items, but only to the extent allowable under § 163 or 164, respectively. If the automobile is operated less than 100 percent for business purposes, an allocation is required to determine the business and nonbusiness portion of the taxes and interest deduction allowable. However, § 163(h)(2)(A) expressly provides that interest is nondeductible personal interest when it is paid or accrued on indebtedness properly allocable to the trade or business of performing services as an employee. Section 164 also expressly provides that state and local taxes that are paid or accrued by a taxpayer in connection with an acquisition or disposition of property will be treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of such property.

.05 Depreciation. For owned automobiles placed in service for business purposes, and for which the business standard mileage rate has been used for any year, depreciation will be considered to have been allowed at the rate of 12 cents per mile for 1997, 1998, and 1999; 14 cents per mile for 2000; and 15 cents per mile for 2001 and 2002, for those years in which the business standard mileage rate was used. If actual costs were used for one or more of those years, the rates above will not apply to any year in which such costs were used. The depreciation described above will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016.

.06 Limitations.

(1) The business standard mileage rate may not be used to compute the deductible expenses of (a) automobiles used for hire, such as taxicabs, or (b) two or more automobiles used simultaneously (such as in fleet operations).

(2) The business standard mileage rate may not be used to compute the deductible business expenses of an automobile leased by a taxpayer unless the taxpayer uses either the business standard mileage rate or a "FAVR" allowance (as provided in section 8 of this revenue procedure) to compute the deductible business expenses of the automobile for the entire lease period (including renewals). For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

(3) The business standard mileage rate may not be used to compute the deductible expenses of an automobile for which the taxpayer has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, or (c) used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile (if owned) from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile's remaining estimated useful life

(subject to the applicable depreciation deduction limitations under § 280F).

(4) The business standard mileage rate and this revenue procedure may not be used to compute the amount of the deductible automobile expenses of an employee of the United States Postal Service incurred in performing services involving the collection and delivery of mail on a rural route if the employee receives qualified reimbursements (as defined in § 162(o)) for such expenses. See § 162(o) for the rules that apply to these qualified reimbursements.

SECTION 6. RESERVED

SECTION 7. CHARITABLE, MEDICAL, AND MOVING STANDARD MILEAGE RATE

.01 Charitable. Section 170(i) provides a standard mileage rate of 14 cents per mile for purposes of computing the charitable deduction for use of an automobile in connection with rendering gratuitous services to a charitable organization under § 170.

.02 Medical and moving. The standard mileage rate is 13 cents per mile for use of an automobile (a) to obtain medical care described in § 213, or (b) as part of a move for which the expenses are deductible under § 217. The standard mileage rates for medical and moving transportation expenses will be adjusted annually (to the extent warranted) by the Service, and any such adjustment will be applied prospectively.

.03 Charitable, medical, or moving expense standard mileage rate in lieu of operating expenses. A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of all operating expenses (including gasoline and oil) of the automobile allocable to such purposes. Costs for such items as depreciation (or lease payments), insurance, and license and registration fees are not deductible, and are not included in such standard mileage rates.

.04 Parking fees, tolls, interest, and taxes. Parking fees and tolls attributable to the use of the automobile for charitable, medical, or moving expense purposes may be deducted as separate items.

Interest relating to the purchase of the automobile and state and local personal property taxes are not deductible as charitable, medical, or moving expenses, but they may be deducted as separate items to the extent allowable under § 163 or 164, respectively.

SECTION 8. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general.*

(1) The ordinary and necessary expenses paid or incurred by an employee in driving an automobile owned or leased by the employee in connection with the performance of services as an employee of the employer will be deemed substantiated (in an amount determined under section 9 of this revenue procedure) when a payor reimburses such expenses with a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of section 8 of this revenue procedure (a FAVR allowance).

(2) The amount of a FAVR allowance must be based on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is reasonable and statistically defensible in approximating the actual expenses employees receiving the allowance would incur as owners of the standard automobile.

.02 *Definitions.*

(1) *FAVR allowance.* A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile (or an automobile of the same make and model that is comparably equipped), retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments; however, such optional high mileage payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes when paid. See section 9.05 of this

revenue procedure. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles driven and substantiated by the employee for a calendar year in excess of the annual business mileage for that year. If an employee is covered by the FAVR allowance for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment.* A periodic fixed payment covers the projected fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving the standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. A periodic fixed payment may be computed by (a) dividing the total projected fixed costs of the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment.* A periodic variable payment covers the projected operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of driving a standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. The rate of a periodic variable payment for a computation period may be computed by dividing the total projected operating costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period can be any period of a year or less. Computation period mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile substantiated by the employee for the computation period, the periodic variable payment

must be paid at a rate that does not exceed the rate for that computation period.

(4) *Base locality.* A base locality is the particular geographic locality or region of the United States in which the costs of driving an automobile in connection with the performance of services as an employee of the employer are generally paid or incurred by the employee. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region in which the employee resides. For purposes of determining the amount of operating costs, the base locality is generally the geographic locality or region in which the employee drives the automobile in connection with the performance of services as an employee of the employer.

(5) *Standard automobile.* A standard automobile is the automobile selected by the payor on which a specific FAVR allowance is based.

(6) *Standard automobile cost.* The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes applicable on the purchase of such an automobile. Further, the standard automobile cost may not exceed \$27,100.

(7) *Annual mileage.* Annual mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage.* Annual business mileage is the mileage a payor reasonably projects a standard automobile will be driven by an employee in connection with the performance of services as an employee of the employer during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage.* A business use percentage is determined by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness

of the business use percentage based on records of total mileage and business mileage driven by the employees annu-

ally, a payor may use a business use percentage that is less than or equal to the following percentages for a FAVR allow-

ance that is paid for the following annual business mileage:

<i>Annual business mileage</i>	<i>Business use percentage</i>
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period.* A retention period is the period in calendar years selected by the payor during which the payor expects an employee to drive a standard automobile in connection with the performance of services as an employee of the employer before the automobile is replaced. Such period may not be less than two calendar years.

(11) *Retention mileage.* Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value.* The residual value of a standard automobile is the projected amount for which it could be sold at the end of the retention period after being driven the retention mileage. The Service will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

<i>Retention period</i>	<i>Residual value</i>
2-year	70 percent
3-year	60 percent
4-year	50 percent

.03 *FAVR allowance in lieu of operating and fixed costs.*

(1) A reimbursement computed using a FAVR allowance is in lieu of the employee's deduction of all the operating and fixed costs paid or incurred by an employee in driving the automobile in connection with the performance of services as an employee of the employer, except as provided in section 9.06 of this revenue procedure. Such items as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, license and registration fees, and personal property taxes are included in operating and fixed costs for this purpose.

(2) Parking fees and tolls attributable to an employee driving the standard automobile in connection with the performance of services as an employee of the employer are not included in fixed and operating costs and may be deducted as separate items. Similarly, interest relating to the purchase of the standard automobile may be deducted as a separate item, but only to the extent that the interest is an allowable deduction under § 163.

.04 *Depreciation.*

(1) A FAVR allowance may not be paid with respect to an automobile for which the employee has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, or (c) used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. If an employee uses actual costs for an owned automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(2) Except as provided in section 8.04(3) of this revenue procedure, the total amount of the depreciation component for the retention period taken into account in computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of such depreciation component may not exceed the sum of the annual § 280F limitations on depreciation (in effect at the beginning of the retention period) that apply to the standard automobile during the retention period.

(3) If the depreciation component of periodic fixed payments exceeds the limitations in section 8.04(2) of this revenue procedure, that section will be treated as satisfied in any year during which the total annual amount of the periodic fixed payments and the periodic variable payments made to an employee driving 80 percent of the annual business mileage of the standard automobile does not exceed the amount obtained by multiplying 80 percent of the annual business mileage of the standard automobile by the applicable business standard mileage rate for that year (see, for example, section 5.01 of this revenue procedure).

(4) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid with respect to an automobile will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. See section 8.07(2) of this revenue procedure for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations.*

(1) A FAVR allowance may be paid only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in connection with the performance of services as an employee of the employer or, if greater, 80 percent of the annual business mileage of that FAVR allowance. If the employee is covered by the FAVR allowance for less than the entire calendar year, these limits may be prorated on a monthly basis.

(2) A FAVR allowance may not be paid to a control employee (as defined in § 1.61-21(f)(5) and (6), excluding the \$100,000 limitation in paragraph (f)(5)(iii)).

(3) At no time during a calendar year may a majority of the employees covered by a FAVR allowance be management employees.

(4) At all times during a calendar year at least five employees of an employer must be covered by one or more FAVR allowances.

(5) A FAVR allowance may be paid only with respect to an automobile (a) owned or leased by the employee receiving the payment, (b) the cost of which, when new, is at least 90 percent of the standard automobile cost taken into account for purposes of determining the FAVR allowance for the first calendar year the employee receives the allowance with respect to that automobile, and (c) the model year of which does not differ from the current calendar year by more than the number of years in the retention period.

(6) A FAVR allowance may not be paid with respect to an automobile leased by an employee for which the employee has used actual expenses to compute the deductible business expenses of the automobile for any year during the entire lease period. For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

(7) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without taking into account such rate-increasing factors as poor driving records or young drivers.

(8) A FAVR allowance may be paid only to an employee whose insurance coverage limits on the automobile with respect to which the FAVR allowance is paid are at least equal to the insurance coverage limits used to compute the periodic fixed payment under that FAVR allowance.

.06 Employee reporting. Within 30 days after an employee's automobile is initially covered by a FAVR allowance, or is again covered by a FAVR allowance if such coverage has lapsed, the employee by written declaration must provide the payor with the following information: (a) the make, model, and year of the employee's automobile, (b) written proof of the

insurance coverage limits on the automobile, (c) the odometer reading of the automobile, (d) if owned, the purchase price of the automobile or, if leased, the price at which the automobile is ordinarily sold by retailers (the gross capitalized cost of the automobile), and (e) if owned, whether the employee has claimed depreciation with respect to the automobile using any of the depreciation methods prohibited by section 8.04(1) of this revenue procedure or, if leased, whether the employee has computed deductible business expenses with respect to the automobile using actual expenses. The information described in (a), (b), and (c) of the preceding sentence also must be supplied by the employee to the payor within 30 days after the beginning of each calendar year that the employee's automobile is covered by a FAVR allowance.

.07 Payor recordkeeping and reporting.

(1) The payor or its agent must maintain written records setting forth (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information provided by the employees pursuant to section 8.06 of this revenue procedure.

(2) Within 30 days of the end of each calendar year, the employer must provide each employee covered by a FAVR allowance during that year with a statement that, for automobile owners, lists the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year and explains that by receiving a FAVR allowance the employee has elected to exclude the automobile from MACRS pursuant to § 168(f)(1). For automobile lessees, the statement must explain that by receiving the FAVR allowance the employee may not compute the deductible business expenses of the automobile using actual expenses for the entire lease period (including renewals). For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

.08 Failure to meet section 8 requirements. If an employee receives a mileage allowance that fails to meet one or more of the requirements of section 8 of this revenue procedure, the employee may not

be treated as covered by any FAVR allowance of the payor during the period of such failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 5, 9.01(1), and 9.02 of this revenue procedure to the extent the requirements of those sections are met.

SECTION 9. APPLICATION

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses incurred or to be incurred by an employee, the amount of the expenses that is deemed substantiated to the payor is either:

(1) for any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the applicable standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee; or

(2) for a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 If the amount of transportation expenses is deemed substantiated under the rules provided in section 9.01 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses in accordance with paragraphs (b)(2) (travel away from home), (b)(6) (listed property, which includes passenger automobiles and any other property used as a means of transportation), and (c) of § 1.274-5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274-5(f), as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274-5(c). See § 1.62-2(e)(1) for the rule that an arrangement must require

business expenses to be substantiated to the payor within a reasonable period of time.

.03 An arrangement providing mileage allowances will be treated as satisfying the requirement of § 1.62-2(f)(2) with respect to returning amounts in excess of expenses as follows:

(1) For a mileage allowance other than a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of such an allowance that relates to miles of travel not substantiated by the employee, even though the arrangement does not require the employee to return the portion of such an allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance mileage allowance of \$80 based on an anticipated 200 business miles at 40 cents per mile (at a time when the applicable business standard mileage rate is 36.5 cents per mile), and the employee substantiates 120 business miles. The requirement to return excess amounts will be treated as satisfied if the employee is required to return the portion of the allowance that relates to the 80 unsubstantiated business miles (\$32) even though the employee is not required to return the portion of the allowance (\$4.20) that exceeds the amount of the employee's expenses deemed substantiated under section 9.01 of this revenue procedure (\$43.80) for the 120 substantiated business miles. However, the \$4.20 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 9.05.

(2) For a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)), (a) the portion (if any) of the periodic variable payment received that relates to miles in excess of the business miles substantiated by the employee, and (b) the portion (if any) of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02. *See* § 1.274-5(f)(2)(i). In addition, such portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from the withholding and payment of employment taxes. *See* §§ 1.62-2(c)(2) and (c)(4).

.05 An employee is required to include in gross income only the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02 of this revenue procedure. *See* § 1.274-5(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. *See* §§ 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06

(1) Except as otherwise provided in section 9.06(2) of this revenue procedure with respect to leased automobiles, if the amount of the expenses deemed substantiated under the rules provided in section 9.01 of this revenue procedure is less than the amount of the employee's business transportation expenses, the employee may claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business transportation expenses, includes on Form 2106, *Employee Business Expenses*, the deemed substantiated portion of the mileage allowance received from the payor, and includes in gross income the portion (if any) of the mileage allowance received from the payor that exceeds the amount deemed substantiated. *See* § 1.274-5(f)(2)(iii). However, for purposes of claiming this itemized deduction, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the

applicable standard mileage rate multiplied by the number of business miles substantiated by the employee minus the amount deemed substantiated under section 9.01 of this revenue procedure. The itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

(2) An employee whose business transportation expenses with respect to a leased automobile are deemed substantiated under section 9.01(1) of this revenue procedure (relating to an allowance other than a FAVR allowance) may not claim a deduction based on actual expenses unless the employee does so consistently beginning with the first business use of the automobile after December 31, 1997. However, an employee whose business transportation expenses with respect to a leased automobile are deemed substantiated under section 9.01(2) of this revenue procedure (relating to a FAVR allowance) may not claim a deduction based on actual expenses.

.07 An employee may deduct an amount computed pursuant to section 5.01 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.08 A self-employed individual may deduct an amount computed pursuant to section 5.01 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

.09 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, such payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. *See* §§ 1.62-2(c)(3), (c)(5), and (h)(2).

SECTION 10. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES.

.01 The portion of a mileage allowance (other than a FAVR allowance), if any, that relates to the miles of business travel

substantiated and that exceeds the amount deemed substantiated for those miles under section 9.01(1) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) In the case of a mileage allowance paid as a reimbursement, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the business miles substantiated. *See* § 1.62-2(h)(2)(i)(B)(2).

(2) In the case of a mileage allowance paid as an advance, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the business miles with respect to which the advance was paid are substantiated. *See* § 1.62-2(h)(2)(i)(B)(3). If some or all of the business miles with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(3) In the case of a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (for example, a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 8 of this revenue procedure), the payor must compute periodically (no less frequently than quarterly) the amount, if any, that exceeds the

amount deemed substantiated under section 9.01(1) of this revenue procedure by comparing the total mileage allowance paid for the period to the applicable standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee for the period. Any excess is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. *See* § 1.62-2(h)(2)(i)(B)(4).

(4) For example, assume an employer pays its employees a mileage allowance at a rate of 40 cents per mile (when the business standard mileage rate is 36.5 cents per mile). The employer does not require the return of the portion of the allowance that exceeds the business standard mileage rate for the business miles substantiated (3.5 cents). In June, the employer advances an employee \$200 for 500 miles to be traveled during the month. In July, the employee substantiates to the employer 400 business miles traveled in June and returns \$40 to the employer for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is \$146 and the employee is not required to return the remaining \$14. No later than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the employer must withhold and pay employment taxes on \$14.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 9.01(2) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62-2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62-2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

SECTION 11. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-48 (2000-49 I.R.B. 5702) is hereby superseded for mileage allowances that are paid both (1) to an employee on or after January 1, 2002, and (2) with respect to transportation expenses paid or incurred by the employee on or after January 1, 2002. Rev. Proc. 2000-48 is also hereby superseded for purposes of computing the amount allowable as a deduction for transportation expenses paid or incurred on or after January 1, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is John Trevey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Trevey at (202) 622-4970 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Conforming Amendments to Section 446

REG-125161-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 18, 1995, the Treasury and the IRS published final regulations governing the intercompany transaction system of the consolidated return regulations. Those regulations state that the timing rules of the intercompany transaction system are a method of accounting. At the time of the publication of those regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with that statement. This document contains proposed regulations confirming that the timing rules of the intercompany transaction regulations are a method of accounting.

DATES: Written or electronic comments and requests for a public hearing must be received by January 7, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, room 5226 (REG-125161-01), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU, room 5226 (REG-125161-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION

CONTACT: Concerning the regulation, Marie C. Milnes-Vasquez or Frances Kelly (202) 622-7770, or Jeffery G. Mitchell (202) 622-4930; concerning submissions and/or requests for a public

hearing, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation

On July 18, 1995, the Treasury and the IRS published in the **Federal Register** (60 FR 36671 [1995-2 C.B. 147]) final regulations under §1.1502-13 governing the intercompany transaction system of the consolidated return regulations. Included in such regulations was an express statement that “[t]he timing rules of [the intercompany transaction regulations] are a method of accounting for intercompany transactions, to be applied by each member in addition to the member’s other methods of accounting.” § 1.1502-13(a)(3)(i). At the time of the publication of those final regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with the statement in § 1.1502-13(a)(3)(i) that the timing rules of § 1.1502-13 are a method of accounting.

In *General Motors v. Commissioner*, 112 T.C. 270 (1999), the Tax Court determined that the timing rule of former § 1.1502-13(b)(2) was not a method of accounting for purposes of section 446(e). The proposed regulations included in this document amend § 1.446-1 to confirm the IRS’s position that the timing rules of current §1.1502-13 are a method of accounting.

Proposed Effective Date

The regulations in this section are proposed to apply to consolidated return years beginning on or after November 7, 2001.

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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6)

do not apply to these regulations, and, because the proposed rule does not impose a collection of information on small entities, a Regulatory Flexibility Analysis 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 (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Marie C. Milnes-Vasquez, Office of the 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. Section 1.446-1 is amended by adding paragraph (c)(2)(iii) to read as follows:

§ 1.446-1 *General rule for methods of accounting.*

(c) ***

(2) ***

(iii) The timing rules of §1.1502-13 are a method of accounting for intercompany transactions (as defined in § 1.1502-13(b)(1)(i)), to be applied by each member of a consolidated group in addition to the member's other methods of accounting. See §1.1502-13(a)(3)(i). This paragraph is applicable to consolidated return years beginning on or after November 7, 2001.

Par. 3. In §1.1502-13, the second sentence of paragraph (a)(3)(i) is revised to read as follows:

§1.1502-13 Intercompany transactions.

(a) ***

(3) ***

(i) *** See §1.1502-17 and, with regard to consolidated return years beginning on or after November 7, 2001, §1.446-1(c)(2)(iii). ***

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on November 6, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 7, 2001, 66 F.R. 56262)

Announcement 2001-115

The IRS has released new Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*. Form 8038-R replaces the procedures of Revenue Procedure 92-83 (1992-2 C.B. 487) the purpose of which was to provide guidance to issuers of tax-exempt bonds who seek to recover overpayments of amounts required to be paid under section 148.

You can obtain Form 8038-R by telephone or by using IRS electronic information services.

New Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions

Request by	Number or address
Telephone	1-800-TAX-FORM (1-800-829-3676)
Personal Computer:	
IRS Web Site	www.irs.gov
File transfer protocol	ftp.irs.gov

IRS and The George Washington University To Sponsor Institute on International Tax Issues

Announcement 2001-116

Director, International, LMSB, Carol Dunahoo, has announced the Fourteenth Annual Institute on Current Issues in International Taxation, jointly sponsored by the Internal Revenue Service and The George Washington University, to be held on December 13 and 14, 2001, at the J.W. Marriott Hotel in Washington, DC. Registration is currently underway for the Institute, which is intended for professionals in international tax law.

The program will present a unique opportunity for top IRS and Treasury officials and tax experts, as well as leading private sector specialists, to address

breaking issues and present key perspectives on new developments. The Institute will open with an address by B. John Williams, Jr., IRS Chief Counsel nominee. The first day will also feature sessions on the following:

- Moving from CFCs to CFPs: Credit and Deferral Issues in the Partnership Setting;
- Le Partnership: Coordinating Foreign and U.S. Taxation of Partnerships;
- Evolution of Business Form: Hybrids, Contractual Ventures, Etc.; and
- Updates on Outbound Issues.

Competent Authority officials from France, Canada, Japan, and the United States will discuss current issues. R. Glenn Hubbard, Chairman of the White House's Council of Economic Advisors, will deliver the luncheon address.

The second day will focus on such topics as:

- Updates on Inbound Issues,
- Selected Transfer Pricing Issues and
- Managing Multinationals' International Tax Controversies.

Mark A. Weinberger, Assistant Treasury Secretary for Tax Policy, is scheduled to deliver the luncheon address. The second day will also include an "Ask the IRS" panel.

Those interested in attending or obtaining more information should contact The George Washington University, Conference Management Services, by visiting their web site at www.gwu.edu/~cms/iti14 or by telephone at 202-973-1110.

Foundations Status of Certain Organizations

Announcement 2001-118

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

- 1st Class, Ridgefield, WA
12 Steps on the Way Home,
Arlington, WA
Aaron A. Hofmann Foundation, Inc.,
Salt Lake City, UT
A B A Foundation, Inc., Phoenix, AZ
Ace Foundation, Pleasant Grove, UT
AC-Tec, Everett, WA
Adelante Housing Corporation,
Surprise, AZ
All Related Extended Care Services,
Inc., Phoenix, AZ
Allied Services for Aids Prevention,
Las Vegas, NV
Ammpec, Inc., Albuquerque, NM
Arizona Archival Institute, Inc.,
Glendale, AZ
Arizona Citizens Project, Scottsdale, AZ
Arizona Jazz Rhythm & Blues Festival,
Inc., Flagstaff, AZ
Arizona Junior Ski Racing Association,
Phoenix, AZ
Arizona Lawyers Committee on
Violence, Oro Valley, AZ
Arizona Minority Counsel Program, Inc.,
Chandler, AZ
Arizona Rising Suns Track Club, Inc.,
Glendale, AZ
Arizona Youth Theater, Inc., Tucson, AZ
Back-on-Track, Inc., Phoenix, AZ
Begin Again Foundation, Phoenix, AZ
Belagana Research Institute, Tucson, AZ
Bells Palsy Research Foundation,
Tucson, AZ
Beneficial Care, Incorporated,
Murray, UT
Beyond X Harambee Museum and
Cultural Center, Murray, UT
Blue Mountain Demonstration Forest,
Port Angeles, WA
Border K-9 Search and Rescue, Inc.,
Las Cruces, NM
Brienne Kiner Foundation for
Exceptional Parents & Children,
Edmonds, WA
Brolly Arts, Salt Lake City, UT
Camano Ranch, Camano Island, WA
Camwood Players, Stanwood, WA
Caribou Trail Housing Association,
Okanogan, WA
Caughlin Ranch School Foundation,
Reno, NV
Center for Entrepreneurship and
Economic Development, Inc.,
Albuquerque, NM
Central Area Coaches Association,
Seattle, WA
Children and Adults Affected by
Pesticides, Santa Fe, NM
Children's Dignity Project Foundation,
Inc., Santa Fe, NM
Childrens Recording Corporation, Inc.,
Park City, UT
Christian Outreach Assembly for
Children, Monroe, WA
Cinema Concepts Foundation,
Scottsdale, AZ
Citizens 911 Guide to Democracy,
Seattle, WA
Clark County Housing Affordability
Consortium, Las Vegas, NV
Coalition for Community Development,
Seattle, WA
Comhaltas Ceoltoiri Eireann,
Albuquerque, NM
Community Advocates Aligned to Unite
Ethnic Social Services, Kent, WA
Community Built Association, Inc.,
Alamogordo, NM
Companion Care, Inc., Provo, UT
Computer Outreach, Phoenix, AZ
Copeland-Freeman Foundation,
Mesa, AZ
Cops Racing Against Violence Through
Education, Las Vegas, NV
Cornerstone Christian Counseling,
Tucson, AZ
County Line Riders of Catalina, Inc.,
Tucson, AZ
Crossroads Treatment Center,
Sparks, NV
Dead Printers Society, Phoenix, AZ
Decker Lake Wetlands Preserve
Foundation, Salt Lake City, UT
Deer Valley Spiritline Booster Club,
Glendale, AZ
Diamond Magic, Spokane, WA
Directions in Education Training and
Consultation, Gig Harbor, WA
Disease Prevention Program, Roy, UT
Divine Mercy Foundation, Tacoma, WA
Dolphin Institute, Seattle, WA
Door of Hope Ministries,
Bellingham, WA
Double Camp Ministries, Glendale, AZ
Earth Spirit Wholeness Center,
Tahotchi, NM
Earth Views Center for Ecosystem
Mapping and Monitoring,
Santa Fe, NM
Eclectic Cross Foundation,
Las Vegas, NV
Ed Rimer Ministries, Inc.,
Albuquerque, NM
Edison Foundation, Seattle, WA
Edmonds Floral and Arts Foundation,
Edmonds, WA
El Pesebre, Inc., Green Valley, AZ
Empathology Research Foundation,
Bellevue, WA
Entiat Valley Service Club, Entiat, WA
Evergreen Clown Care, Orting, WA
Familia of Seattle, Mercer Island, WA
Family Mental Health Clinic,
Las Cruces, NM
Fast Forward Media Lab, Seattle, WA
Fillmore Housing Corporation,
Phoenix, AZ
Flag Children Services, Inc.,
Glendale, AZ
Fork in the Road, Inc., Tucson, AZ
Foundation for Colorectal Surgical
Education, Seattle, WA
Foundation for Law Enforcement
Education and Training, Inc.,
Phoenix, AZ
Friends of Garfield Foundation,
Seattle, WA
Friends of the Adelson Drug Clinic, Inc.,
Las Vegas, NV
Gamblers at Their End Society,
Graham, WA
Gateway Estates, Inc., Silver City, NM
Get High on Life-Be Dear to Yourself,
Inc., Las Vegas, NV
Gods Little Creatures Foundation,
Seattle, WA

Golden Hills Neighborhood Association, Salt Lake City, UT
Golden League Association, Kent, WA
Goldendale Education Fund, Goldendale, WA
Granny-Nanny Caregivers, Inc., Reno, NV
Gratitude Fellowship, Salt Lake City, UT
Great Basin National Feline Found, Fallon, NV
Grey Hound Friends Northwest, Issaquah, WA
Harp, Inc., Glendale, AZ
Healthy Start Infants Home, Deer Park, WA
Heartpraise Music Association, Vancouver, WA
Help Ministries, Inc., Scottsdale, AZ
Herdas Bicycle Club, Las Vegas, NV
Hispanic Historical Society, Inc., Albuquerque, NM
Hope for Coap, Spokane, WA
Hosanna Ministries International, Henderson, NV
Howard Memorial Mission, Inc., Glendale, AZ
Impact Foundation, Salt Lake City, UT
Independent Technicians Education Coalition, Tukwila, WA
Institute for International Economic Education, Mercer Island, WA
International Society for Integrated Human Development and Universal Peace, West Valley City, UT
Inventors Association of Arizona, Tucson, AZ
Irish Pipers Club, Seattle, WA
Jackson High Booster Club, Everett, WA
JASNET, Seattle, WA
Jewish Council For HIV-AIDS, Inc., Phoenix, AZ
Jimi Hendrix Family Foundation, Tukwila, WA
Jonathon Turner Trauma Foundation, Incline Village, NV
Kandy Productions Company, Inc., Scottsdale, AZ
King County Samoan Organizing Project, Seattle, WA
Kingdom Giving Foundation, Bellingham, WA
Kings Kids Day Care, Inc., Roswell, NM
Kylies Project, Bellingham, WA
La Jicarita Enterprise Communities, Penasco, NM
Laughing Horse Productions, Seattle, WA
Lead International Ministry Network, Vancouver, WA
Legacy Foundation, Inc., Phoenix, AZ
Leonard Bolar Foundation, Tacoma, WA
Lewis & Clark Bicentennial Seaplane Rendezvous Committee, Vashon, WA
Light Foundation, Inc., Salt Lake City, UT
Light to the Nations, Wasilla, AK
Malcom Harris Memorial Educational Enrichment Trust, Phoenix, AZ
Mannings Child Care Learning Center, Seattle, WA
Marine View Homes Association, Federal Way, WA
Marshall-David Library, Tucson, AZ
Mesa American Youth Football, Inc., Mesa, AZ
Mighty River Evangelistic Association, Inc., Albuquerque, NM
Mobile Caterer for the Homeless, Seattle, WA
Mobile Community Council for Progress, Inc., Maricopa, AZ
Mother of Mercy Chapel, Coulee City, WA
My Brothers Resource Center, Casa Grande, AZ
National American Indian Diabetes Association, Sacramento, CA
Native American Fish & Wildlife Society, Broomfield, CO
Native Americas International Film Exposition, Santa Fe, NM
NDN Productions, Inc., Albuquerque, NM
Neighborhood Ice and Recreation Development Fund, Inc., Salt Lake City, UT
New Exodus Ministries, Inc., Mesa, AZ
New Mexico Vietnam Veterans Foundation, Inc., Albuquerque, NM
New Shiprock Campus Committee, Inc., Shiprock, NM
Nibbana Foundation, Corrales, NM
Nicholas Group, Seattle, WA
Nighthawk, Santa Fe, NM
Noah 2 Northern Navajo Organization for the Advancement of Animal Health & Humanity, Shiprock, NM
Noahs Ark Animal Refuge, Inc., Carlsbad, NM
North High School Alumni Association, Phoenix, AZ
North Snohomish County Boxing Club, Arlington, WA
Northwest Tasar Association, Bow, WA
Nurses for Christ, Kingman, AZ
NW River Ecology, Spokane, WA
Open Gates Ministries , Yuma, AZ
Options for Youth Families and Communities, Inc., Logan, UT
Organization Latins Unidos, Albuquerque, NM
Organization of Positive Thought and Action, Mesa, AZ
Pathway to Freedom Counseling Center, Inc., Tucson, AZ
Peak at Santa Teresa, Santa Teresa, NM
Percussion for Kids Association, Seattle, WA
Personal Credit Assistance, Inc., Carson City, NV
Pierce Housing Corporation, Phoenix, AZ
Post-Recovery Aid Foundation, Federal Way, WA
Power to Cope-Missionary Health Restoration Work, Spokane, WA
Pro Homo Arts, Seattle, WA
Professionals Helping Amputees Train, Inc., Tucson, AZ
Recycling Insight, Everett, WA
Resources United for Supportive Services, Blaine, WA
Rialto Foundation, Tucson, AZ
Rising Star Communications of the Pacific Northwest, Inc., Kennewick, WA
Robbins Housing Corp , Santaquin, UT
Rocky Mountain Band of Cherokee Descendants, Sandy, UT
Safe Passage, Sedro Woolley, WA
San Jose Community Center, San Jose, NM
San Juan Resident Committee, San Juan Pueblo, NM
Sanctuary for Enlightened Action, Inc., Montpelier, VA
Santa Fe High School Football Booster Association, Inc., Sante Fe, NM
Santa Fe Institute for Medicine & Prayer, Sante Fe, NM
Scottsdale Childrens Nature Center for Science & Education, Scottsdale, AZ
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Shield Ministries, Kennewick, WA
Shiprock Community Development Corporation, Shiprock, NM
Sierra Vista Ballet Company, Sierra Vista, AZ
Sigma Tau Sigma, Las Vegas, NV
Sonja L Harrison Foundation for Seniors, Bothell, WA

Sons of Haiti Manor Housing Association, Seattle, WA
Sons of Haiti Senior Housing Association, Seattle, WA
South Asia Cultural Association, Spokane, WA
South Pacific County Cliff Rescue, Seaview, WA
Southern Oregon Hockey Association, Inc., Medford, OR
Stephen Christopher Foundation, Inc., Scottsdale, AZ
Super Kids of America, Springville, UT
Tacoma Empowerment Consortium, Tacoma, WA
Theatre Southwest, Inc., Albuquerque, NM
Therapeutic Living Concept-Message Therapy for People With AIDS, Everett, WA
Threshold House, Mesa, AZ
Tohatchi Youth Center, Tohatchi, NM
Tseikiin Community Development Corporation, Ramah, NM
Tucson Marriage Encounter, Inc., Tucson, AZ
Tucson Mormon Battalion Monument Foundation, Tucson, AZ

United States Freestyle Ski Team, Inc., Salt Lake City, UT
Utah Hispanic Womens Association, Inc., Mountain Green, UT
Valdez Swim Club, Inc., Valdez, AK
Valley Crossroads, Inc., Salt Lake City, UT
Venturi Foundation, Sun City, AZ
Visions World Productions, Inc., Phoenix, AZ
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Wardley Foundation, Inc., Salt Lake City, UT
Warren and Jolene Young Ministries, Sun City West, AZ
Washington Higher Education Policy Center, Olympia, WA
Washington State Council of Firefighters Benevolent Fund, Olympia, WA
Washington Waterfowl Association, Edmonds, WA
Wellspring Womens Center, Sacramento, CA
West Bountiful Little League Baseball, West Bountiful, UT
West Jordan Municipal Soccer Authority Incorporated, West Jordan, UT

Wings Foundation, Tucson, AZ
Wings of Love Ministries, Tukwila, WA
Womens Resource Center, Carson City, NV
Worldwide Cultural Exchange, Inc., Sedona, AZ
Y.A.F.D.A. Youth Away From Drugs and Alcohol, Moses Lake, WA
Young at Heart Ministries, Albuquerque, NM
Zion Temple Ashram Community, Inc., Tucson, AZ
Zolo Foundation, Gold Canyon, AZ

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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.
FR—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsels Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.PR.—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

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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.

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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.