

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2001-2, page 255.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period October through December 2000. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period October through December 2000. This ruling also announces errors in bond factor amounts for dispositions of 1987 properties in 1998 and of all properties in 1999 and January through June 2000, and sets forth summaries for 1998, 1999, and 2000 that contain the corrected bond factor amounts.

Notice 2001-2, page 265.

Research credit suspension periods. This notice provides guidance to help taxpayers compute and report their credit for increasing research activities (research credit) under section 41 of the Code for taxable years that include the research credit suspension periods described in section 502(d)(2) of the Tax Relief Extension Act of 1999, Pub. L. No. 106-170 (Dec. 17, 1999). This notice also explains how to take into account any research credits attributable to a research credit suspension period.

Notice 2001-4, page 267.

This notice provides additional guidance to qualified intermediaries and U.S. withholding agents relating to the withholding of income tax under section 1441 of the Code on certain U.S. source income paid to foreign persons.

Rev. Proc. 2001-10, page 272.

Methods of accounting; inventories; small taxpayers. This procedure provides that the Commissioner will exercise

his discretion to except a qualifying taxpayer with average annual gross receipts of \$1,000,000 or less from the requirements to use an accrual method of accounting and to account for inventories. Rev. Proc. 2000-22 modified and superseded. Rev. Proc. 99-49 modified and amplified.

Rev. Proc. 2001-11, page 275.

Penalties; substantial understatement. Guidance is provided concerning when information shown on a return will be adequate disclosure for purposes of reducing an understatement of income tax under section 6662(d) of the Code and for purposes of avoiding the preparer penalty under section 6694(a) of the Code.

EMPLOYEE PLANS

Notice 2001-3, page 267.

Weighted average interest rate update. The weighted average interest rate for December 2000 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.

EMPLOYMENT TAX

T.D. 8910, page 258.

Final regulations under section 6053 of the Code set forth rules for employers that wish to establish electronic systems for use by their tipped employees in reporting tips to the employer. The regulations also provide rules relating to substantiation requirements for tipped employees using the electronic system.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

Notice 2001-1, page 261.

This notice sets forth the requirements employers must meet and the procedures for obtaining approval of employer-designed tip reporting alternative commitment (EmTRAC) programs for the food and beverage industry. Notice 2000-21 superseded.

Page 258.

Railroad retirement; rate determination; quarterly. The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 26 cents for the quarter beginning January 1, 2001.

Announcement 2001-1, page 277.

The Service announces the availability of two new *pro forma* voluntary tip reporting agreements for employers of tipped employees and revisions of three existing *pro forma* voluntary tip reporting agreements. These documents were published in proposed form as announcements in I.R.B. 2000-19.

ADMINISTRATIVE**Announcement 2001-2, page 277.**

An updated edition of Publication 551, *Basis of Assets* (revised December 2000), will be available soon.

Announcement 2001-3, page 278.

This announcement updates Publication 1187 (Rev. 8-98), which provides specifications for the magnetic or electronic filing of Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*. Announcement 99-79 superseded.

Announcement 2001-4, page 286.

This document contains corrections to T.D. 8889, 2000-30 I.R.B. 124, final regulations regarding claims for certain income tax convention benefits.

Announcement 2001-5, page 286.

This document contains corrections to the Numerical Finding List, the Finding List of Current Actions on Previously Published Items, and the Index for Cumulative Bulletin 1998-2. These pages are reprinted here.

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 proce-

dures 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 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 41.—Credit for Increasing Research Activities

Notice 2001-2 provides guidance to help taxpayers compute and report their credit for increasing research activities (research credit) under section 41 of the Code for taxable years that include the research credit suspension periods described in section 502(d)(2) of the Tax Relief Extension Act of 1999, Pub. L. No. 106-170 (Dec. 17, 1999) (the Act). Further, this notice explains how to take into account any research credits attributable to a research credit suspension period. See Notice 2001-2, page 265.

Section 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; “bond factor” amounts for the period October through December 2000. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period October through December 2000. This ruling also announces errors in bond factor amounts for dispositions of 1987 properties in 1998 and of all properties in 1999 and January through June 2000, and sets forth summaries for 1998, 1999, and 2000 that contain the corrected bond factor amounts.

Rev. Rul. 2001-2

In Rev. Rul. 90-60, 1990-2 C.B. 4, the Internal Revenue Service provided guidance to taxpayers concerning the general

methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of “bond factor” amounts for dispositions occurring during each calendar month.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) for dispositions of qualified low-income buildings or interests therein during the period October through December 2000. Table 1 also provides a summary of the bond factor amounts for dispositions occurring during the period January through September 2000. Table 2 provides a summary of bond factor amounts for dispositions occurring during the period January through December 1999. Table 3 provides a summary of the bond factor amounts for dispositions occurring during the period January through December 1998.

Due to a miscalculation, Rev. Rul. 98-13, 1998-1 C.B. 686; Rev. Rul. 98-31, 1998-1 C.B. 1269; Rev. Rul. 98-45, 1998-2 C.B. 364; and Rev. Rul. 99-1, 1999-1 C.B. 265, are in error regarding the specific bond factor amounts for buildings placed in service in calendar year 1987 and disposed of in calendar year 1998. Further, Rev. Rul. 99-18, 1999-1 C.B. 868; Rev. Rul. 99-24,

1999-1 C.B. 1096; Rev. Rul. 99-38, 1999-2 C.B. 335; Rev. Rul. 99-54, 1999-2 C.B. 675; Rev. Rul. 2000-22, 2000-16 I.R.B. 880; and Rev. Rul. 2000-31, 2000-26 I.R.B. 1269, are in error regarding the bond factor amounts for buildings placed in service in calendar years 1987 through 2000 and disposed of in calendar year 1999 and January 2000 through June 2000. The present revenue ruling provides a complete list of the corrected bond factor amounts.

Under the authority of § 7805(b), taxpayers that posted bonds and taxpayers that established Treasury Direct Accounts with the Service pursuant to Rev. Proc. 99-11, 1999-1 C.B. 275, based upon the above mentioned bond factor amounts may continue to rely on those figures. Taxpayers that choose to amend their previously posted bonds by using the corrected bond factor amounts listed in this revenue ruling may do so by submitting an amended Form 8693, *Low-Income Housing Tax Credit Disposition Bond*, to the Internal Revenue Service Center, Philadelphia, PA 19255. The amended form may be submitted by either the taxpayer or the surety. Taxpayers that choose to amend the amount of securities pledged in their previously established Treasury Direct Accounts with the Service by using the corrected bond factor amounts listed in this revenue ruling should contact the Bureau of the Public Debt, Division of Customer Service, IRS Collateral Desk at (304) 480-6158 for further information.

Table 1
Rev. Rul. 2001-2
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

		Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year													
Month of Disposition		1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Jan	'00	37.59	51.81	63.64	73.62	75.52	77.92	80.36	82.70	85.05	87.63	90.38	93.52	96.69	97.21
Feb	'00	37.59	51.81	63.64	73.62	75.31	77.69	80.12	82.44	84.78	87.35	90.08	93.17	96.26	97.21
Mar	'00	37.59	51.81	63.64	73.62	75.09	77.47	79.88	82.20	84.53	87.07	89.79	92.85	95.88	97.21
Apr	'00	39.75	54.78	67.30	77.84	79.96	83.31	86.76	90.16	93.64	97.41	101.43	105.89	110.31	112.52
May	'00	39.75	54.78	67.30	77.84	79.74	83.07	86.51	89.90	93.36	97.12	101.11	105.54	109.93	112.52
Jun	'00	39.75	54.78	67.30	77.84	79.52	82.84	86.26	89.64	93.09	96.83	100.81	105.22	109.59	112.52
Jul	'00	39.75	54.78	67.30	77.84	79.31	82.61	86.02	89.38	92.82	96.56	100.53	104.92	109.29	112.52

Table 1 (cont'd)
Rev. Rul. 2001-2
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year													
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Aug '00	39.75	54.78	67.30	77.84	79.09	82.39	85.78	89.14	92.57	96.29	100.25	104.64	109.02	112.52
Sep '00	39.75	54.78	67.30	77.84	78.89	82.17	85.55	88.89	92.32	96.04	99.99	104.37	108.77	112.52
Oct '00	39.75	54.78	67.30	77.84	78.68	81.95	85.32	88.66	92.08	95.79	99.74	104.12	108.55	112.52
Nov '00	39.75	54.78	67.30	77.84	78.48	81.74	85.10	88.43	91.84	95.55	99.50	103.89	108.35	112.52
Dec '00	39.75	54.78	67.30	77.84	78.28	81.54	84.88	88.21	91.61	95.32	99.28	103.66	108.16	112.52

Table 2
Rev. Rul. 2001-2
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year													
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	
Jan '99	49.72	60.91	70.15	70.99	72.34	73.94	75.54	76.98	78.38	79.94	81.59	83.60	83.98	
Feb '99	49.72	60.91	70.15	70.79	72.13	73.72	75.31	76.75	78.13	79.68	81.32	83.28	83.98	
Mar '99	49.72	60.91	70.15	70.60	71.93	73.51	75.09	76.52	77.90	79.44	81.07	83.00	83.98	
Apr '99	52.57	64.41	74.17	75.18	77.36	79.85	82.37	84.77	87.15	89.75	92.48	95.53	97.21	
May '99	52.57	64.41	74.17	74.97	77.14	79.62	82.13	84.52	86.90	89.49	92.20	95.25	97.21	
Jun '99	52.57	64.41	74.17	74.77	76.93	79.39	81.89	84.28	86.65	89.23	91.95	94.99	97.21	
Jul '99	52.57	64.41	74.17	74.57	76.72	79.18	81.67	84.04	86.41	88.99	91.71	94.76	97.21	
Aug '99	52.57	64.41	74.17	74.37	76.52	78.96	81.44	83.81	86.18	88.76	91.48	94.55	97.21	
Sep '99	52.57	64.41	74.17	74.18	76.32	78.75	81.23	83.59	85.95	88.54	91.27	94.37	97.21	
Oct '99	52.57	64.41	74.17	73.99	76.12	78.55	81.02	83.37	85.74	88.32	91.07	94.20	97.21	
Nov '99	52.57	64.41	74.17	73.80	75.93	78.35	80.81	83.17	85.53	88.12	90.88	94.04	97.21	
Dec '99	52.57	64.41	74.17	73.62	75.74	78.15	80.61	82.96	85.33	87.93	90.71	93.90	97.21	

Table 3
Rev. Rul. 2001-2
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year												
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	
Jan '98	69.28	79.57	81.84	84.75	88.14	91.97	95.92	99.75	103.57	107.70	111.85	112.52	
Feb '98	69.28	79.57	81.59	84.49	87.86	91.67	95.59	99.39	103.18	107.25	111.28	112.52	
Mar '98	69.28	79.57	81.35	84.24	87.59	91.37	95.27	99.04	102.80	106.83	110.79	112.52	
Apr '98	65.52	75.25	75.96	77.87	80.16	82.79	85.46	87.97	90.41	93.03	95.60	97.21	
May '98	65.52	75.25	75.75	77.65	79.93	82.55	85.20	87.69	90.12	92.74	95.31	97.21	

Table 3 (cont'd)
Rev. Rul. 2001-2
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year												
Month of Disposition	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Jun '98	65.52	75.25	75.54	77.44	79.71	82.31	84.95	87.43	89.85	92.46	95.05	97.21
Jul '98	65.52	75.25	75.33	77.22	79.49	82.08	84.70	87.18	89.60	92.21	94.81	97.21
Aug '98	65.52	75.25	75.13	77.01	79.27	81.85	84.47	86.93	89.35	91.97	94.61	97.21
Sep '98	65.52	75.25	74.93	76.81	79.06	81.63	84.23	86.70	89.12	91.74	94.42	97.21
Oct '98	65.52	75.25	74.73	76.61	78.85	81.41	84.01	86.47	88.89	91.53	94.25	97.21
Nov '98	65.52	75.25	74.54	76.41	78.65	81.20	83.79	86.25	88.68	91.33	94.09	97.21
Dec '98	65.52	75.25	74.35	76.22	78.45	80.99	83.58	86.04	88.47	91.14	93.94	97.21

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see Rev. Rul. 98-3, 1998-1 C.B. 248.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 98-13, 1998-1 C.B. 686; Rev. Rul. 98-31, 1998-1 C.B. 1269; Rev. Rul. 98-45, 1998-2 C.B. 364; Rev. Rul. 99-1, 1999-1 C.B. 265; Rev. Rul. 99-18, 1999-1 C.B. 868; Rev. Rul. 99-24, 1999-1 C.B. 1096; Rev. Rul. 99-38, 1999-36 I.R.B. 335; Rev. Rul. 99-54, 1999-51 I.R.B. 675; Rev. Rul. 2000-22, 2000-16 I.R.B. 880; Rev. Rul. 2000-31, 2000-26 I.R.B. 1269; and Rev. Rul. 2000-48, 2000-42 I.R.B. 349, are revoked.

DRAFTING INFORMATION

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

Section 162.—Trade or Business Expenses

26 CFR 1.162-3: Cost of materials.

Qualifying taxpayers with average annual gross receipts of \$1,000,000 or less are excepted from the requirement under § 471 of the Code to account for inventories, and instead may account for inventori-

able items as materials and supplies that are not incidental under § 1.162-3 of the regulations. See Rev. Proc. 2001-10, page 272.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A-1: Uniform capitalization of costs.

Section 263A does not apply to inventoriable items of qualifying taxpayers with average annual gross receipts of \$1,000,000 or less that are treated as materials and supplies that are not incidental under § 1.162-3 of the regulations. See Rev. Proc. 2001-10, page 272.

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446-1: General rule for methods of accounting.

Qualifying taxpayers with average annual gross receipts of \$1,000,000 or less are excepted from the requirement to use an accrual method of accounting under § 446 of the Code and to account for inventories under § 471. See Rev. Proc. 2001-10, page 272.

Section 471.—General Rule for Inventories

26 CFR 1.471-1: Need for inventories.

Qualifying taxpayers with average annual gross receipts of \$1,000,000 or less are excepted from the requirement to use an accrual method of accounting under § 446 of the Code and to ac-

count for inventories under § 471, and may instead treat inventoriable items as materials and supplies that are not incidental under § 1.162-3 of the regulations. See Rev. Proc. 2001-10, page 272.

Section 481.—Adjustments Required for Changes in Method of Accounting

26 CFR 1.481-1: Adjustments in general.
26 CFR 1.481-4: Adjustments taken into account with consent.

Procedures are provided for qualifying taxpayers with average annual gross receipts of \$1,000,000 or less to obtain automatic consent to change to the cash receipts and disbursements method of accounting and to a method of accounting for inventory as materials and supplies that are not incidental under § 1.162-3 of the regulations. See Rev. Proc. 2001-10, page 272.

Section 1001.—Determination of Amount of and Recognition of Gain or Loss

26 CFR 1.1001-1: Computation of gain or loss.

Notwithstanding § 1001 and the regulations thereunder, qualifying taxpayers that use the cash receipts and disbursements method of accounting include amounts in income attributable to open accounts receivable (*i.e.*, receivables due in 120 days or less) as amounts are actually or constructively received. See Rev. Proc. 2001-10, page 272.

Section 3221.—Rate of Tax

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2001, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2001, 39.7 percent of the taxes collected under sections 3221(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 60.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated December 1, 2000.

By Authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

(Filed by the Office of the Federal Register on December 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for December 13, 2000, 65 F.R. 77938)

Section 6053.—Reporting of Tips

26 CFR 31.6053-1: Report of tips by employee to employer.

T.D. 8910

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

Electronic Tip Reports

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the regulations dealing with the requirement that tipped employees report their tips to their employer. These final regulations permit employers to establish electronic systems for use by their tipped employees in reporting tips to the employer. These final regulations also address substantiation requirements for employees using the electronic system.

DATES: *Effective Date:* These regulations are effective December 13, 2000.

Applicability Dates: For dates of applicability, see §31.6053-1(d)(6) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202-622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1603. Responses to this collection of information are mandatory.

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

The estimated annual burden per respondent varies from 1 hour to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On January 26, 1998, the IRS published in the **Federal Register** (63 F.R. 3681) a notice of proposed rulemaking (REG-104691-97, 1998-1 C.B. 695) under section 6053 of the Internal Revenue Code relating to electronic tip reports. The notice proposed to amend §31.6053-1 and §31.6053-4 of the employment tax regulations.

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as final regulations.

The final regulations are consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.

Special Analyses

It has been determined that these final regulations are 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. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in §31.6053-1 is imposed solely on individuals, not on any small entities, and the regulations provide flexibility to employees who must provide the information required by statute, thereby reducing burden. With respect to the collection of information in §31.6053-4, the certification is based on the expectation of the IRS that most businesses that choose to implement the electronic tip reporting provisions will be larger businesses with many employees and sophisticated computer systems. Moreover, because the provision is wholly elective, any small business that would be adversely impacted may choose not to use electronic tip reporting. Finally, the Service expects that for those small entities that choose to implement the provision, the use of electronic tip reporting will reduce overall burden by re-

ducing paper collections. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.6053-1 is amended as follows:

1. Paragraph (a) is revised.
2. The introductory text of paragraph (b)(1) is revised.
3. The last sentence of paragraph (b)(1)(iii) is revised.
4. Paragraph (b)(2) is revised.
5. Paragraph (c) is revised.
6. Paragraph (d) is added.

The revisions and additions read as follows:

§31.6053-1 Report of tips by employee to employer.

(a) *Requirement that tips be reported—*
(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a

statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month. For example, tips received by an employee in January 2000 are required to be reported by the employee to the employer on or before February 10, 2000.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§31.3102-3 and 31.3121(a)(12)-1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§31.3401(a)(16)-1, 31.3401(f)-1, and 31.3402(k)-1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3221, see section 3231(e) and §31.3231(e)-1(a).

(b) * * * (1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

* * * * *

(iii) * * * If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

* * * * *

(2) *Form of statement—*(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other means for the employee to report tips, the employee may use Form 4070, "Employee's Report of Tips to Employer."

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper or in electronic form (such as a time card or report), must meet the requirements of paragraph (b)(1)(iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished (if not less frequent than monthly) by the employer to the employee showing gross pay and deductions.

(c) *Period covered by, and due date of, tip statement—*(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on

the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless is a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment terminates, the employee must furnish a tip statement to the employer when the employee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer is a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems—(1) In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip state-

ment must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

(5) *Record retention.* The record retention requirements applicable to automatic data processing systems also apply to electronic tip reporting systems.

(6) *Effective date.* The provisions pertaining to electronic systems and electronic tip reports are applicable as of December 13, 2000. However, employers may apply these provisions to earlier periods.

Par. 3. Section 31.6053-4 is amended as follows:

1. A sentence is added to paragraph (a)(1) after the third sentence.

2. A sentence is added to paragraph (a)(2) after the fourth sentence.

The additions read as follows:

§31.6053-4 Substantiation requirements for tipped employees.

(a)(1) * * * The Commissioner may by revenue ruling, procedure or other guidance of general applicability provide for other methods of demonstrating evidence of tip income. * * *

(2) * * * In addition, an electronic system maintained by the employer that collects substantially similar information as Form 4070A may be used to maintain such daily record, provided the employee receives and maintains a paper copy of the daily record. * * *

* * * * *

PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by revising the entries for 31.6053-1 and 31.6053-4 to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

Approved August 25, 2000.

Jonathan Talisman,
Acting Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on December 12, 2000, 8:45 a.m., and published in the issue of the Federal Register for December 13, 2000, 65 F.R. 77818)

CFR part or section where identified and described	Current OMB control No.
* * * * *	
31.6053-1	1545-0029 1545-0062 1545-0064 1545-0065 1545-1603
* * * * *	
31.6053-4	1545-0065 1545-1603
* * * * *	

Part III. Administrative, Procedural, and Miscellaneous

Employer-Designed Tip Reporting Program for the Food and Beverage Industry

Notice 2001-1

I. BACKGROUND

In 1993, the Internal Revenue Service introduced its Tip Rate Determination/Education Program (TRD/EP), which is designed to enhance tax compliance among tipped employees through taxpayer education and voluntary advance agreements instead of traditional audit techniques. The TRD/EP was developed as a means of enhancing tax compliance while reducing taxpayer burden. In essence, the TRD/EP envisions that the Service and taxpayers in industries in which tipping is common will work together to improve tax compliance.

The TRD/EP currently offers employers the opportunity of entering into one of two types of agreements. The Tip Rate Determination Agreement (TRDA) requires the determination of tip rates; the Tip Reporting Alternative Commitment (TRAC) agreement emphasizes education and tip reporting procedures. The agreements also set forth an understanding that both the employer and employees who comply with the terms of the agreement will not be subject to challenge by the Service. The decision to enter into either a TRDA or a TRAC agreement is entirely voluntary on the part of the employer.

TRDAs are currently in use in the food and beverage industry and the gaming industry. TRAC agreements are currently in use in the food and beverage industry and the cosmetology and barber industry. The Service expects to begin making these agreements available to other industries during 2000.

Taxpayers in the food and beverage industry have expressed interest in designing their own TRAC programs. Notice 2000-21, 2000-19 I.R.B. 967, set forth proposed requirements and procedures for obtaining approval of an employer-designed EmTRAC program. Notice 2000-21 also offered interested persons the opportunity to comment on the proposed program. The Service received no comments. Even so, several nonsubstan-

tive clarifying changes have been made. They appear in this document.

II. EmTRAC PROGRAM

The EmTRAC program is available only to employers in the food and beverage industry that have employees who receive both cash and charged tips. The employer may have one place of business or many places of business. For purposes of the program, each place of business is called an establishment. If an employer has more than one establishment, it can choose which establishments to include in its EmTRAC program.

The EmTRAC program retains many of the provisions in the TRAC agreement. The employer must establish an educational program that trains employees that the law requires them to report all their cash and charged tips to their employer. Education must be furnished for newly hired employees and quarterly for existing employees.

The employer must establish tip reporting procedures, under which a written or electronic statement is prepared and processed on a regular basis (no less frequently than monthly), reflecting all tips for services attributable to each employee.

The EmTRAC program provides an employer with considerable latitude in designing its educational program and tip reporting procedures, which the employer may combine. For example, a point-of-sale tip reporting system could meet both of these requirements, because the employee is prompted of the tip reporting requirement at the end of each sale and because the reporting occurs at the end of each sale.

The employer must agree-

1. to comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes;

2. to maintain the following records for at least 4 years after the April 15 following the calendar year to which the records relate:

- a. gross receipts subject to tipping, and

- b. charge receipts showing charged tips; and

3. upon the request of the Service, to

make the following quarterly totals available, by establishment, for statistical samplings of its establishments:

- a. Gross receipts subject to tipping,

- b. Charge receipts showing charged tips,

- c. Total charged tips, and

- d. Total tips reported.

The Service agrees-

1. not to initiate any tip examinations of the employer or an establishment included in the EmTRAC for any period for which the EmTRAC program is in effect; except in relation to a tip examination of one or more employees or former employees of the employer or an establishment.

2. to base any section 3121(q) notice and demand issued to the employer or an establishment included in the EmTRAC and relating to any period during which the EmTRAC program is in effect solely on amounts reflected on-

- a. Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an Employee with his or her Form 1040, or

- b. Form 885-T, *Adjustment of Social Security Tax on Tip Income Not Reported to Employer*, prepared at the conclusion of an employee tip examination; and

3. not to evaluate the employer for compliance with the provisions of its EmTRAC program for the first two calendar quarters for which the EmTRAC program is effective.

Both parties agree that, for purposes of the EmTRAC program, a compliance review is not treated as an examination or an inspection of books of account or records, and an inspection of books of account or records pursuant to a tip examination is not an inspection of books or records for purposes of section 7605(b) of the Code, and is not a prior audit for purposes of section 530 of the Revenue Act of 1978.

The effective date of an EmTRAC program is the first day of the quarter beginning on or after the date the Service signs an approval letter.

An employer may at any time terminate its EmTRAC program either completely

or with respect to one or more establishments. The Service may terminate its approval with respect to the EmTRAC program or a specific establishment or establishments, only if—

1. the Service determines that the employer or establishment(s) has failed to comply with the required provisions; or

2. the Service pursues an administrative or judicial action relating to the employer, an establishment included in the EmTRAC, or any other related party to the employer's EmTRAC program.

Generally, any termination is effective the first day of the first calendar quarter after the terminating party notifies the other party in writing.

If the employer has an existing TRAC agreement or TRDA covering one or more establishments included in the employer's EmTRAC program, the existing TRAC agreement or TRDA will terminate with respect to that establishment or those establishments upon the approval of the employer's EmTRAC program.

III. PROCEDURES FOR REQUESTING APPROVAL

The employer must request approval of its EmTRAC program. For this purpose, the Service has developed a *pro forma* letter that an employer must use to request approval of its EmTRAC program. The letter requests approval of the employer's EmTRAC program and states that the employer will comply with the provisions set forth in the letter (and also set forth in section II above).

A copy of the approval request letter is attached to this notice. It can be obtained by mail by contacting the tip coordinator in any local IRS office or by calling (202) 622-5532 (not a toll-free call).

The completed approval request letter and a copy of the employer's EmTRAC program should be sent to:

Internal Revenue Service
S:C:CP:ET Room 2404
Attn: EmTRAC Coordinator
1111 Constitution Avenue, N.W.
Washington, DC 20224

IV. PROCEDURES FOR APPROVING REQUESTS

After it receives the approval request letter, the Service will review the employer's program. If the program meets the necessary requirements, the Service will send the employer an approval letter, a copy of which is attached to this notice. The approval letter will specify the effective date of the employer's EmTRAC program.

If the IRS determines that the employer's EmTRAC program fails to meet all the requirements, the IRS will contact the employer and offer assistance in working out a program that will meet both the employer's needs and the IRS's requirements.

V. MISCELLANEOUS

Upon request to the local tip coordinator or the EmTRAC Coordinator, the Service will assist any employer in establishing, maintaining, or improving its educational program or tip reporting procedures.

The Commissioner of Internal Revenue may terminate all EmTRAC programs at any time following a significant statutory change in the FICA taxation of tips. After December 31, 2005, the Commissioner may terminate prospectively the Tip Rate Determination/Education Program and all EmTRAC programs.

VI. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1716.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections II and III. This information is required to comply with sections 6053(a) and 6001 of

the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employer's performance under its EmTRAC program. The collections of information are required to obtain the benefits available under the EmTRAC program. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 870 hours.

The estimated annual burden per respondent/recordkeeper varies from 8 hours to 44 hours, depending on individual circumstances, with an estimated average of 13 hours. The estimated number of respondents and/or recordkeepers is 20.

The estimated annual frequency of responses is on occasion.

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 section 6103 of the Code.

VII. AFFECT ON OTHER DOCUMENTS

Notice 2000-21 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Karin Loverud of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ida Volz of the Office of Compliance Policy at (202) 622-5532 (not a toll-free call).

Letter — Request for EmTRAC approval

Tip Coordinator
Internal Revenue Service

Re: Request for EmTRAC Approval

Dear Internal Revenue Service:

Pursuant to the Employer Tip Reporting Alternative Commitment Program (EmTRAC), I request your approval of the enclosed program for _____ (name of business), EIN _____.

In accordance with Notice 2001-1, 2001-2 I.R.B. 261, if you approve this program _____ (name of business) agrees to:

- (1) comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes;
- (2) maintain the following records for at least 4 years after the April 15 following the calendar year to which the records relate:
 - a. gross receipts subject to tipping, and
 - b. charge receipts showing charged tips;
- (3) upon your request, make the following quarterly totals available, by establishment, for statistical samplings:
 - a. gross receipts subject to tipping,
 - b. charge receipts showing charged tips,
 - c. total charged tips, and
 - d. total tips reported;
- (4) operate its EmTRAC program as indicated in the program documents attached to this letter; and
- (5) comply with the terms of your approval described in Notice 2001-1.

Also in accordance with Notice 2001-1, _____ (name of business) agrees that a compliance review will not be treated as an examination or an inspection of its books of account or records and that your inspection of books of account or records pursuant to a tip examination will not be treated as an inspection of books or records for purposes of section 7605(b) of the Internal Revenue Code, and will not be treated as a prior audit for purposes of section 530 of the Revenue Act of 1978.

All correspondence pertaining to this EmTRAC program (including a notice of termination) should be sent to the address indicated below, unless we notify you in writing of a change of address. _____ (name of business) will send correspondence to you in the manner indicated in your approval letter. All correspondence is effective on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, on the sender's receipt.

I represent that I have the authority to agree to these terms on behalf of _____ (name of business).

If you have any questions, please contact _____ at _____ (telephone number) or _____ (e-mail address).

Name of Business

\\ _____

By: _____

Title: _____

Date: _____

Enclosures:

- EmTRAC program documents
- List of establishments (name, address, and EIN) participating in the program

Letter – EmTRAC approval

Internal Revenue Service
Service Representative

Department of the Treasury

Person to Contact:
Identification Number:
Contact Telephone Number:

Re: EmTRAC Approval

Dear _____ (Taxpayer):

Thank you for your letter of _____ requesting our approval of your EmTRAC program and containing your agreements with respect to that program. We are pleased to inform you that your EmTRAC Program meets the requirements of Notice 2001–1.

Accordingly, we agree as follows:

Your EmTRAC program will be effective on _____ [insert the first day of the quarter beginning on or after the date the Service signs the letter]. The Service agrees not to initiate any new tip examinations of you or any of the establishments included in your letter for any period during which your EmTRAC program is in effect, except in relation to a tip examination of one or more employees or former employees of you or an establishment.

Any section 3121(q) notice and demand that we issue to you (or an establishment) relating to any period during which your EmTRAC program is in effect will be based solely on amounts reflected on Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, filed by an employee with his or her Form 1040, or Form 885-T, *Adjustment of Social Security Tax on Tip Income Not Reported to Employer*, prepared at the conclusion of an employee tip examination.

The Service will not evaluate your EmTRAC program for compliance until _____ [insert the first day of the second calendar quarter following the date on which the EmTRAC program becomes effective]. The Service may, however, review your progress in implementing your EmTRAC program before then.

Your EmTRAC program will remain in effect until you terminate it or the Service terminates its approval. If you no longer wish your EmTRAC program to apply to one or more of your establishments, you may terminate the program with respect to any establishment(s) by identifying the establishment(s) in writing to the Service Representative described below. If you want to completely terminate your EmTRAC program, please say that in your letter to the Service Representative.

The Service may terminate its approval only (1) if you fail to comply with your agreements described in your letter, (2) if the Service pursues an administrative or judicial action relating to you, an establishment, or any other related party to your EmTRAC program, (3) following a significant statutory change in the FICA taxation of tips, or (4) after December 31, 2005. If one or more establishments fail to comply with any of your agreements, the Service may choose to terminate its approval with respect to that establishment(s).

Any termination will be effective the first day of the first calendar quarter after the terminating party notifies the other party in writing, unless you (or an establishment) fail to comply with your agreements. In that case, the Service may terminate your EmTRAC program effective as of the first day of the quarter in which you ceased to comply.

Please send all correspondence relating to your EmTRAC program to _____ (name and address), unless we notify you in writing otherwise.

If you have any questions regarding this agreement, please contact _____ (ID _____) at (telephone number) or _____ (e-mail address).

Thank you for your participation in the program.

INTERNAL REVENUE SERVICE

By: _____

ID: _____

Date: _____

Research Credit-Suspension Period

Notice 2001-2

PURPOSE

This notice provides guidance to help taxpayers compute and report their credit for increasing research activities (research credit) under § 41 of the Internal Revenue Code for taxable years that include the research credit suspension periods described in § 502(d)(2) of the Tax Relief Extension Act of 1999, Pub. L. No. 106-170 (Dec. 17, 1999) (the Act). Further, this notice explains how to take into account any research credits attributable to a research credit suspension period.

SPECIAL RULES RELATING TO THE RESEARCH CREDIT SUSPENSION PERIODS

Section 502(d) of the Act provides that, for purposes of the Code, any research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, that is otherwise allowable under the Code, may not be taken into account prior to October 1, 2000. Further, any research credit attributable to the period beginning on October 1, 2000, and ending on September 30, 2001, that is otherwise allowable under the Code, may not be taken into account prior to October 1, 2001.

On or after the earliest date that an amount of research credit attributable to a research credit suspension period may be taken into account, the amount may be taken into account through the filing of an amended return, an application for expedited refund, or an adjustment of estimated taxes.

Because the research credit suspension periods merely delay the use of research credits attributable to a research credit suspension period, the limitations contained in § 38(c), § 39, and § 41(g) on the amount of research credit allowable to any person as a credit against tax for any taxable year remain applicable. Further, taxpayers not electing to take a reduced credit under § 280C(c)(3) must continue to reduce applicable deductions, amounts chargeable to capital account, and credits for the taxable year by the full amount of the research credit as required by § 280C(c)(1) and (2).

COMPUTATION OF THE RESEARCH CREDIT FOR TAXABLE YEARS INCLUDING SUSPENSION PERIODS

Section 502(d)(4) of the Act provides the rule for determining the amount of research credit suspended for taxable years including research credit suspension periods. To determine the amount of research credit that is suspended, taxpayers first must calculate the research credit for the taxable year. The amount of research credit that is attributable to a research credit suspension period under § 502(d) of the Act is the amount that bears the same ratio to the amount of research credit for the taxable year as the number of months in the research credit suspension period that are during the taxable year bears to the total number of months in the taxable year.

Form 6765, *Credit for Increasing Research Activities*, reflects the required computation of the research credit and the determination of the research credit allowed on a current year return and the suspended research credit attributable to the current year.

APPLICATION

ORIGINAL RETURNS

Research credits attributable to a research credit suspension period may not be used as a credit against tax on a timely filed or late filed original return for a taxable year that includes any part of such suspension period even if that original return is filed after the expiration of such suspension period. This rule is necessary for the Internal Revenue Service to properly administer § 502(d) of the Act.

CARRYBACK AND CARRYFORWARD OF SUSPENDED CREDITS

Any research credit that is not allowed for the taxable year that is attributable to a research credit suspension period may not be claimed as a carryback or carryforward until the day after the end of the applicable research credit suspension period. After the end of the applicable research credit suspension period, however, research credits attributable to a research credit suspension period that are not used currently as a credit against tax may be carried to other taxable years under the rules of § 39.

OVERPAYMENT OF TAX AND INTEREST ON OVERPAYMENTS

Because research credits attributable to a research credit suspension period may not be taken into account in determining any amount required to be paid for any purpose under the Code until the expiration of the applicable research credit suspension period, research credits attributable to a research credit suspension period are not available as a credit against tax until the expiration of the applicable research credit suspension period and may not be considered in determining any overpayment of tax until the expiration of the applicable research credit suspension period.

In computing interest on any overpayment attributable to any suspended research credit under the rules of § 6611, the date of the overpayment for purposes of computing the interest is the later of the date of the overpayment without regard to the research credit suspension period (even though the credit may not be claimed on an original return that includes any part of the suspension period) or the day after the close of the suspension period.

REFUND OF TAX AND EXPEDITED REFUNDS

If an overpayment of tax for a taxable year arises as of the expiration of a research credit suspension period, a claim for refund of the overpayment of tax may be taken into account by filing an amended return, an application for tentative refund, or an application for expedited refund on or after the earliest date that an amount of credit may be taken into account. A separate claim should be made for each taxable period.

An application for expedited refund of suspended research credits is made by filing a Form 1045, *Application for Tentative Refund*, or a Form 1139, *Corporation Application for Tentative Refund*, or by filing an amended income tax return (Form 1040X, Form 1120X, or other amended return) before the date that is the later of one year after the close of the research credit suspension period to which the application relates or one year after the close of the taxable year to which the suspended research credit relates. The application for expedited refund shall be filed with the Service

Center receiving the original return. The application for expedited refund shall indicate at the top **“Application for Expedited Refund-Suspended Research Credit”** and include a copy of the Form 6765 filed with the original return.

If an application for an expedited refund is filed before the date that is the later of one year after the close of the research credit suspension period to which the application relates or one year after the close of the taxable year to which the suspended research credit relates, the Internal Revenue Service will review the application, determine the amount of the overpayment, and apply, credit, or refund the overpayment, in a manner similar to the manner provided in § 6411(b), no later than 90 days after the date on which an application is filed.

Further, a claim for refund of the overpayment of tax attributable to suspended research credits may be taken into account by filing an amended income tax return (Form 1040X, Form 1120X, or other amended return) on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates but before the expiration of the period of limitation on filing a claim for credit or refund under § 6511. An amended income tax return, filed on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates, claiming a refund of the overpayment of tax attributable to suspended research credits shall indicate at the top **“Refund-Suspended Research Credit”** and include a copy of the Form 6765 filed with the original return. Further, an amended income tax return filed on or after the date that is the later of one year after the close of the research credit suspension period to which the claim relates or one year after the close of the taxable year to which the suspended research credit relates and before the expiration of the period of limitation on filing a claim for credit or refund under § 6511 will be processed under the general rules for processing refund claims in lieu of the expedited refund procedures described above.

Finally, any claim for refund of an overpayment of tax attributable to a research credit suspension period should not be filed before the expiration of the applicable suspension period or before the date the original return for the applicable taxable year is filed.

ESTIMATED TAXES

The prohibition on taking into account research credits attributable to a research credit suspension period extends to the determination of any estimated tax payment. Thus, for example, the research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, cannot be used to reduce any estimated tax payments due before October 1, 2000. The research credit attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, can be used to reduce an estimated tax payment due on or after October 1, 2000.

ESTIMATED TAX PENALTIES

In general, additions to tax for failure to pay estimated tax are made under § 6654 or § 6655 for any underpayment of income tax imposed by the Code even if the underpayment was created or increased by reason of the suspension of the research credit under § 502 of the Act. No additions to tax for failure to pay estimated tax, however, will be made for any period before July 1, 1999, for any underpayment of income tax imposed by the Code to the extent the underpayment was created or increased by reason of the suspension of the research credit under § 502 of the Act.

EXAMPLE

Assume that taxpayer, a calendar-year corporation, had 800x dollars of research credit for 1999 and 800x dollars of research credit for 2000. The amount of research credit attributable to the period July 1 through December 31, 1999, is 400x dollars (6/12 x 800x dollars), and the amount of research credit attributable to the period from January 1 through September 30, 2000 would be 600x dollars (9/12 x 800x dollars).

On taxpayer's original return for 1999, taxpayer may not reduce its 1999 tax liability by the research credit of 400x dollars attributable to the period July 1

through December 31, 1999. On or after October 1, 2000, taxpayer may file an amended return to claim the benefit of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. In lieu of filing an amended return, on or after October 1, 2000, taxpayer may file an application for tentative refund of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. An application for tentative refund of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, must be filed before October 1, 2001. An amended return or application for tentative refund filed before October 1, 2001, claiming the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, with the designation **“Application for Expedited Refund-Suspended Research Credit”** will be treated as an application for expedited refund.

Taxpayer's 400x dollars of research credit attributable to the period July 1 through December 31, 1999, and 600x dollars of research credit attributable to the period January 1 through September 30, 2000, may not be taken into account in determining any of the estimated tax payments that are due before October 1, 2000. If taxpayer makes an estimated tax payment for its 2000 taxes based on its prior year tax liability, that liability must be determined without regard to the 400x dollars of research credit attributable to the period July 1 through December 31, 1999. If taxpayer makes an estimated tax payment for its 2000 taxes based on its current year tax liability, whether or not that liability is annualized, that liability must be determined without regard to the 600x dollars of research credit attributable to the period January 1 through September 30, 2000, or any research credit attributable to the second research credit suspension period.

Because taxpayer's first estimated tax payment due on or after October 1, 2000, is the payment due on December 15, 2000, taxpayer may use its 600x dollars of research credit attributable to the period January 1 through September 30, 2000, and available on October 1, 2000, to reduce the amount of estimated tax payments otherwise required to be paid on December 15, 2000. In addition, if tax-

payer indicates on its amended return filed on or after October 1, 2000, that all or part of the 400x dollars of research credit attributable to the period July 1 through December 31, 1999, and available on October 1, 2000, is to be applied to its estimated tax for the succeeding taxable year (in lieu of a refund), then the amount requested will be applied to the taxpayer's estimated tax payment due on December 15, 2000.

Alternatively, assume taxpayer files an amended return on December 1, 2000 to claim a refund of the 400x dollar overpayment of tax attributable to the period July 1 through December 31, 1999. Taxpayer is entitled to interest under § 6611 on the overpayment from October 1, 2000 (the end of the applicable suspension period) to December 1, 2000 (the date the amended return was filed). Assuming that the overpayment is refunded within 45 days

after the amended return is filed, no additional interest is allowed on the refund.

DRAFTING INFORMATION

The principal author of this notice is Lisa J. Shuman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Shuman at (202) 622-3120 (not a toll-free call).

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 November 2000 is 5.78 percent.

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

Weighted Average Interest Rate Update

Notice 2001-3

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

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
December	2000	5.93	5.34 to 6.23	5.34 to 6.52

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) 283-9702 (not a toll-free number).

Clarifications of Qualified Intermediary Agreement Provisions and Procedures

Notice 2001-4

I. Purpose

Certain issues have arisen regarding the implementation of the new withholding and reporting regulations (T.D. 8734, 1997-2 C.B.109, and T.D. 8881, 2000-23 I.R.B. 1158) and the qualified intermediary agreement contained in Rev. Proc. 2000-12 (2000-4 I.R.B. 387). This notice provides guidance regarding certain transitional and other issues for qualified intermediaries (QIs) and U.S. withholding agents. In addition,

this notice provides a clarification regarding the use of the term "know your customer" in the context of the new withholding and reporting regulations. The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) will continue to monitor the implementation of the new regulations and the qualified intermediary agreement and will provide, as appropriate, other guidance designed to ensure that the implementation process occurs as smoothly as possible.

II. Background

In T.D. 8734, as modified by T.D. 8881, (the "new withholding regulations"), Treasury and the IRS issued comprehensive regulations under chapter 3 (sections 1441-1464) and subpart G of subchapter A of chapter 61 (sections 6041-6050S) of the Internal Revenue Code (the "Code"). The regulations are a significant revision of the procedural rules regarding the withholding, documentation, and information reporting requirements that apply to payments of income to foreign persons, particularly as they relate to payments handled by financial in-

termediaries. The regulations generally become effective January 1, 2001.

The provisions relating to QIs are a key component of the new regulations. Those provisions are intended to reduce the administrative burdens of both foreign financial institution intermediaries (as well as foreign branches of U.S. intermediaries) and the U.S. withholding agents from whom the foreign intermediaries and foreign branches receive income. To become a QI, an entity must submit an application and enter into a qualified intermediary withholding agreement (QI agreement) with the IRS. The application procedures and terms of the QI agreement are set forth in Rev. Proc. 2000-12. Additional guidance has been provided to qualified intermediaries in Announcement 2000-48 (2000-23 I.R.B. 1243).

III. Transitional Guidance for QIs.

A. Acting as a QI Prior to Execution of the QI Agreement

1. Provisions Applicable to QIs.

Some potential QIs have expressed concerns about their ability to act as QIs on January 1, 2001, if they file an application for a QI agreement before January 1,

2001, but do not receive a fully executed QI agreement by that date. Other potential QIs have expressed concerns about their treatment if they submit applications after January 1, 2001. To address these concerns, the IRS will apply the following rules to potential QIs.

An applicant for a QI agreement may represent on a Form W-8IMY that it is a QI for a limited period after it submits a complete application for a QI agreement and before it receives a fully executed agreement. An application is complete if it contains all of the information required by section 3 (Application for QI Status) of Rev. Proc. 2000-12, including a completed Appendix A (countries in which the applicant will operate as a QI) and Appendix B (list of auditors that may be used by the QI and any private arrangement intermediary of the QI to perform external audits). It is not necessary, however, for an applicant to attach the know-your-customer documentary evidence attachment for particular countries because the IRS has standardized those attachments.

An applicant that has submitted a QI application before January 1, 2001, may represent on Form W-8IMY that it is a QI without being in possession of a fully executed QI agreement until June 30, 2001. An applicant that has submitted a QI application after December 31, 2000, may represent on Form W-8IMY that it is a QI until the end of the sixth full month after the month in which it submits its QI application. An application is submitted on the date it is post marked. Because of limited resources, the IRS will not date stamp return copies of applications.

An applicant may not represent that it is a QI if it receives a notice from the IRS stating that it may not make the representation unless it receives a fully executed QI agreement. The IRS will only issue such notices in cases where an application is not substantially complete or the IRS has determined on a preliminary basis that it will not enter into a QI agreement with the applicant.

The IRS has instituted procedures to issue applicants a QI employer identification number (QI-EIN) upon receiving an application. An applicant should include the QI-EIN on any Form W-8IMY it provides as a QI after it receives the number. If an applicant has provided a Form W-8IMY before it has received a number,

it should write "awaiting QI-EIN" on line 6 of Part I of the form. If an applicant provides an "awaiting QI-EIN" statement on a Form W-8IMY, or an applicant has provided a Form W-8IMY before the date of this notice in anticipation of becoming a QI, the applicant should provide the QI-EIN to its withholding agent as soon as practicable after it is received. It is not necessary, however, for the applicant to provide a newly executed Form W-8IMY with the QI-EIN after it receives the QI-EIN or after it receives a fully executed QI agreement provided all of the information on the original form remains valid. The applicant may furnish its QI-EIN to its withholding agent in any manner agreed to by the applicant and its withholding agent.

Provided that it submits its application before July 1, 2001, a potential QI may apply all of the provisions of the QI agreement beginning January 1, 2001. An applicant that submits its application after June 30, 2001, may represent to a withholding agent that it is a QI effective on the date it submits a complete application. Such a QI, however, will not be permitted to apply the reporting provisions of section 8 of the QI agreement or the collective credit or refund procedures of section 9.04 of the QI agreement to any payments received prior to the effective date contained in its QI agreement. Thus, a QI that submits its application after June 30, 2001, must report all payments that it makes prior to the effective date of its QI agreement as a nonqualified intermediary. See e.g., §1.1461-1(c)(4).

The IRS will not assess any penalties for failure to make a deposit of withheld amounts prior to the date the QI receives its QI-EIN provided the QI makes a deposit of any amounts otherwise required to be made within 3 days of receiving its QI-EIN. In addition, if a QI applies to enroll in the Electronic Federal Tax Payment System (EFTPS) within 30 days of receiving a QI-EIN, no penalty will be assessed for failure to deposit withheld amounts if any deposit otherwise required to be made before the date that the QI is enrolled in EFTPS is made within 3 days of being enrolled in EFTPS.

2. Rules Applicable to Withholding Agents

A withholding agent that receives a Form W-8IMY with an "awaiting QI-

EIN" statement may treat the person that provides the form as a QI unless it knows, or has reason to know, that the provider of the form cannot validly represent that it is a QI. A withholding agent that receives a Form W-8IMY with an EIN, or that receives an EIN with respect to an otherwise valid Form W-8IMY without an EIN, may treat the provider of the form as a QI unless it knows, or has reason to know, that the provider of the Form is not a QI. A withholding agent is not required to determine when a QI applied for an agreement or if it is actually in possession of a fully executed agreement. A withholding agent is also not required to verify whether the EIN is a QI-EIN.

A withholding agent should report any payments made prior to receiving a Form W-8IMY on which a person represents that it is acting as a QI in accordance with any other valid documentation that the withholding agent has for such person or, in the absence of such documentation, in accordance with the presumption rules provided in the withholding agent's QI agreement (if the withholding agent is a QI) or the presumption rules contained in the new withholding regulations (if the withholding agent is not a QI).

B. Documentation Transition Rules for QIs.

Under section 5.01 of the QI agreement, a QI is required to apply the presumption rules of section 5.13(C) to any payment made to an account holder unless the QI can reliably associate the payment with valid documentation from the account holder. The presumption rules may result in withholding at a 30-percent or 31-percent rate. Under section 11.03(F), failure to obtain documentation from a significant number of direct account holders constitutes an event of default for which the IRS may terminate a QI agreement.

Some potential QIs have indicated that they will be unable to obtain the account holder documentation required under section 5 of the QI agreement by January 1, 2001, because they have a substantial number of existing accounts for which documentation must be sought. These institutions have requested clarification regarding the operation of the documentation requirements and, in particular, the audit provisions of the QI agreement. Specifically, they have asked whether the audit provi-

sions of the QI agreement afford them a documentation transition period.

Section 10.03 of the QI agreement provides that the QI shall have its external auditor conduct an audit of the second and fifth full calendar years that the agreement is in effect. Section 10.06 provides that, upon review of the external auditor's report, the IRS may request, and the QI must permit, the external auditor to perform additional audit procedures or to expand the external audit to cover some or all of the calendar years for which the period of limitations for assessment of taxes has not expired.

The IRS intends to implement the audit provisions in a manner that will permit a QI to have a transition period for obtaining account holder documentation. To effect a documentation transition period, the IRS will not request an external auditor to examine the first year of the QI agreement provided that the IRS determines, based on the external auditor's report, that the QI is in substantial compliance with all of the provisions of the QI agreement, including the documentation requirements, by the end of the second full year of its agreement. In addition, the IRS will not impose failure to deposit penalties to the extent that the under-deposit is attributable solely to the failure to apply the presumption rules in the second full year of the agreement. The IRS will, however, require a QI to pay the tax due from the second full year of the agreement if the amount actually withheld from an account holder is less than the amount supported by valid documentation on file by the end of the second full year of the agreement or, if there is no documentation on file, the amount withheld was less than required under the presumption rules. No penalties will be assessed on underpaid tax; however, interest will be charged on any tax due that is paid after the due date of the Form 1042 for the second full calendar year of the agreement.

The following example illustrates the documentation transition rule. Assume that after the audit of the second year of its QI agreement, a QI is found to be in substantial compliance with the QI agreement and all but an insignificant number of its accounts have valid documentation. The external auditor determines that payments of dividends were received by a particular individual account holder, B, prior to B furnishing the QI with any docu-

mentation. The QI applied withholding on dividends received by B in year 2 at the rate of 15 percent. By the end of year 2, B does provide the QI with documentation that supports the 15 percent rate. No penalties will be asserted against the QI even though 30 percent was not withheld from the dividends as required under the presumption rules. If, however, B did not provide valid documentation supporting the 15-percent treaty rate by the end of the second full calendar year of the agreement, the QI would be liable for the tax equal to the difference between the 15-percent rate of withholding actually applied and the 30-percent rate that should have applied under the presumption rules. Because the QI is in substantial compliance with the QI agreement and has valid documentation for all but an insignificant number of its accounts, however, the underpayment will be computed only with respect to dividends paid in the second year of the agreement.

The IRS will not apply the transition approach to any QI that is found not to be in substantial compliance with the QI agreement by the end of the second full year of the agreement. In that case, the IRS may, in accordance with the terms of the QI agreement, request the external auditor to audit the first year of the QI agreement, and the IRS may assess the appropriate penalties for both the first and second years of the agreement. The provisions of this section III. B. shall not apply for years after 2002.

C. Documentation and Reporting Relief for Simple and Grantor Trusts.

Under section 5.07 of the QI agreement, a QI is generally required to obtain a Form W-8IMY from a flow-through entity, which includes a foreign simple or foreign grantor trust, together with appropriate documentation from the interest holders in the flow through entity. Section 8.02(B) of the QI agreement provides that a QI must file separate Forms 1042-S for each interest holder in a flow-through entity that is not itself a nonqualified intermediary or flow-through entity. Thus, the pool basis reporting provisions of section 8.03 of the QI agreement do not apply to payments made to beneficiaries or owners of foreign simple trusts and foreign grantor trusts.

Commentators have requested that the IRS consider treating beneficiaries of for-

foreign simple trusts and owners of foreign grantor trusts as direct account holders of a QI in appropriate circumstances. They argue that where local "know-your-customer" rules (*i.e.*, the rules that require a person to obtain documentation confirming the identity of a customer or account holder) require a QI to identify the beneficiaries or owners of such trusts, plus certain additional precautions are taken, it is appropriate to treat the beneficiaries or owners as direct account holders. In addition, they argue that a company providing fiduciary services as a trustee should be able to become a QI if it is subject to know-your-customer rules, even though it is not a financial institution or a clearing organization described in §1.1441-1(e)(5)(ii)(A) and (B).

The IRS will permit a QI to treat the beneficiaries of a foreign simple trust or the owners of a foreign grantor trust as direct account holders for purposes of the QI agreement if the following criteria are met. First, the QI must be required, pursuant to the applicable know-your-customer rules, to determine the identity of the beneficiaries or owners of foreign simple or foreign grantor trusts. Second, the QI must obtain the type of know-your-customer documentation set forth in paragraph 4 of the appropriate know-your-customer attachment to the QI agreement. This second requirement cannot be satisfied by obtaining a Form W-8. Third, the QI must obtain a valid Form W-8 from the beneficiary or owner of the trust. The IRS will apply the documentation transition approach described in section III. B. of this notice to these documentation requirements. The documentation may be provided to the QI directly rather than being attached to a Form W-8IMY, or it may be attached to a Form W-8IMY on which the trust represents that it is a foreign simple or foreign grantor trust. If a Form W-8IMY is provided, it is not necessary for the trust to provide a withholding statement. In addition, if a Form W-8IMY is provided and the trust has 5 or fewer owners, the IRS will not require the trust to provide the QI with a taxpayer identification number despite §1.1441-1(e)(4)(vii)(G).

The IRS will also permit a company that is in the business of providing fiduciary services as a trustee (*i.e.*, a trust company) and that is subject to know-

your-customer rules that have been approved by the IRS for purposes of the QI agreement to become a QI provided that the trust company agrees to the provisions of the QI agreement as set forth in Rev. Proc. 2000-12. Such a QI must treat the trusts and trust beneficiaries or owners as account holders for purposes of applying the QI agreement. Such a QI may also treat beneficiaries and owners of foreign simple trusts and foreign grantor trusts as direct account holders provided they meet the conditions of this section III. C.

Treasury and the IRS will monitor whether the rules of this notice applicable to grantor and simple trusts are appropriate and may provide further guidance as necessary.

D. Proprietary Accounts of Qualified Intermediaries

Section 1.01 of the QI agreement provides that a QI must act as a qualified intermediary for those accounts which it designates as QI accounts with a withholding agent. Clearing organizations have argued that the language that requires a QI to act as a QI with respect to an account prohibits the QI from including assets for which the QI is the beneficial owner in the same account as one containing assets for which the QI acts as a QI. Separating proprietary and intermediary assets into separate accounts would, they argue, erode the efficiencies that clearing organizations provide their financial institution members and shareholders.

Notwithstanding Section 1.01, the IRS will permit a QI that maintains an account with a clearing organization in which it is a member or shareholder to include the assets for which the QI is the beneficial owner in the same account with those assets for which it acts as a qualified intermediary if the QI timely and accurately reports the income for which it is the beneficial owner by filing the appropriate Forms 1042-S for each year showing itself as the recipient of the income for which it is the beneficial owner. For purposes of this exception to section 1.01 of the QI agreement, a clearing organization is an entity which is in the business of holding obligations for member organizations or shareholders and transferring those obligations among the members or shareholders by credit or debit to the account of the member or shareholder without the necessity of physical delivery of the obligation. Under no circumstances, how-

ever, may a QI maintain assets for which it acts as a QI in the same account as assets for which it acts as a nonqualified intermediary.

E. Assumption of Primary Form 1099 Reporting and Backup Withholding Responsibility

Section 3.07 of the QI agreement contains the terms for those QIs assuming primary Form 1099 reporting and backup withholding responsibilities. The introductory language to that section provides that QIs that are not U.S. payors must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility. The IRS evidences its approval by inserting the Commissioner's, or his delegate's, signature in the margin of section 3.07 of the QI agreement.

The IRS will no longer require QIs that are not U.S. payors to obtain IRS approval before assuming primary Form 1099 reporting and backup withholding responsibility. A non-U.S. payor QI may, therefore, assume such responsibilities by making the appropriate representations on Form W-8IMY, or the associated withholding statement, provided to a withholding agent.

IV. Transition Relief for Foreign Partnerships

Under the regulations as well as the QI agreement, foreign partnerships are generally treated as flow-through entities. As such, they should provide withholding agents, including QIs, with a Form W-8IMY together with documentation from each partner and a withholding statement that, among other things, allocates the payment made to each of the partners in the partnership.

To achieve a smoother transition period for foreign partnerships and their withholding agents, the IRS will permit for calendar year 2001 a foreign partnership to provide a withholding agent, including a QI, with a Form W-8IMY together with a withholding statement that provides the withholding agent with information regarding withholding rate pools. The foreign partnership must associate the documentation from each of its partners with the Form W-8IMY. However, if a partner is a foreign person or a U.S. exempt recipient (e.g., a corporation), that documentation may be provided to the withholding

agent at any time during calendar year 2001. A Form W-9 must be provided, however, with respect to any U.S. non-exempt recipient before a payment is made to a partnership.

A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S or Form 1099, as applicable, that is subject to a single rate of withholding. The foreign partnership, must provide a separate withholding rate pool for each U.S. non-exempt recipient partner (e.g., a U.S. individual, U.S. partnership, U.S. trust, or U.S. estate).

A withholding agent, including a QI, may withhold in accordance with the withholding rate pool information provided by the foreign partnership. In addition, a withholding agent that is not a QI should report payments allocated to withholding rate pools, other than a withholding rate pool attributable to a U.S. non-exempt recipient, on Form 1042-S as if the payment were made to the foreign partnership as a recipient. A QI should report such payments as if it were made to its general withholding rate pool. A withholding agent that is not a QI must report payments to U.S. non-exempt recipients in accordance with the regulations under chapter 61 of the Code. A withholding agent that is a QI must treat U.S. non-exempt recipients in accordance with the provisions of the QI agreement. Withholding agents that cannot allocate a payment to a withholding rate pool must apply the appropriate presumption rules.

V. Transition Relief for U.S. Withholding Agents

A. Documentation Transition Rules.

Some U.S. withholding agents that are financial institutions have stated that despite the extensive period they have been given to obtain Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY, they have nevertheless had difficulties re-documenting the large number of accounts they must handle. In addition, they have stated that the rule in §1.1441-1(e)(2)(ii), which prohibits the use of a P.O. box as a permanent residence address on a Form W-8, presents an insurmountable difficulty for Forms W-8 provided by residents of foreign countries that do not have street addresses and instead use P.O. boxes as permanent residence addresses. Finally, some commentators have

noted that T.D. 8881, issued on May 15, 2000, made certain changes to the rules regarding when a withholding certificate may be treated as reliable that are more restrictive than the rules promulgated under T.D. 8734. In particular, they note that under T.D. 8881, a withholding agent cannot rely on a Form W-8 if the form has a U.S. mailing address or the withholding agent has a U.S. mailing address as part of its account information, unless the withholding agent obtains both documentary evidence that is less than three years old and a written explanation from the account holder that substantiates the account holder's foreign status.

To address these concerns, the IRS will permit a U.S. withholding agent during calendar year 2001 to rely on old Form W-8 (*i.e.*, Form W-8 as revised November 1992), Form 1001, Form 1078, Form 4224, and Form 8709 obtained under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1992), even if the validity period of those forms has expired, provided that the U.S. withholding agent can demonstrate on audit that it has made good faith efforts to obtain Forms W-8BEN, W-8ECI, W-8EXP, W-8IMY, and W-9 from account holders required to provide those forms. In addition, and until further notice, the IRS will permit Forms W-8 that contain a P.O. box as a permanent residence address to be relied upon provided that the withholding agent does not know, or have reason to know, that the person providing the form is a U.S. person and provided that the withholding agent does not know, or have reason to know, that a street address is available. Finally, the IRS will permit a withholding agent to rely on Forms W-8 for which there is a U.S. mailing address provided the Form was received prior to December 31, 2001, without applying the provisions of 1.1441-7(b) regarding the presence of a U.S. mailing address on the Form W-8 or as part of the withholding agent's account information.

Under no circumstances, however, may a U.S. withholding agent apply the so-called address rule contained in §§1.1441-3(b)(3) and 35a.9999-3 Q&A 36 for dividends paid after December 31, 2000. Thus, a withholding agent may not treat dividends as paid to a foreign person, or as subject to a reduced rate of withholding under an income tax treaty, based

solely on the address of the person to whom the dividends are paid. The withholding agent may treat the payee of dividends as a foreign person, and as a resident of a treaty country, if applicable, in the absence of a Form W-8BEN if it is in possession of a Form W-8 (revised November 1992) or a Form 1001 for the same payee and it does not know, nor have reason to know, that the payee is not entitled to treaty benefits.

Notwithstanding the provisions of this section V. A., a withholding agent may not rely on an old Form W-8 (revised November 1992) to treat a foreign financial institution as the beneficial owner of income if the withholding agent knows, or has reason to know, that the foreign financial institution is acting as an intermediary on behalf of others.

B. Year 2001 as Transition Year for U.S. Withholding Agents

In Notice 98-16 (1998-1 C.B. 847) and Notice 99-25 (1999-1 C.B. 979), the IRS stated that it would regard the calendar years 1999 and 2000 as transition years. Calendar year 2001 will similarly be regarded as a transition year for U.S. withholding agents by the IRS in enforcing compliance for the administration of the withholding tax system. Accordingly, the IRS will take into account in performing audits of the year 2001, the extent to which a U.S. withholding agent has made good faith efforts in 1999, 2000, and 2001 to transform its business practices and information systems to comply with the new withholding regulations. Thus, the IRS will take into account whether a U.S. withholding agent has made reasonable efforts during 1999, 2000, and 2001 to modify its account opening practices to conform to the new documentation requirements, obtain new withholding certificates on existing accounts, and make appropriate systems changes to comply with the new withholding regulations. The IRS will also take into account whether or not a U.S. withholding agent has effectively implemented the new withholding regulations by January 1, 2002.

C. Reporting Relief for U.S. Payors in U.S. Possessions.

Under the new withholding regulations, U.S. payors that pay foreign source income outside the United States to U.S. non-exempt recipients must generally report such payments on Form 1099 and, if

appropriate, apply backup withholding. A commentator has noted that the new withholding regulations will require reporting of income from sources within a possession of the United States, including Puerto Rico, on Form 1099 if that income is paid to persons that are U.S. citizens, even though that income may be exempt from Federal income taxation under section 931, section 932, section 933, or section 935.

The IRS intends to revise the new withholding regulations so that income from sources within a possession of the United States that is exempt from taxation under section 931, section 932, section 933, or section 935 and that a payor reasonably believes to be paid to a resident of a possession of the United States is not required to be reported on Form 1099. U.S. payors will not be required to report such income pursuant to the authority of this notice until the regulations are amended.

D. Use of the Documentary Evidence Rule in U.S. Possessions

Section 1.6049-5(c)(1), effective January 1, 2001, states that a payor may rely on documentary evidence instead of a beneficial owner withholding certificate (*i.e.*, a Form W-8) for a payment made to an offshore account, or, in the case of broker proceeds, for the sales effected outside the United States. For this purpose, the term offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States and outside of U.S. possessions. The IRS intends to amend section 1.6049-5(c)(1) so as to permit the use of documentary evidence in lieu of a Form W-8 in the U.S. possessions. U.S. payors will be permitted to rely on documentary evidence in lieu of a Form W-8 in a U.S. possession pursuant to the authority of this notice until the regulations are amended.

E. Foreign Source Services Income

Under section 6041, a U.S. payor must report payments of foreign source income paid for services performed outside the United States unless the U.S. payor has a Form W-8 from the payee stating that the payee is not a U.S. person. Under the presumption rules of §§1.6049-5(d)(2) and 1.14441-1(b)(3)(iii), a U.S. payor must presume that the payee of income for services is a U.S. payee and subject to Form

1099 reporting, and potentially backup withholding, if the payee is an individual. U.S. payors, which include controlled foreign corporations, contend that the rule contained in the regulations is overly burdensome in that it requires them to ask all persons to whom they make payments for services performed outside the United States to represent that they are not U.S. persons.

Until further notice, the IRS will not require a U.S. payor to report, under section 6041, income paid for services if (1) the payee of the income is an individual, (2) the U.S. payor does not know that the payee is a U.S. citizen or resident, (3) the payor does not know, and has no reason to know, that the income is (or may be) effectively connected with the conduct of a U.S. trade or business, and (4) all of the services for which payment is made were performed by the payee outside the United States.

VI. Issuance of New Forms W-8.

The IRS has released new versions of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY, all of which were revised in December 2000. Withholding agents have asked for clarification regarding whether the prior versions of those forms (Forms W-8 as revised October 1998) may be relied upon now that new versions of those forms have been released.

Withholding agents, including QIs, may rely on the October 1998 versions of Forms W-8BEN, W-8ECI, W-8EXP, W-8IMY that they receive prior to January 1, 2002, for the normal validity period applicable to those forms. Withholding agents are advised, however, to use the newer versions of the forms in all mailings they make after December 2000.

VII. Clarification Regarding Use of the Term “Know Your Customer”

Treasury and the IRS have recently become aware that some confusion may have arisen concerning the use of the term “know your customer” in relation to the QI agreement. Accordingly, Treasury and the IRS wish to clarify the meaning of “know your customer” in that context, to avoid any misunderstanding by foreign financial institutions or officials in other countries.

Use of the term “know your customer” in the QI context should not be confused

with the use of that term in other contexts, specifically including the use of the term in the area of international standards relating to money laundering control. As used in the QI context, the term “know your customer” generally relates to the capacity of financial institutions to determine whether their customers are U.S. persons and, if their customers are non-U.S. persons claiming the benefits of an income tax treaty, whether these customers are residents of the applicable treaty country.

The term “know your customer” in the context of international money laundering control efforts, for example in recommendations of the Financial Action Task Force (FATF), refer to a broad range of rules and practices designed to ensure that financial institutions properly identify their customers and understand enough about their customers’ customary banking activities to be able to comply with applicable suspicious activity reporting rules and other obligations that may apply under anti-money laundering regimes. Although the meaning of the term “know your customer” in the QI context is often closely related to the meaning of the term in the broader context of money laundering control, the concepts are nevertheless distinct and should not be regarded as having the same meaning or scope.

Contact Information

The principal author of this Notice is Laurie Hatten-Boyd of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. For further information regarding this Notice contact Ms. Hatten-Boyd at 202-622-3840 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 162, 263A, 446, 471, 481, 1001; 1.162-3, 1.263A-1, 1.446-1, 1.471-1, 1.481-1, 1.481-4, 1.1001-1.)

Rev. Proc. 2001-10

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Rev. Proc. 2000-22, 2000-20 I.R.B. 1008, and provides that the Commissioner of Internal Revenue will exercise his discretion to except a qualifying taxpayer with average annual gross re-

ceipts of \$1,000,000 or less from the requirements to use an accrual method of accounting under § 446 of the Internal Revenue Code and to account for inventories under § 471. This revenue procedure also provides the procedures by which a qualifying taxpayer (as defined in section 3 of this revenue procedure) may obtain automatic consent to change to the cash receipts and disbursements method of accounting (the cash method) and to a method of accounting for inventory as materials and supplies that are not incidental under § 1.162-3 of the Income Tax Regulations.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 446(a) provides that taxable income must be computed under the method of accounting on the basis of which the taxpayer regularly computes income in keeping the taxpayer’s books.

.02 Section 446(c) generally allows a taxpayer to select the method of accounting it will use to compute its taxable income. A taxpayer is entitled to adopt any one of the permissible methods for each separate trade or business, including the cash method and an accrual method, subject to certain restrictions. For example, § 446(b) provides that the selected method must clearly reflect income. In addition, § 1.446-1(c)(2)(i) requires that a taxpayer use an accrual method of accounting with regard to purchases and sales of merchandise whenever § 471 requires the taxpayer to account for inventories, unless otherwise authorized by the Commissioner under § 1.446-1(c)(2)(ii). Under § 1.446-1(c)(2)(ii), the Commissioner has the authority to permit a taxpayer to use a method of accounting that clearly reflects income even though the method is not specifically authorized by the regulations.

.03 The cash method generally requires an item to be included in income when actually or constructively received and permits a deduction for an expense when paid. § 1.446-1(c)(1)(i).

.04 Section 471 provides that whenever, in the opinion of the Secretary, the use of inventories is necessary to clearly determine the income of the taxpayer, inventories must be taken by the taxpayer. Section 1.471-1 requires a taxpayer to account for inventories when the production, purchase, or sale of merchandise is

an income-producing factor in the taxpayer's business.

.05 Section 1.162-3 requires taxpayers carrying materials and supplies (other than incidental materials and supplies) on hand to deduct the cost of materials and supplies only in the amount that they are actually consumed and used in operations during the tax year.

.06 Section 263A generally requires direct costs and an allocable portion of indirect costs of certain property produced or acquired for resale by a taxpayer to be included in inventory costs, in the case of property that is inventory, or to be capitalized, in the case of other property. However, resellers with gross receipts of \$10,000,000 or less and producers with \$200,000 or less of indirect costs are not required to capitalize costs under § 263A. See §§ 263A(b)(2)(B) and 1.263A-2(b)(3)(iv).

.07 Sections 446(e) and 1.446-1(e) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting in accordance with § 446(e).

.08 Section 481(a) requires those adjustments necessary to prevent amounts from being duplicated or omitted to be taken into account when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding tax year.

.09 Rev. Proc. 2000-22 is modified in the following respects:

(1) Section 3 is modified to make clear that this revenue procedure does not apply to taxpayers described in § 448(a)(3) (tax shelters).

(2) Section 4.02 is added to clarify the proper time to take into account the cost of inventoriable items (*i.e.*, merchandise purchased for resale and raw materials purchased for use in producing finished goods) that are treated as materials and supplies that are not incidental under § 1.162-3;

(3) The conformity requirement of section 5.07 has been removed. Taxpay-

ers are reminded that they must comply with the requirements under § 446(a) and the regulations thereunder to maintain adequate books and records, which may include a reconciliation of any differences between such books and records and their return. See § 1.446-1(a)(4);

(4) Section 6.02(1) is modified to provide that qualifying taxpayers using an accrual method of accounting that are not required under § 471 to account for inventories may use the automatic consent provisions of this revenue procedure to change to the cash method;

(5) Section 6.02(2) is modified to provide that qualifying taxpayers (including taxpayers not currently accounting for inventories) may use the automatic consent provisions of this revenue procedure to change to the method of accounting for inventoriable items as materials and supplies that are not incidental under § 1.162-3;

(6) Section 6.03 is added to provide guidance on the computation of the adjustment required under § 481(a) in connection with the automatic changes in method of accounting under this revenue procedure; and

(7) Section 8 is modified in accordance with the removal of the conformity requirement of section 5.07.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers (other than a taxpayer described in § 448(a)(3)) with "average annual gross receipts" of \$1,000,000 or less (as defined in section 5.01 of this revenue procedure) ("qualifying taxpayers").

SECTION 4. SMALL TAXPAYER EXCEPTION

.01 Pursuant to the discretion under §§ 446(b) and 471, and to simplify book-keeping requirements for small taxpayers, the Commissioner, as a matter of administrative convenience, will except qualifying taxpayers from the requirements to use an accrual method under § 446 and to account for inventories under § 471. For purposes of this revenue procedure, notwithstanding § 1001 and the regulations thereunder, qualifying taxpayers that use the cash method include amounts in income attributable to open accounts receivable (*i.e.*, receivables due in 120 days or less) as amounts are actually or con-

structively received. However, § 1001 may be applicable to other transactions. Qualifying taxpayers that do not want to account for inventories must treat inventoriable items (*i.e.*, merchandise purchased for resale and raw materials purchased for use in producing finished goods) in the same manner as materials and supplies that are not incidental under § 1.162-3. Section 263A does not apply to inventoriable items that are treated as materials and supplies that are not incidental.

.02 Under § 1.162-3, materials and supplies that are not incidental are deductible only in the year in which they are actually consumed and used in the taxpayer's business. For purposes of this revenue procedure, inventoriable items that are treated as materials and supplies that are not incidental are consumed and used in the year in which the taxpayer sells the merchandise or finished goods. Thus, under the cash method, the cost of such inventoriable items are deductible only in that year, or in the year in which the taxpayer actually pays for the inventoriable items, whichever is later. Producers may use any reasonable method of estimating the amount of raw materials in their year-end work-in-process and finished goods inventory to determine the amount of raw materials that were used to produce finished goods that are sold during the tax year, provided that method is used consistently.

.03 The Service and Treasury expect to provide further guidance on when items may be treated as incidental materials and supplies (the cost of which may be deducted currently under § 1.162-3) and when items are inventoriable items (the cost of which, under this revenue procedure, may be deducted no earlier than the year in which the items are consumed and used).

SECTION 5. DEFINITIONS

.01 *Average annual gross receipts defined.* A taxpayer has average annual gross receipts of \$1,000,000 or less if, for each prior tax year ending on or after December 17, 1998, the taxpayer's average annual gross receipts for the 3-tax-year period ending with the applicable prior tax year does not exceed \$1,000,000.

.02 *Gross receipts defined.* Gross receipts is defined consistent with § 1.448-1T(f)(2)(iv) of the temporary

regulations. Thus, gross receipts for a tax year equal all receipts derived from all of the taxpayer's trades or businesses that must be recognized under the method of accounting actually used by the taxpayer for that tax year for federal income tax purposes. For example, gross receipts include total sales (net of returns and allowances), all amounts received from services, interest, dividends, and rents. However, gross receipts do not include amounts received by the taxpayer with respect to sales tax or other similar state and local taxes if, under the applicable state or local law, the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the tax to the taxing authority.

.03 *Aggregation of gross receipts.* For purposes of computing gross receipts, all taxpayers treated as a single employer under subsection (a) or (b) of § 52 or subsection (m) or (o) of § 414 (or that would be treated as a single employer under these sections if the taxpayers had employees) will be treated as a single taxpayer. However, when transactions occur between taxpayers that are treated as a single taxpayer by the previous sentence, gross receipts arising from these transactions will not be treated as gross receipts for purposes of the average annual gross receipts limitation. See § 1.448-1T(f)(2)(ii).

.04 *Taxpayer not in existence for 3 tax years.* If a taxpayer has been in existence for less than the 3-tax-year period referred to in section 5.01 of this revenue procedure, the taxpayer must determine its average annual gross receipts for the number of years (including short tax years) that the taxpayer has been in existence.

.05 *Treatment of short tax years.* In the case of a short tax year, the taxpayer's gross receipts must be annualized by multiplying the gross receipts of the short tax year by 12 and then dividing the product by the number of months in the short tax year. See § 1.448-1T(f)(2)(iii).

.06 *Treatment of predecessors.* Any reference to taxpayer in this section 5 includes a reference to any predecessor of such taxpayer.

.07 *Example.* Taxpayer A, a calendar year taxpayer, manufactures and sells widgets. For federal income tax purposes, Taxpayer A uses an overall accrual method of accounting. Further, Taxpayer A complies

with the requirements of § 1.471-1 to use inventory accounts and § 263A to capitalize direct and indirect costs.

Taxpayer A has gross receipts (as defined in section 5.02 of this revenue procedure) of \$200,000 in 1996, \$800,000 in 1997 and \$1,100,000 in 1998.

To determine whether it qualifies for the small taxpayer exception set forth in section 4 of this revenue procedure beginning with the 1999 tax year, Taxpayer A computes its average annual gross receipts for each prior tax year ending on or after December 17, 1998, that is, its 1998 tax year. Taxpayer A's average annual gross receipts for 1998 is \$700,000 ($\$200,000 (1996) + \$800,000 (1997) + \$1,100,000 (1998) = \$2,100,000/3$).

Taxpayer A's average annual gross receipts for each prior tax year ending after December 17, 1998, does not exceed \$1,000,000. Therefore, Taxpayer A qualifies for the small taxpayer exception for its 1999 tax year. By following the procedures set forth in section 6.02 of this revenue procedure, Taxpayer A may change to the cash method and a method of treating inventoriable items in the same manner as materials and supplies that are not incidental under § 1.162-3 for the tax year ending December 31, 1999.

Taxpayer A must determine its applicability for the small taxpayer exception set forth in section 4 of this revenue procedure each year. Thus, to qualify for the exception for its 2000 tax year, Taxpayer A's average annual gross receipts for 1999 (*i.e.*, the average of A's gross receipts for 1999, 1998, and 1997) also must be \$1,000,000 or less. If, in any later year, Taxpayer A ceases to qualify for the small taxpayer exception set forth in section 4 of this revenue procedure, it must change to an inventory method and an accrual method with respect to the production and sale of widgets in accordance with section 6.04 of this revenue procedure.

SECTION 6. CHANGE IN ACCOUNTING METHOD

.01 *In general.* Any change in a taxpayer's method of accounting pursuant to this revenue procedure is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply.

.02 *Automatic change for taxpayers within the scope of this revenue procedure.*

(1) *Automatic change to the cash method.* A qualifying taxpayer that wants to change to the cash method must follow the automatic change in accounting method provisions of Rev. Proc. 99-49, 1999-52 I.R.B. 725 (or its successor) with the following modifications:

(a) The scope limitations in section 4.02 of Rev. Proc. 99-49 do not apply. However, if the taxpayer is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the Form 3115, *Application for Change in Accounting Method*, to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate;

(b) A taxpayer making a change under section 6.02 of this revenue procedure for its first tax year ending on or after December 17, 1999, that, on or before January 16, 2001, files or files its original federal income tax return for such year, is not required to comply with the filing requirement in section 6.02(2)(a) of Rev. Proc. 99-49, provided the taxpayer complies with the following filing requirement. The taxpayer must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's amended federal income tax return for the taxpayer's first tax year ending on or after December 17, 1999. This amended return must be filed no later than June 15, 2001. A copy of the Form 3115 must be filed with the national office (see section 6.02(5) of Rev. Proc. 99-49 for the address) no later than when the taxpayer's amended return is filed;

(c) For a change in method of accounting within the scope of this revenue procedure, the provisions of Rev. Proc. 99-49 are effective for tax years ending on or after December 17, 1999; and

(d) Taxpayers filing Form 3115 for a change in method of accounting under section 6.02 of this revenue procedure are reminded to complete all applicable parts of the form, including Part II, line 17 (regarding information on gross receipts in previous years) and Part III (regarding

the § 481(a) adjustment). Such taxpayers must also complete Part I of Schedule A of Form 3115, but need not complete Part II. Taxpayers should write "Filed under Rev. Proc. 2001-10" at the top of the form.

(2) *Automatic change to § 1.162-3.* A qualifying taxpayer that does not want to account for inventories must make any necessary change from the taxpayer's current method of accounting for inventoriable items (including, if applicable, from the method of capitalizing costs under § 263A) to treat inventoriable items in the same manner as materials and supplies that are not incidental under § 1.162-3. For purposes of such a change, the rules of section 6.02(1) of this revenue procedure apply. Taxpayers may file a single Form 3115 for both changes described in sections 6.02(1) and (2).

.03 *Section 481(a) adjustment.* The net amount of the § 481(a) adjustment computed under this revenue procedure must take into account both increases and decreases in the applicable account balances such as accounts receivable, accounts payable, and inventory. For example, a taxpayer that wants to treat inventory as materials and supplies that are not incidental under § 1.162-3 must take into account the difference resulting from this recharacterization in determining the § 481(a) adjustment.

.04 *Taxpayers not within the scope of this revenue procedure.* A taxpayer that ceases to qualify for the small taxpayer exception described in section 4 of this revenue procedure and otherwise is required to use an accrual method (*e.g.*, a taxpayer otherwise required to account for inventories) must change to an accrual method and, if applicable, an inventory method that complies with §§ 263A and 471 using either the automatic change in accounting method provisions of section 5.01 of the APPENDIX to Rev. Proc. 99-49, if applicable, or the advance consent provisions of Rev. Proc. 97-27, 1997-1 C.B. 680 (or its successor).

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-22 is modified and, as modified, is superseded. Rev. Proc. 99-49 is modified and amplified to include this automatic change in section 5 of the APPENDIX.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for tax years ending on or after December 17, 1999. However, the Service will not challenge a taxpayer's use of the cash method under § 446 (or a taxpayer's failure to account for inventories under § 471) in an earlier year if the taxpayer would satisfy the 3-tax-year-period gross receipts test of section 5.01 of this revenue procedure (applied by testing the 3-tax-year period ending prior to such earlier year).

DRAFTING INFORMATION

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

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, § 6662.)

Rev. Proc. 2001-11

SECTION 1. PURPOSE

.01 This revenue procedure updates Rev. Proc. 99-41, 1999-2 C.B. 566, and identifies circumstances under which the disclosure on a taxpayer's return of a position with respect to an item is adequate for the purpose of reducing the understatement of income tax under § 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under § 6694(a) (relating to understatements due to unrealistic positions). This revenue procedure does not apply with respect to any other penalty provision (including the negligence or disregard provisions of the § 6662 accuracy-related penalty).

.02 This revenue procedure applies to any return filed on 2000 tax forms for a taxable year beginning in 2000, and to any return filed on 2000 tax forms in 2001 for short taxable years beginning in 2001.

SEC. 2. CHANGES FROM REV. PROC. 99-41

The following will no longer constitute adequate disclosure for purposes of re-

ducing the understatement of income tax under § 6662(d) and avoiding the preparer penalty under § 6694(a): The completion of Schedule M (Form 5471), Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons, lines 19 and 20, and Form 5472, Part IV, Monetary Transactions Between Reporting Corporations and Foreign Related Party, lines 7 and 18. Additionally, minor editorial changes have been made in updating Rev. Proc. 99-41.

SEC. 3. BACKGROUND

.01 If § 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment to which the section applies is added to the tax. (The penalty rate is 40 percent in the case of certain gross valuation misstatements.) Under § 6662(b)(2), § 6662 applies to the portion of an underpayment that is attributable to a substantial understatement of income tax.

.02 Section 6662(d)(1) provides that there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the amount of tax required to be shown on the return for the taxable year or \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company). Section 6662(d)(2) defines an understatement as the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate (within the meaning of § 6211(b)(2)).

.03 In the case of an item not attributable to a tax shelter, § 6662(d)(2)(B)(ii) provides that the amount of the understatement is reduced by the portion of the understatement attributable to any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed on the return or on a statement attached to the return, and there is a reasonable basis for the tax treatment of such item by the taxpayer.

.04 In general, this revenue procedure provides guidance in determining when disclosure is adequate for purposes of § 6662(d). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and

the money amounts entered on these forms must be verifiable. Guidance under § 6662(d) for returns filed for 1999, 1998, and 1997 is provided in Rev. Proc. 99-41; Rev. Proc. 98-62, 1998-2 C.B. 816; and Rev. Proc. 97-56, 1997-2 C.B. 582, respectively.

SEC. 4. PROCEDURE

.01 Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under § 6662(d) provided that the forms and attachments are completed in a clear manner and in accordance with their instructions. The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can demonstrate the origin of the number (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(1) Form 1040, Schedule A, Itemized Deductions:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expense: Complete lines 10 through 14, supplying all required information. This section 4.01(1)(c) does not apply to (i) amounts disallowed under § 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is completed, or (ii) amounts disallowed under § 265.

(d) Contributions: Complete lines 15 through 18, supplying all required information. Merely entering the amount of the donation on Schedule A, however, will not constitute adequate disclosure if the taxpayer receives a substantial benefit from the donation shown. If a contribution of property other than cash is made

and the amount claimed as a deduction exceeds \$500, a properly completed Form 8283, *Noncash Charitable Contributions*, must be attached to the return. This section 4.01(1)(d) will not apply to any contribution of \$250 or more unless the contemporaneous written acknowledgment requirement of § 170(f)(8) is satisfied.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section 4.01(2), the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.01(1)(e) above must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section 4.01(2)(b) does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or nondeductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1120, Schedule E, *Compensation of Officers*, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to "part" or "as needed." This section 4.01(2)(d) does not apply to "golden parachute" payments, as defined under § 280G. This section 4.01(2)(d) will not apply to the extent that remuneration paid or incurred exceeds the \$1 million-employee-remuneration limitation, if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section 4.01(2)(e) does not apply, however, to any repair expenses properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Form 1120, Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*, provided:

(a) The amount of the deviation from the financial books and records is not the result of a computation that includes the netting of items; and

(b) The information provided reasonably may be expected to apprise the Internal Revenue Service of the nature of the potential controversy concerning the tax treatment of the item.

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*.

(b) Treaty-Based Return Position: Transactions and amounts under § 6114 or § 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure*.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*, and attach to the return. This section 4.01(5)(b) does not apply to club dues, or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SEC. 5. EFFECTIVE DATE

This revenue procedure applies to any return filed on 2000 tax forms for a taxable year beginning in 2000, and to any return filed on 2000 tax forms in 2001 for short taxable years beginning in 2001.

SEC. 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Willie Armstrong, Jr. of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue procedure, contact Mr. Armstrong at (202) 622-7920 (not a toll-free call).

Part IV. Items of General Interest

Voluntary Tip Agreements for Employers of Tipped Employees

Announcement 2001-1

The Internal Revenue Service has finalized *pro forma* Tip Rate Determination Agreements (TRDA) and Tip Reporting Alternative Commitment (TRAC) agreements for use in its Tip Rate Determination/Education Program (TRD/EP). The TRD/EP is designed to enhance tax compliance among tipped employees through taxpayer education and voluntary advance agreements instead of traditional audit techniques.

The Service published five voluntary agreements in proposed form on May 8, 2000 (see 2000-19 I.R.B.): (1) a revised TRAC agreement for use in the cosmetology and barber industry (Announcement 2000-21, 2000-19 I.R.B. 983), (2) a revised TRAC agreement for use in the food and beverage industry (Announcement 2000-22, 2000-19 I.R.B. 987), (3) a revised TRDA for use in the food and beverage industry (Announcement 2000-23, 2000-19 I.R.B. 992), (4) a new TRAC agreement for use in industries other than the food and beverage industry and the cosmetology and barber industry in which tipped employees receive both cash and charged tips (Announcement 2000-19, 2000-19 I.R.B. 973), and (5) a new TRDA for use in industries other than the food and beverage industry and the gaming industry (Announcement 2000-20, 2000-19 I.R.B. 977).

Final versions of these agreements are available on the IRS website at http://www.irs.gov/bus_info/msu-info.html. They can also be obtained from any IRS office. The substance of the revised agreements has not changed.

The Service received comments from interested persons and has incorporated most of the comments in the final ver-

sions. Two commentators expressed concern about the employer that has already entered into an agreement and that may be interested in replacing its existing agreement with the new updated agreement. One commentator suggested that the updated provisions of the revised agreements automatically be extended to employers that have an existing agreement. The Service wants to offer employers the broadest choice of voluntary compliance agreements and recognizes that some employers may choose to continue to be bound by their existing agreements.

Another commentator suggested notifying employers who have existing agreements of the availability of the new updated agreement. These employers would be advised that, if they choose to enter into a new agreement, the old agreement will automatically terminate. In response to this comment, the Service has added a new *Termination of prior agreement* section to the termination provisions of the first three agreements listed above. The new provision states:

Termination of prior agreements. Any prior [TRAC agreement or TRDA] relating to an Establishment covered by this Agreement shall terminate on the day preceding the effective date of this Agreement with respect to the Establishment.

Some commentators requested clarification of certain provisions. They wondered, for example, whether the Service intends to terminate a TRAC agreement if only one establishment fails to meet a requirement, or whether the Service will invoke the termination provision under the administrative or judicial action provision by instituting an examination of a tax return. These kinds of issues will be addressed in the IRS manual, Handbook 104.6.7.12.1, entitled TRDA/TRAC Agreements. This section of the manual is currently being revised to reflect these

new provisions and address these issues. The appropriate manual provision will be available on the IRS website at http://www.irs.gov/bus_info/tax_pro/irm-part/part04.html. The Service expects to make these provisions available soon.

Taxpayers interested in learning more about these agreements should contact their local tip coordinator. A list of tip coordinators is available at http://www.irs.gov/bus_info/tip-coord.html.

DRAFTING INFORMATION

The principal author of this announcement is Karin Loverud of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement or any of the voluntary agreements, contact Ida Volz of the Office of Compliance Policy at (202) 622-5532.

Announcement 2001-2

New Revision of Publication 551, Basis of Assets

Publication 551, revised December 2000, will be available soon from the Internal Revenue Service. It replaces the April 1999 revision.

This publication provides information on how to figure your basis in property in order to compute depreciation, amortization, depletion, and casualty loss deductions, as well as gain or loss on sales or other dispositions of property.

You can get a copy of this publication by calling 1-800-TAX-FORM (1-800-829-3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. The publication is also available on the IRS Internet web site at www.irs.gov.

Magnetic Media Specifications for Form 1042-S

Announcement 2001-3

Revenue Procedure 98-44, IR Bulletin 1998-32, dated August 10, 1998, Specifications for Filing Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding, Magnetically or Electronically*, reprinted as Publication 1187 (Rev. 8-98), will be used to prepare Forms 1042-S for Tax Year (TY) 2000 filed in Calendar Year (CY) 2001.

Please use the 2000 Instructions for paper Forms 1042-S and other appropriate publications listed in Part A, Sec. 1.04, in the preparation of 2000 Forms 1042-S.

Please make note of the following changes to the Publication 1187 (Rev. 8-98). These changes need to be adhered to in order for your Forms 1042-S to be filed correctly both magnetically/electronically with the Internal Revenue Service at the Martinsburg Computing Center.

1. The Tax Year reported in the Transmitter "T" Record, Recipient "Q" Record, and Withholding Agent "W" Record will be 2000, unless filing for a prior tax year.

2. The addresses for the Martinsburg Computing Center have changed.

A. The new address for filing Form 1042-S magnetically/electronically to the Martinsburg Computing Center is:

If by Postal Service, truck, or air freight:

IRS-Martinsburg Computing Center
Information Reporting Program
230 Murall Drive
Kearneysville, WV 25430

B. All requests for an extension of time filed on Form 8809 or filed magnetically on tape, tape cartridge, or 3 1/2 inch diskette, requests for undue hardship waivers filed on Form 8508, and requests for extension of time to furnish the statements to recipients should be sent using the following address:

If by Postal Service, truck or air freight:

IRS-Martinsburg Computing Center
Information Reporting Program
Attn: Extension of Time Coordinator
240 Murall Drive
Kearneysville, WV 25430

NOTE: Due to security regulations at MCC, the Internal Revenue police officers will not accept media from Private Delivery Services (PDSs) or couriers between the hours of 3:00 p.m. to 11:00 p.m. seven days a week, and 11:00 p.m. to 7:00 a.m., Saturday and Sunday.

3. The following types of media are no longer accepted by IRS/MCC:

1. 5 1/4-inch diskettes
2. 3 1/2-inch diskettes created on a non-MS-DOS system
3. 3 1/2-inch diskettes created on a System 36 or AS400

NOTE: Beginning in calendar year 2003 for Tax Year 2002, 9 track magnetic tape will no longer be an acceptable method for submitting Information Returns to IRS/MCC.

4. The acceptable sizes of Quarter Inch Cartridges (QIC) have changed. Part B, Section 4.08(b) delete Quarter Inch Cartridges with a size of QIC-11, QIC-320, and QIC-1350.

5. **Beginning in Calendar Year 2002 for Tax Year 2001, IRS/MCC will no longer return problem media in need of replacement.** Filers will continue to receive a tracking form, listing and letter detailing the reason(s) their media could not be processed. Filers will be expected to send in replacement media within the prescribed time frame. This makes it **imperative** that filers maintain backup copies and/or recreate capabilities for their information return files.

6. Part C, Bisynchronous (Mainframe) Electronic Filing Specifications, and Part D, Asynchronous (IRP-BBS) Electronic Filing Specifications, contained in Publication 1187 (Rev. 8-98) **will no longer be used for electronic filing** of Forms 1042-S. A revised Part C, Electronic Filing Specifications, included below, must be used for submitting all electronic files to the Martinsburg Computing Center beginning November 1, 1999. The new telephone number for electronic filing is **304-262-2400**.

Part C. Electronic Filing Specifications

Sec. 1 Background

01. All electronic filing of information returns are received at IRS/MCC via the FIRE (Filing Information Returns Electronically) System. The FIRE System can be accessed via analog and ISDN BRI connections. The system is designed to support the electronic filing of information returns only. The telephone number for electronic filing is **(1-304-262-2400)**. Publications and

forms are no longer available electronically from MCC. Users needing the publications and forms will need to download them from the IRS's Internet Web Site at www.irs.gov or order them by calling 1-800-TAX-FORM (1-800-829-3676).

Sec. 2. Advantages of Filing Electronically

Some of the advantages of filing electronically are as follows:

- (1) Acknowledgment of files received.
- (2) Results available within 20 workdays as to the acceptability of the data transmitted. (30 days for replacement transmissions).
- (3) Better customer service due to on-line availability of transmitters files for research purposes.

Sec. 3. General

.01 Electronic filing of Forms 1042-S originals, corrections, and replacements of information returns is offered as an alternative to magnetic media (tape, tape cartridge, or diskette) or paper filing, but is not a requirement. Transmitters filing electronically will fulfill the magnetic media requirements for those payers who are required to file magnetically. It may also be used by payers who are under the filing threshold requirement, but would prefer to file their information returns this way. If the original file was sent magnetically, but was returned for replacement, the replacement may be transmitted electronically. Also, if the original file was submitted via magnetic media, any corrections may be transmitted electronically.

.02 The electronic filing of information returns is not affiliated with the Form 1040 electronic filing program. These two programs are totally independent, and filers must obtain separate approval to participate in each of them. All inquiries concerning the electronic filing of information returns should be directed to IRS/MCC. IRS/MCC personnel cannot answer questions or assist taxpayers in the filing of Form 1040 tax returns. Filers with questions of this nature will be directed to the Customer Service toll-free number **(1-800-829-1040)** for assistance.

.03 Files submitted to IRS/MCC electronically must be in standard ASCII code. No magnetic media or paper forms are to be submitted with the same information as the electronically submitted file.

.04 If a request for extension is approved, transmitters who file electronically will be granted an extension of time to file. Part A, Sec. 11, explains procedures for requesting extensions of time. Filers are encouraged to file their data as soon as possible.

.05 The formats of the "T", "Q", "W", and "Y" Records are the same for electronically filed records as they are for 3 1/2-inch diskettes, tapes, and tape cartridges, and must be in standard ASCII code. For electronically filed documents, each transmission is considered a separate file; therefore, each transmission **must** begin with a Transmitter "T" Record and end with an End of Transmission (EOT) "Y" Record.

Sec. 4. Electronic Filing Approval Procedure

.01 Filers must obtain, or already have, a Transmitter Control Code (TCC) assigned prior to submitting their files electronically. (Filers who currently have a TCC for magnetic media filing of Form 1042-S, beginning with "22", do not have to request a second TCC for electronic filing.) Refer to Part A, Sec. 7, for information on how to obtain a TCC.

.02 Once a TCC is obtained, electronic filers assign their own passwords and do not need prior or special approval.

.03 With all passwords, it is the user's responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and are up to 8 alpha/numerics, which are case sensitive. However, if filers do forget their password, call **304-263-8700** for assistance.

Note: Passwords are case sensitive.

Sec. 5. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all electronic filers because of the new hardware and software. If filers wish to submit an electronic test file for Tax Year 2000 (returns to be filed in 2001), it **must** be submitted to IRS/MCC **no earlier than** December 1, 2000, and **no later than** February 15, 2001.

.02 If a filer encounters problems while transmitting the electronic test files, contact IRS/MCC for assistance.

.03 Filers can verify the status of their transmitted test data by dialing the FIRE System phone number **(1-304-262-2400)**. This information will be available within 20 workdays (30 workdays for replacements) after their transmission is received by IRS/MCC.

Sec. 6. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/MCC 24 hours a day, 7 days a week. Technical assistance will be available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern Time by calling **304-263-8700**.

.02 **The FIRE System will be down from December 29, 2000, through January 7, 2001.** This will allow time for IRS/MCC to update their system to reflect current year changes.

.03 Data compression is encouraged when submitting information returns electronically. WinZip and PKZip are acceptable compression packages. UNIX COMPRESS may be acceptable; however, a test file is recommended to verify compatibility. IRS/MCC cannot accept self-extracting zip files or compressed files containing multiple files.

The time required to transmit information returns electronically will vary depending on the modem speed and the type of data

compression used, if any. **The time required to transmit a file can be reduced by as much as 95 percent by using software compression and hardware compression.**

The following are actual transmission rates achieved in test uploads at MCC using compressed files. The actual transmission rates will vary depending on the modem speeds.

Transmission Speed In bps	1000 Records	10,000 Records	100,000 Records
19.2K	34 Sec.	6 Min.	60 Min.
56K	20 Sec.	3 1/2 Min.	33 Min.
128K (ISDN)	8 Sec.	1 Min.	10 Min.

.04 Files submitted electronically will be assigned a unique filename by the IRS system (the users may name files anything they choose from their end). The IRS assigned filename will consist of, submission type [TEST, ORIG (original), CORR (correction), and REPL (replacement)] the filer's TCC and a four digit number sequence. The sequence number will be incremented for every file sent. For example, if it is your first original file for the calendar year and your TCC is 22000, the IRS assigned filename would be ORIG.22000.0001. Record the filename. This information will be needed by MCC in order to identify the file, if assistance is required, and to complete Form 4804.

.05 If a file was submitted timely and is bad, the filer will have up to 45 days to transmit the first replacement, and 30 days thereafter, if additional replacements are necessary.

.06 Filers are advised not to resubmit an entire file if records were omitted from the original transmission. This will result in duplicate filing. A new file should be sent consisting of the records that had not previously been submitted.

.07 The TCC (beginning with the numbers "22") in the Transmitter "T" Record must be the TCC used to transmit the file; otherwise, the file will be considered in error.

Sec. 7. Transmittal Requirements

.01 The results of the electronic transmission will be available in the File Status area of the FIRE System within 20 workdays (30 workdays for replacements) after the signed Form 4804 is received. The Form 4804 must be postmarked by the due date of the return. No return is considered filed until a Form 4804 is received by IRS/MCC. The Form 4804 may be faxed to 304-264-5602.

.02 Form 4804 can be ordered by calling the IRS toll-free forms and publication order number **1-800-TAX-FORM (1-800-829-3676)**, or it may be computer-generated. It may also be obtained from the **IRS's Internet Web Site at www.irs.gov**. If a filer chooses to computer-generate Form 4804, all of the information contained on the original form, including the affidavit, must also be contained on the computer-generated form.

.03 The TCC used in the Transmitter "T" Record (beginning with numbers "22") is the TCC which must appear on the transmittal Form 4804.

.04 Forms 4804 may be mailed to the following address:

If by Postal Service, air or truck freight:

IRS-Martinsburg Computing Center
 Information Reporting Program
Attn: Special Projects Coordinator
 230 Murall Drive
 Kearneysville, WV 25430

**Please indicate on the envelope the following message:
 CONTAINS FORM 4804 INFORMATION - NO MAGNETIC MEDIA**

Sec. 8. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 1042-S, 1099, 1098, 5498, 8027, W2-G and W-4.

.02 A transmitter must have a TCC before a file can be transmitted. If you have a TCC for magnetic media filing which begins with the numbers "22", that TCC can also be used for electronic filing.

.03 Filers can determine the acceptability of files submitted by checking the file status area of the system. These reports will be available on the electronic system within 20 workdays (30 workdays for replacements) after the Form 4804 is received by IRS/MCC.

.04 Contact the FIRE System by dialing **304-262-2400**. This number supports analog connections from 1200bps to 56Kbps or ISDN BRI 128Kbps connections. The system can be accessed via Dial-up network/web browser or communications software. The Dial-up network/web browser provides an Internet-like look without going through the Internet (point to point). If you do not have this capability, a text interface is provided that can be accessed via typical communications software such as Hyperterminal, Procomm, PCAnywhere, etc.

Sec. 9. Dial-up Network/Browser Specifications (Web Interface)

.01 The following are some general instructions (many of these settings may already be set by default in your software):

Dial-up network settings:

- (a) Set dial-up server type to PPP
- (b) Set network protocol to TCP/IP

Browser settings:

- (a) Set to receive 'cookies'
- (b) Enable JavaScript or Jscript
- (c) Browser must be capable of file uploads (i.e., Internet Explorer 4.0, Netscape 2.0 or higher)
- (d) Enter the URL address of *http://10.225.224.2* (Remember, this is a point-to-point connection, not the Internet.)

.02 Due to the large number of communication products available, it is impossible to provide specific information on all software/hardware configurations. However, since most of our filers use Windows 95, 98, or NT software, the following instructions are geared toward those products:

UPLOADING FILES WITH DIAL-UP NETWORKING/WEB BROWSER IN WINDOWS 95/98

Tips

- (1) This is a point-to-point connection – not the Internet.
- (2) Your browser must be capable of file uploads, i.e., Internet Explorer 4.0 or Netscape Navigator 2.0 or higher.
- (3) If you currently access the Internet via a LAN or a PROXY server, you will need to disable those options in your browser and enable 'Connect to the Internet using a modem'.

Select **Programs**
Accessories
Communications (Windows 98)
Dial-Up Networking

First time connecting with Dial-Up Network (If you have logged on previously, skip to Subsequent Dial-up Network Connections.)

The first time you dial-in, you will need to configure your Dial-Up Networking.

Select '**Make new connection**'.

Type a descriptive name for the system you are calling.

Select your modem.

Click '**Next**'.

Enter area code **304** and telephone number **262-2400**.

Click '**Next**'.

When you receive a message that you have successfully created a new Dial-Up Networking connection, click '**Finish**'.

Click '**Connect**' to dial. If you are prompted for a user name and password, complete according to local procedures; otherwise, click '**OK**'.

When you receive the message that you have connected to our system, click on your Web Browser (**remember, you are not connecting via the Internet – this is a point-to-point connection**).

In the URL Address enter **http://10.225.224.2** and press **ENTER**.

Subsequent Dial-Up Network connections

Click '**Connect**'.

If prompted for user name and password, complete according to local procedures; otherwise, click '**OK**'.

When you receive 'Connection Complete', click **'OK'**.
Click on your Web Browser (**remember, you are not connecting via the Internet**).
In the URL Address enter **http://10.225.224.2** and press **ENTER**.

First time connection to The FIRE System (If you have logged on previously, skip to Subsequent Connections to the FIRE System.)

Click **'Create New Account'**.
Fill out the registration form and click **'Create'**.
Enter your **logon name** (most users logon with their first and last name).
Enter your **password** (the password is user assigned and is case sensitive).
Click **'Create'**.
If you receive the message 'account created', click **'OK'**.
Click **'Start the Fire Application'**

Subsequent connections to The FIRE System

Click **'Log On'**.
Enter your **logon name** (most users logon with their first and last name).
Enter your **password** (the password is user assigned and is case sensitive).

At Menu Options:

Click **'Information Returns'**
Enter your **TCC:**
Enter your **EIN:**
Click **'Submit'**.

The system will then display the company name, address, city, state, ZIP code and phone number. This information will be used to contact or send any correspondence regarding this transmission. Update as appropriate and/or click **'Accept'**.

Click one of the following:

Original File
Correction File
Test File
Replacement File (if you select this option, select one of the following):
FIRE Replacement (file was originally transmitted on this system)
Click file to be replaced

Magnetic Media Replacement File

Enter the alpha character from Form 9267, Media Tracking Slip, that was returned with your magnetic media shipment.
Click **'Submit'**.

Enter the **drive/path/filename** of the file you want to upload or click **'Browse'** to locate the file.
Click **'Upload'**.

<p>When the upload is complete, the screen will display the total bytes received and the file name to be recorded on your Form 4804, Box 7b.</p>

If you have more files to upload for that TCC:
Click **'File Another'**; otherwise,
Click **'Back to Main Menu'**.

It is your responsibility to check the acceptability of your file; therefore, be sure to dial back into the system in 20 business days.

At the Main Menu:

Click **'File Stats'**.
Enter your **TCC:**
Enter your **EIN:**
Click **'Search'**.

If 'Results' indicate:

'File Good' and you agree with the 'Count of Payees' and have mailed your Form 4804, you are finished with this file. (Form 4804 is not needed on a replacement file unless the number of payees has changed from the original/correction file.)

'File Bad' - Correct the errors and resubmit the file as a 'replacement'.

'Not Yet Processed' - File has been received, but we do not have results available yet. Please check back in a few days.

Click on the desired file for a detailed report of your transmission.

When finished viewing your files, click on **'Main Menu'**.

Click **'Log Off'**.

Close your Web Browser.

IMPORTANT

Go back into your Dial-Up Network and click 'hang-up'; otherwise, you may stay connected and incur unnecessary phone charges.

Sec. 10. Communication Software Specifications (Text Interface)

.01 Communications software settings must be:

- No parity
- Eight data bits
- One stop bit

.02 Terminal Emulation must be VT100.

.03 Due to the large number of communication products available, it is impossible to provide specific information on all software/hardware configurations. However, since most of our filers use Windows 95, 98 or NT software, the following instructions are geared toward those products (Procomm, PCAnywhere and many other communications packages are also acceptable and the product does not necessarily need to be Windows based.):

UPLOADING FILES USING HYPERTERMINAL IN WINDOWS 95, 98 OR NT

Select **Programs**
Accessories
Communications (Windows 98)
Hyperterminal

The first time you log on, select **Hyperterminal**, **Hyperterm** or **Hyperterm.exe**, whichever is available on your system. Thereafter, you can just select the icon that you have saved.

A box will appear titled **'Connection Description'**.

Enter a name and choose an icon for the connection:

Country Code: United States of America

Area Code: **304**

Phone Number: **262-2400**

Connect Using: (default)

(If you need to modify the phone number, select **File**, then **Properties** to enter defaults for the area code, phone numbers and/or special access codes.)

Click on **Dial**.

A 'Connect' box will appear to show the status.

Once you have connected to The FIRE System, if you do not get a menu within a few seconds, press the **ENTER** key one time.

First Time Logon

When you have connected to the system, enter **'new'** to create your logon name and password.

Complete the registration information and enter **'y'** to create account.

Logon Name and Password

Logon Name: Enter a logon name. Most users enter their first and last name as the logon name.

Password: Enter a password of your choosing (1-8 alpha/numerics - case sensitive).

After entering the password, you will go to the Main Menu.

Transferring Your Electronic File

Enter 'A' for Electronic Filing.

After reading Information Notice, press **ENTER**.

Enter 'A' for Forms 1098, 1099, 5498, W-2G, 1042-S, 8027 and Questionable Forms W-4.

Press the Tab key to advance to TCC box; otherwise, enter 'E' to exit.

Enter your **TCC**:

Enter your **EIN**:

The system will then display the company name, address, city, state, ZIP code, and phone number. This information will be used to contact or send correspondence (if necessary) regarding this transmission. If you need to update, enter 'n' to change information; otherwise, enter 'y' to accept.

Select one of the following:

'A' for an Original file

'B' for a Replacement file

'C' for a Correction file

'D' for a Test file

If you selected 'B' for a replacement file, select one of the following:

'A' Replacement Files For This System

This option is to replace an original/correction file that was submitted electronically on this system but was bad and needs to be replaced. Select the file needing replaced.

'B' Magnetic media replacement files

Enter the alpha character from Form 9267, Media Tracking Slip, that was returned with your magnetic media shipment.

Choose one of the following protocols (Hyperterminal is normally set to Zmodem by default):

X - Xmodem

Y - Ymodem

Z - Zmodem (Zmodem will normally give you the fastest transfer rate.)

At this point, you must start the upload from your PC.

To send a file:

Go to the hyperterminal menu bar.

Click on **Transfer**.

Click on **Send file**.

A box will appear titled 'Send File'.

Enter the drive/path/filename or click on **Browse** to locate your file.

Click on **Send**.

When the upload is complete, the screen will display the total bytes received and the file name to be recorded on your Form 4804, Box 7b.

Press **ENTER** to continue.

If you have more files to send for the same TCC/EIN, enter 'y'; otherwise, enter 'n'.

It is your responsibility to check the acceptability of your file; therefore, be sure to dial back into the system in 20 workdays.

At the Main Menu:

Enter '**B**' for file status.

Press the Tab key to advance to TCC box; otherwise, enter 'E' to exit.

Enter your **TCC**:

Enter your **EIN**:

Tab to the file you want to look at and press **ENTER**.

If 'Results' indicate:

'**File Good**' and you agree with the 'Count of Payees' and have mailed your Form 4804, you are finished with this file. (Form 4804 is not needed on a replacement file unless the number of payees changes from the original/correction file.)

'File Bad' - Correct the errors and resubmit the file as a replacement.

'Not Yet Processed' - File has been received, but we do not have results available yet. Please check back in a few days.

When you are finished, enter **'E'** from the Main Menu to logoff.

Enter **'2'** to hang-up.

Sec. 11. Modem Configuration

.01 Hardware features

- (a) Enable hardware flow control
- (b) Enable modem error control
- (c) Enable modem compression

Sec. 12. Common Problems Associated with Electronic Filing

.01 Refer to Part A, Section 17, for Major Problems Encountered with Form 1042-S magnetic/electronic files.

.02 The following are the major non-format errors associated with electronic filing:

1. No Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically.

Even though you have sent your information returns electronically, you still need to mail a signed Form 4804 by the due date of the return. No processing will occur on the file until the form is received.

2. Transmitter does not dial back to the electronic system to determine file acceptability.

The results of your file transfer are posted to the FIRE System within 20 workdays (30 workdays for replacements) from the receipt of Form 4804. It is your responsibility to verify file acceptability and, if the file contains errors, you can get an online listing of the errors. Date received and number of payee records are also displayed.

3. Incorrect file is not replaced timely.

If your file is bad, correct the file and timely resubmit as a replacement.

4. Transmitter compresses several files into one.

Only compress one file at a time. For example, if you have 10 uncompressed files to send, compress each file separately and send 10 separate compressed files.

5. Transmitter sends a file and File Status indicates that the file is good, but the transmitter wants to send a replacement or correction file to replace the original/correction/replacement file.

Once a file has been transmitted, you cannot send a replacement file unless File Status indicates the file is bad. If you do not want us to process the file, you must first contact us at 304-263-8700 to see if this is a possibility. However, this will count as a replacement. (See Part A, Sec. 16, for the definition of replacement.)

6. Transmitter sends an original file that is good, then sends a correction file for the entire file even though there are only a few changes.

The correction file, containing the proper coding, should only contain the records needing correction, not the entire file.

7. File is formatted as EBCDIC.

All files submitted electronically must be in standard ASCII code.

Guidance Regarding Claims for Certain Income Tax Convention Benefits; Correction

Announcement 2001-4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8889 [2000-30 I.R.B. 124]) which were published in the Federal Register on Monday, July 3, 2000 (65 F.R. 40993). The final regulations relate to claims for certain income tax convention benefits.

DATES: This correction is effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn R. Pringle (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 894 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 8889) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8889), which was the subject of FR Doc. 00-16761, is corrected as follows:

1. On page 40996, column 2, in the preamble under the paragraph heading "D. Treatment of Complex Trusts", paragraph 2, line 13 from the bottom of the paragraph, the language "the hands of the interest holder are" is corrected to read "the hands of the interest holder are not".

2. On page 40997, column 1, in the preamble under the paragraph heading "Special Analyses", paragraph 1, line 2, the language "treasury decision not a significant" is corrected to read "Treasury decision is not a significant".

§1.894-1 [Corrected]

3. On page 40997, column 1, correct the amendatory instruction for Par. 2. to read as follows:

Par. 2. Section 1.894-1 is amended as follows:

1. Paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added.

2. In newly designated paragraph (e), add a sentence at the end of the paragraph.

The additions read as follows:

4. On page 40999, column 2, §1.894-1(d)(5), paragraph (i) of *Example 7.*, line 10, the language "legal personality of the arrangement, A is not" is corrected to read "legal personality in Country X of the arrangement, A is not".

5. On page 40999, column 2, §1.894-1(d)(5), paragraph (i) of *Example 7.*, lines 11 and 12, the language "liable to tax at the entity level in Country X and is not a resident within the meaning of" is corrected to read "liable to tax as a person at the entity level in Country X and is thus not a resident within the meaning of".

6. On page 40999, column 2, §1.894-1(d)(5), paragraph (ii) of *Example 7.*, line 9, the language "is not considered a resident of Country X" is corrected to read "is not considered a person in Country X and thus not a resident of Country X".

7. On page 40999, column 2, §1.894-1(d)(5), paragraph (ii) of *Example 7.*, line 12, the language "derive the income for purposes of the U.S.-" is corrected to read "derive the income as a

resident of Country X for purposes of the U.S.-".

8. On page 41000, column 1, §1.894-1(d)(5), paragraph (i) of *Example 11.*, the last line of the paragraph, the language "subject to tax by Country X." is corrected to read "taxed by Country X.".

9. On page 41000, column 2, §1.894-1, after paragraph (d)(6), add a sentence at the end of paragraph (e) to read as follows:

§1.894-1 Income affected by treaty.

* * * * *

(e) * * * See paragraph (d) (6) of this section for applicability dates for paragraph (d) of this section.

10. On page 41000, column 2, a new amendatory instruction Par. 3. is added to read as follows:

§1.894-1T [Removed]

Par. 3. Section 1.894-1T is removed.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Office of Special Counsel
(Modernization & Strategic Planning).

(Filed by the Office of the Federal Register on December 7, 2000, 8:45 a.m., and published in the issue of the Federal Register for December 8, 2000, 65 F.R. 76932)

Cumulative Bulletin 1998-2; Corrections

Announcement 2001-5

The following is a reprint of the corrected pages of the Numerical Finding List, Finding List of Current Actions on Previously Published Items, and the Index for Cumulative Bulletin 1998-2.

Numerical Finding List

The page number in this 1998-2 Cumulative Bulletin is shown in boldface type.

Announcements:

98-57, 1998-28 I.R.B. 11, **57**
98-58, 1998-28 I.R.B. 12, **58**
98-59, 1998-28 I.R.B. 12, **58**
98-60, 1998-27 I.R.B. 39, **38**
98-61, 1998-27 I.R.B. 38, **37**
98-62, 1998-29 I.R.B. 13, **79**
98-63, 1998-28 I.R.B. 12, **58**
98-64, 1998-28 I.R.B. 14, **60**
98-65, 1998-28 I.R.B. 14, **60**
98-66, 1998-28 I.R.B. 15, **61**
98-67, 1998-28 I.R.B. 15, **61**
98-68, 1998-29 I.R.B. 14, **80**
98-69, 1998-30 I.R.B. 16, **101**
98-70, 1998-30 I.R.B. 17, **102**
98-71, 1998-30 I.R.B. 17, **102**
98-72, 1998-31 I.R.B. 14, **120**
98-73, 1998-31 I.R.B. 14, **120**
98-74, 1998-31 I.R.B. 15, **121**
98-75, 1998-31 I.R.B. 15, **121**
98-76, 1998-32 I.R.B. 64, **192**
98-77, 1998-34 I.R.B. 30, **245**
98-78, 1998-34 I.R.B. 30, **245**
98-79, 1998-34 I.R.B. 31, **246**
98-80, 1998-34 I.R.B. 32, **247**
98-81, 1998-36 I.R.B. 35, **304**
98-82, 1998-35 I.R.B. 17, **267**
98-83, 1998-36 I.R.B. 36, **305**
98-84, 1998-38 I.R.B. 30, **390**
98-85, 1998-38 I.R.B. 30, **390**
98-86, 1998-38 I.R.B. 31, **391**
98-87, 1998-40 I.R.B. 11, **458**
98-88, 1998-41 I.R.B. 14, **483**
98-89, 1998-40 I.R.B. 11, **458**
98-90, 1998-42 I.R.B. 22, **510**
98-91, 1998-40 I.R.B. 12, **459**
98-92, 1998-41 I.R.B. 15, **484**
98-93, 1998-43 I.R.B. 10, **532**
98-94, 1998-43 I.R.B. 32, **554**
98-95, 1998-44 I.R.B. 13, **572**
98-96, 1998-44 I.R.B. 18, **577**
98-97, 1998-44 I.R.B. 18, **577**
98-98, 1998-44 I.R.B. 18, **577**
98-99, 1998-46 I.R.B. 34, **650**
98-100, 1998-46 I.R.B. 42, **658**
98-101, 1998-45 I.R.B. 27, **612**
98-102, 1998-45 I.R.B. 28, **613**
98-103, 1998-47 I.R.B. 12, **672**
98-104, 1998-47 I.R.B. 13, **673**
98-105, 1998-49 I.R.B. 21, **712**
98-106, 1998-48 I.R.B. 10, **686***
98-107, 1998-48 I.R.B. 10, **687**
98-108, 1998-48 I.R.B. 12, **688**
98-109, 1998-50 I.R.B. 20, **739**
98-110, 1998-50 I.R.B. 21, **740**
98-111, 1998-50 I.R.B. 21, **740**
98-112, 1998-51 I.R.B. 46, **789**
98-113, 1998-51 I.R.B. 48, **791**
98-114, 1998-52 I.R.B. 88, **881**

Court Decisions:

2063, 1998-49 I.R.B. 6, **697**
2064, 1998-37 I.R.B. 4, **315**
2065, 1998-39 I.R.B. 7, **400**

Notices:

98-34, 1998-27 I.R.B. 30, **29**
98-35, 1998-27 I.R.B. 35, **34***
98-36, 1998-29 I.R.B. 8, **74**
98-37, 1998-30 I.R.B. 13, **98**
98-38, 1998-34 I.R.B. 7, **222**

Notices—Continued

98-39, 1998-33 I.R.B. 11, **205**
98-40, 1998-35 I.R.B. 7, **257**
98-41, 1998-33 I.R.B. 12, **206**
98-42, 1998-33 I.R.B. 12, **206**
98-43, 1998-33 I.R.B. 13, **207**
98-44, 1998-34 I.R.B. 7, **222**
98-45, 1998-35 I.R.B. 7, **257**
98-46, 1998-36 I.R.B. 21, **290**
98-47, 1998-37 I.R.B. 8, **319**
98-48, 1998-39 I.R.B. 17, **410**
98-49, 1998-38 I.R.B. 5, **365**
98-50, 1998-44 I.R.B. 10, **569**
98-51, 1998-44 I.R.B. 11, **570**
98-52, 1998-46 I.R.B. 16, **632**
98-53, 1998-46 I.R.B. 24, **640**
98-54, 1998-46 I.R.B. 25, **641**
98-55, 1998-46 I.R.B. 26, **642**
98-56, 1998-47 I.R.B. 9, **669**
98-57, 1998-47 I.R.B. 9, **669**
98-58, 1998-49 I.R.B. 13, **704**
98-59, 1998-49 I.R.B. 16, **707**
98-60, 1998-49 I.R.B. 17, **708**
98-61, 1998-51 I.R.B. 13, **756**
98-62, 1998-51 I.R.B. 15, **758**
98-63, 1998-51 I.R.B. 15, **758**
98-64, 1998-52 I.R.B. 10, **803**
98-65, 1998-52 I.R.B. 10, **803**
98-66, 1998-52 I.R.B. 17, **810**
98-67, 1998-52 I.R.B. 18, **811**

Railroad Retirement Quarterly Rates:

1998-31 I.R.B. 7, **113**
1998-50 I.R.B. 4, **723**

Proposed Regulations:

REG-101363-98, 1998-40 I.R.B. 10, **457**
REG-102023-98, 1998-48 I.R.B. 6, **683**
REG-104565-97, 1998-39 I.R.B. 21, **414**
REG-104641-97, 1998-29 I.R.B. 9, **75**
REG-105170-97, 1998-50 I.R.B. 10, **729**
REG-106177-97, 1998-37 I.R.B. 33, **344**
REG-106221-98, 1998-41 I.R.B. 10, **479**
REG-109708-97, 1998-45 I.R.B. 29, **614**
REG-110332-98, 1998-33 I.R.B. 18, **212**
REG-110403-98, 1998-29 I.R.B. 11, **77**
REG-115393-98, 1998-39 I.R.B. 34, **427**
REG-115446-97, 1998-36 I.R.B. 23, **292**
REG-116608-97, 1998-29 I.R.B. 12, **78**
REG-118926-97, 1998-39 I.R.B. 23, **416**
REG-118966-97, 1998-39 I.R.B. 29, **422**
REG-119227-97, 1998-30 I.R.B. 13, **98**
REG-122488-97, 1998-42 I.R.B. 19, **508**
REG-209060-86, 1998-39 I.R.B. 18, **411**
REG-209446-82, 1998-36 I.R.B. 24, **293**
REG-209769-95, 1998-41 I.R.B. 8, **477**
REG-209813-96, 1998-35 I.R.B. 9, **259**
REG-246256-96, 1998-34 I.R.B. 9, **224**

Revenue Procedures:

98-38, 1998-27 I.R.B. 29, **28**
98-40, 1998-32 I.R.B. 6, **134**
98-41, 1998-32 I.R.B. 7, **135**
98-42, 1998-28 I.R.B. 9, **55**
98-43, 1998-29 I.R.B. 8, **74**
98-44, 1998-32 I.R.B. 11, **139**
98-45, 1998-34 I.R.B. 8, **223**
98-46, 1998-36 I.R.B. 21, **290**
98-47, 1998-37 I.R.B. 8, **319**
98-48, 1998-38 I.R.B. 7, **367**
98-49, 1998-37 I.R.B. 9, **320**

Revenue Procedures—Continued

98-50, 1998-38 I.R.B. 8, **368**
98-51, 1998-38 I.R.B. 20, **380**
98-52, 1998-37 I.R.B. 13, **324**
98-53, 1998-40 I.R.B. 9, **456**
98-54, 1998-43 I.R.B. 7, **529**
98-55, 1998-46 I.R.B. 27, **643**
98-56, 1998-46 I.R.B. 33, **649**
98-57, 1998-48 I.R.B. 5, **682**
98-58, 1998-49 I.R.B. 19, **710**
98-59, 1998-50 I.R.B. 8, **727**
98-60, 1998-51 I.R.B. 16, **759**
98-61, 1998-52 I.R.B. 18, **811**
98-62, 1998-52 I.R.B. 23, **816**
98-63, 1998-52 I.R.B. 23, **818**
98-64, 1998-52 I.R.B. 32, **825**
98-65, 1998-52 I.R.B. 40, **833**

Revenue Rulings:

98-33, 1998-27 I.R.B. 26, **25**
98-34, 1998-31 I.R.B. 12, **118**
98-35, 1998-30 I.R.B. 4, **89**
98-36, 1998-31 I.R.B. 6, **112**
98-37, 1998-32 I.R.B. 5, **133**
98-38, 1998-32 I.R.B. 4, **132**
98-39, 1998-33 I.R.B. 4, **198**
98-40, 1998-33 I.R.B. 4, **198**
98-41, 1998-35 I.R.B. 6, **256**
98-42, 1998-35 I.R.B. 5, **255**
98-43, 1998-36 I.R.B. 9, **278**
98-44, 1998-37 I.R.B. 4, **315**
98-45, 1998-38 I.R.B. 4, **364**
98-46, 1998-39 I.R.B. 10, **403**
98-47, 1998-39 I.R.B. 4, **397**
98-48, 1998-39 I.R.B. 6, **399**
98-49, 1998-40 I.R.B. 4, **451**
98-50, 1998-40 I.R.B. 7, **454**
98-51, 1998-43 I.R.B. 4, **526**
98-52, 1998-45 I.R.B. 4, **589**
98-53, 1998-46 I.R.B. 12, **628**
98-54, 1998-46 I.R.B. 14, **630**
98-55, 1998-47 I.R.B. 5, **665**
98-56, 1998-47 I.R.B. 5, **665**
98-57, 1998-49 I.R.B. 4, **695**
98-58, 1998-52 I.R.B. 6, **799**
98-59, 1998-52 I.R.B. 8, **801**
98-60, 1998-51 I.R.B. 6, **749**
98-61, 1998-51 I.R.B. 8, **751**
98-62, 1998-51 I.R.B. 4, **747**

Tax Convention:

1998-43 I.R.B. 6, **528**

Treasury Decisions:

8769, 1998-28 I.R.B. 4, **50**
8770, 1998-27 I.R.B. 4, **3**
8771, 1998-29 I.R.B. 6, **72**
8772, 1998-31 I.R.B. 8, **114**
8773, 1998-29 I.R.B. 4, **70**
8774, 1998-30 I.R.B. 5, **90**
8775, 1998-31 I.R.B. 4, **110**
8776, 1998-33 I.R.B. 6, **200***
8777, 1998-34 I.R.B. 4, **219**
8778, 1998-36 I.R.B. 4, **273**
8779, 1998-36 I.R.B. 11, **280**
8780, 1998-39 I.R.B. 14, **407**
8781, 1998-40 I.R.B. 4, **451**
8782, 1998-41 I.R.B. 5, **474**
8783, 1998-41 I.R.B. 4, **473**
8784, 1998-42 I.R.B. 4, **493***
8785, 1998-42 I.R.B. 5, **494***
8786, 1998-44 I.R.B. 4, **563**

Numerical Finding List—Continued

The page number in this **1998–2** Cumulative Bulletin is shown in boldface type.

Treasury Decisions—Continued

8787, 1998–46 I.R.B. 5, **621**

8788, 1998–45 I.R.B. 6, **591**

8790, 1998–50 I.R.B. 4, **723**

* A later action changed this item. See *Finding List of Current Actions on Previously Published Items*.

Finding List of Current Actions on Previously Published Items

The page number in this 1998–2 Cumulative Bulletin is shown in boldface type.

Announcement:

98–47

Corrected by
ANN 98–59, 1998–28 I.R.B. 5, **58**

98–106

Corrected by
ANN 98–113, 1998–51 I.R.B. 48, **791**

Notices:

87–13

Modified by
98–49, 1998–38 I.R.B. 5, **365**

87–16

Modified by
98–49, 1998–38 I.R.B. 5, **365**

92–36

Modified by
98–39, 1998–33 I.R.B. 11, **205**

96–64

Modified by
98–39, 1998–33 I.R.B. 11, **205**

97–19

Modified by
98–34, 1998–27 I.R.B. 30, **29**

97–50

Modified by
98–47, 1998–37 I.R.B. 8, **319**

97–73

Modified by
98–46, 1998–36 I.R.B. 21, **290**

Modified by

98–59, 1998–49 I.R.B. 16, **707**

98–7

Modified by
98–54, 1998–46 I.R.B. 25, **641**

98–46

Modified by
98–59, 1998–49 I.R.B. 16, **707**

Proposed Regulations:

REG–106031–98

Corrected by
ANN 98–74, 1998–31 I.R.B. 15, **121**

REG–209276–87

Corrected by
ANN 98–66, 1998–28 I.R.B. 15, **61**

REG–209463–82

Corrected by
ANN 98–63, 1998–28 I.R.B. 12, **58**

REG–245256–96

Corrected by
ANN 98–97, 1998–44 I.R.B. 18, **577**

Revenue Procedures:

83–58

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

87–50

Modified by
98–59, 1998–50 I.R.B. 8, **727**

88–17

Clarified, modified, and superseded by
98–54, 1998–43 I.R.B. 7, **529**

Revenue Procedures—Continued

92–81

Superseded by
98–52, 1998–37 I.R.B. 13, **324**

94–23

Amplified and superseded by
98–55, 1998–46 I.R.B. 27, **643**

96–53

Modified by
Notice 98–65, 1998–52 I.R.B. 10, **803**

97–37

Modified and amplified by
RR 98–39, 1998–33 I.R.B. 4, **198**

Clarified, modified, amplified and superseded by
98–60, 1998–51 I.R.B. 16, **759**

97–40

Amplified and superseded by
98–55, 1998–46 I.R.B. 27, **643**

97–54

Superseded by
98–65, 1998–52 I.R.B. 40, **833**

97–58

Superseded by
98–63, 1998–52 I.R.B. 25, **818**

97–59

Superseded by
98–64, 1998–52 I.R.B. 32, **825**

97–60

Superseded by
98–50, 1998–38 I.R.B. 8, **368**

97–61

Superseded by
98–51, 1998–38 I.R.B. 20, **380**

98–3

Modified by
98–40, 1998–32 I.R.B. 6, **134**

98–8

Modified by
98–59, 1998–50 I.R.B. 8, **727**

98–14

Modified by
98–53, 1998–40 I.R.B. 9, **456**

98–35

Corrected by
ANN 98–72, 1998–31 I.R.B. 14, **120**

Corrected by

ANN 98–104, 1998–47 I.R.B. 13, **673**

Revenue Rulings:

57–271

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

67–301

Modified by
98–41, 1998–35 I.R.B. 6, **256**

70–225

Obsolated by
98–44, 1998–37 I.R.B. 4, **315**

71–277

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

Revenue Rulings—Continued

71–434

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

71–574

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

72–75

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

72–120

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

72–121

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

72–122

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

74–77

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

75–19

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

76–562

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

77–214

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

79–106

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

83–113

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

85–143

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

88–8

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

88–76

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

88–79

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–4

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–5

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–6

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–30

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

Finding List of Current Actions on Previously Published Items—Continued

The page number in this 1998–2 Cumulative Bulletin is shown in boldface type.

Revenue Rulings—Continued

93–38

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–49

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–50

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–53

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–81

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–91

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–92

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

93–93

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

94–5

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

94–6

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

94–30

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

94–51

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

94–79

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

95–2

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

95–9

Obsolated by
98–37, 1998–32 I.R.B. 5, **133**

97–37

Modified and amplified by
98–39, 1998–33 I.R.B. 4, **198**

97–56

Supplemented and Superseded by
98–58, 1998–52 I.R.B. 6, **799**

97–57

Supplemented and Superseded by
98–59, 1998–52 I.R.B. 8, **801**

98–39

Modified by
98–60, 1998–51 I.R.B. 16, **759**

Treasury Decisions:

8685

Corrected by
Notice 98–36, 1998–29 I.R.B. 8, **74**

8739

Corrected by
ANN 98–64, 1998–28 I.R.B. 14, **60**

8748

Corrected by
ANN 98–65, 1998–28 I.R.B. 14, **60**

8776

Corrected by
ANN 98–96, 1998–44 I.R.B. 18, **577**

8784

Corrected by
ANN 98–110, 1998–50 I.R.B. 21, **740**

8785

Corrected by
ANN 98–109, 1998–50 I.R.B. 20, **739**

Index¹ for 1998–2 C.B.

Internal Revenue Bulletins 1998–27 Through 1998–52

The abbreviation and number in parenthesis following the index entry refer to the specific item.

Key to Abbreviations:

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

EMPLOYMENT TAX

Amount exempt from levy on wages, salary, and other income (Forms 668–W(c) and 668–W(c)(DO) in 1999 (Notice 60) 49, 17, **708**

Magnetic media; electronic filing:

1998 Form 8027 (RP 52) 37, 13, **324**

Proposed regulations:

26 CFR 1.411(d)–4, amended; protected benefits (REG–101363–98) 40, 10, **457**

26 CFR 31.3221–4, added; exception from supplemental annuity tax on railroad employers (REG–209769–95) 41, 8, **477**

26 CFR 31.6302–1(f)(4), revised; federal employment tax deposits *de minimis* rule (REG–110403–98) 29, 11, **77**

Railroad retirement; rate determination; quarterly beginning April 1, 1998 and July 1, 1998, 31, 7, **113**; quarterly beginning October 1, 1998, 50, 4, **723**

Regulations:

26 CFR 1.411(d)–4, amended; 1.411(d)–4T, added; protected benefits (TD 8781) 40, 4, **451**

¹Numbers following a specific item indicate the item can be found as follows:

29 – I.R.B. 1998–29

15 – I.R.B. page number

81 – C.B. page number

EMPLOYMENT TAX— Continued

26 CFR 1.6045–1T, –2T, removed; 1.6045–1, –2, amended; 301.6011–2, amended; 301.6011–2T, removed; magnetic filing requirements for information returns (TD 8772) 31, 8, **114**

26 CFR 31.6302–1(f)(4), 31.6302–1T, added; federal employment tax deposits *de minimis* rule (TD 8771) 29, 6, **72**

Social security contribution and benefit base; domestic employee coverage threshold for 1999, 52, 87, **880**

Worker classification; Section 530; Tax Court review (Notice 43) 33, 13, **207**

ESTATE TAX

Regulations:

26 CFR 20.2044–1(e), added; 20.2044–1T, removed; 20.2056(b)–7, revised; 20.2056(b)–7T, removed; 20.2056(b)–10, revised; 20.2056(b)–10T, removed; certain property for which marital deduction was previously allowed (TD 8779) 36, 11, **280**

EXCISE TAX

Ad valorem tax, export clause (Ct.D. 2064) 37, 4, **315**

Deposit of excise taxes, amendment (Notice 36) 29, 8, **74**

Excise tax changes (ANN 83) 36, 36, **305**

Forms:

Form 8849, comments requested (ANN 90) 42, 21, **510**

Gasoline and diesel fuel, T.D. 8748, 1998–8 I.R.B. 24, corrected (ANN 65) 28, 14, **60**

Kerosene tax and floor stocks tax (ANN 57) 28, 11, **57**

Proposed regulations:

26 CFR 48.4052–1, added; 48.4081–1, amended; 48.4082–6 through –10 and intermediary sections, 48.4091–3, added; 48.4101–2, amended; 48.4101–3, 48.6427–10, –11, added; kerosene tax, aviation fuel tax, tax on heavy trucks and trailers (REG–119227–97) 30, 13, **98**

26 CFR 53.4958; 301.6213–1, 301.6501(e)–1, 301.6501(n)–1, 301.7422–1, amended; 53.4958–0

EXCISE TAX— Continued

through –7 and intermediary sections, added; failure by certain charitable organizations to meet certain qualification requirements, taxes on excess benefit transactions (REG–246256–96) 34, 9, **224**; corrected (ANN 97) 44, 18, **577**

Regulations:

26 CFR 48.4081–1T, 48.4082–6T through –10T and intermediary sections, 48.4091–3T, 48.4101–2T, –3T, 48.6427–10T, –11T, added; 145.4052–1, amended; kerosene, aviation fuel, heavy trucks and trailers tax (TD 8774) 30, 5, **90**

INCOME TAX

Abatement of Notices, REG–209276–87, C.B. 1998–1, **700**, corrected (ANN 66) 28, 15, **61**

Administrative appeal of adverse determination of tax-exempt status of bond issue (Notice 58) 49, 13, **704**

Advance pricing agreements, small business taxpayers (Notice 65) 52, 10, **803**

Alternative minimum tax, change in accounting method (RP 58) 49, 19, **710**

Bankruptcy procedures (ANN 89) 40, 11, **458**

Below-market loans; second mortgage loans under the MAHRA Act (RR 34) 31, 12, **118**

Beneficiary under retirement plan, REG–209463–82, 1998–21 I.R.B. 27, corrected (ANN 63) 28, 12, **58**

CPI adjustment for below-market loans under section 7872(g) for 1999 (RR 59) 52, 8, **801**

Business expenses:

Environmental remediation expenditures (RP 47) 37, 8, **319**

Cafeteria plan temporary regulation, delay (ANN 105) 49, 21, **712**

Common Trust Funds, unrelated business taxable income (RR 41) 35, 6, **256**

Continuous levy under section 6331(h) (Notice 62) 51, 15, **758**

Cost-of-living adjustments for 1999 (RP 61) 52, 18, **811**

Courier's Desk Early closing (Notice 67) 52, 18, **811**

INCOME TAX—Continued

CPI adjustment:

Below-market loans under section 7872(g) for 1999 (RR 59) 52, 8, **801**

Certain loans under section 1274A for 1999 (RR 58) 52, 6, **799**

Credits against tax:

Earned income credit; disqualified income (RR 56) 47, 5, **665**

Deductions:

When taken:

All events test; accrued cooperative advertising expenses (RR 39) 33, 4, **198**

Depletion Marginal production rates (Notice 42) 33, 12, **206**

Determination letters:

Section 1374 determination letters (RP 56) 46, 33, **649**

Disaster Relief extended (ANN 81) 36, 35, **304**

Disclosure authorization list (RP 43) 29, 8, **74**

Distribution codes of Form 1099-R, changes (ANN 106) 48, 9, **686**; corrected (ANN 113) 57, 48, **791**

Distribution of stock and securities of a newly formed controlled corporation; limitations (RR 44) 37, 4, **315**

District of Columbia Enterprise Zone, Identification of census tracts (Notice 57) 47, 9, **669**

Eleventh Annual Institute on Current Issues in International Taxation (ANN 102) 45, 28, **613**

Employee plans:

Determination letter requests, remedial amendments (RP 53) 40, 9, **456**

Discrimination:

Safe harbors (Notice 52) 46, 16, **632**

Funding:

Full funding limitations, weighted average interest for July 1998 (Notice 37) 30, 13, 98; August 1998 (Notice 44) 34, 7, **222**; September 1998 (Notice 48) 39, 17, **410**; October 1998 (Notice 51) 44, 11, **570**; November 1998 (Notice 56) 47, 9, **669**; December 1998 (Notice 64) 52, 10, **803**

Individual retirement arrangements:

Roth IRAs (Notice 49) 38, 5, **365**; (Notice 50) 44, 10, **569**

Roth IRAs; prototypes (RP 59) 50, 8, **727**

INCOME TAX—Continued

Limit on contributions and benefits; cost-of-living adjustments (Notice 53) 46, 24, **640**

Forms:

1040:

e-file program (RP 50) 38, 8, **368**

On-line filing program (RP 51) 38, 20, **380**

1042S:

Specifications for filing substitute, computer-prepared, computer-generated tax forms and schedules for 1998 (RP 65) 52, 40, **833**

Minimum:

Remedial amendments (RP 42) 28, 9, **55**

Qualification:

Church plans (Notice 39) 33, 11, **205**

Covered compensation (RR 53) 46, 12, **628**

Section 457:

Model amendments (RP 41) 32, 7, **135**

Ruling program (RP 40) 32, 6, **134**

Enhanced oil recovery credit (Notice 41) 33, 12, **206**

Exempt Organizations:

Classified as private foundations (ANN 112) 51, 46, **789**; (ANN 111) 50, 21, **740**; (ANN 107) 48, 10, **687**; (ANN 104) 47, 13, **673**; (ANN 101) 45, 27, **612**; (ANN 94) 43, 32, **554**; (ANN 91) 40, 12, **459**; (ANN 80) 34, 32, **247**; (ANN 76) 32, 64, **192**; (ANN 71) 30, 17, **102**; (ANN 75) 31, 15, **121**; (ANN 68) 29, 14, **80**; (ANN 67) 28, 15, **61**; (ANN 60) 27, 39, **38**

Contributions are not deductible under section 170 (ANN 114) 52, 88, **881**; (ANN 98) 44, 18, **577**; (ANN 86) 38, 31, **391**; (ANN 70) 30, 17, **102**

Expatriate, private letter rulings under sections 877, 2107, and 2501(a)(3) (Notice 34) 27, 30, **29**

Foreign liquidation and reorganization, amended (ANN 69) 30, 16, **101**

Foreign loss provisions, effective date (Notice 40) 35, 7, **257**

Foreign taxpayers trade, REG-106031-98, 1998-26 I.R.B. 38, corrected (ANN 74) 31, 15, **121**

Foreign tax treaties ANN 98-47, 1998-23 I.R.B. 5, corrected (ANN 64) 28, 14, **60**

INCOME TAX—Continued

Fringe benefits aircraft valuation formula, second half of 1998 (RR 40) 33, 4, **198**

Hope Credit, Lifetime Learning Credit; information reporting (Notice 59) 49, 16, **707**; (Notice 46) 36, 21, **290**

Hospitality industry:

Resolution of employee meals (ANN 78) 34, 30, **245**

Training material applied to employee means (ANN 77) 34, 30, **245**

Hybrid arrangements, treatment under subpart F (Notice 35) 27, 35, **34**

Information reporting:

Hope Scholarship and Lifetime Learning credits (Notice 46) 36, 21, **290**; (Notice 59) 49, 16, **707**

Innocent spouse equitable relief (Notice 61) 51, 13, **756**; proposed revision (ANN 95) 44, 13, **572**

Insurance companies:

Differential earnings rate and recomputed differential earnings rate for mutual life insurance companies (RR 38) 32, 4, **132**

“Reserve strengthening,” reasonable interpretation (Ct.D. 2065) 39, 7, **400**

Interest Rate, weighted rate (Notice 64) 52, 10, **803**

Interest:

Investment:

Federal short-term, mid-term, and long-term rates for July 1998 (RR 33) 27, 26, **25**; August 1998 (RR 36) 31, 6, **112**; September 1998 (RR 43) 36, 9, **278**; October 1998 (RR 50) 40, 7, **454**; November 1998 (RR 52) 45, 4, **589**; December 1998 (RR 57) 49, 4, **695**

Rates, underpayments and overpayments calendar quarter beginning October 1, 1998 (RR 46) 39, 10, **403**; calendar quarter beginning January 1, 1999 (RR 61) 51, 8, **751**

International operation of ships and/or aircraft, United Arab Emirates, 43, 6, **528**

Inventory:

LIFO:

Automobile and truck dealers (RP 46) 36, 21, **290**

Price indexes; department stores for July 1998 (RR 48) 39, 6, **399**; August 1998 (RR 51) 43, 4, **526**; September 1998 (RR 54) 46, 14,

INCOME TAX—Continued

- 630**; October 1998 (RR 62) 51, 4, **747**
Price indexes; inventory price computation method (RP 49) 37, 9, **320**
Lien for taxes; validity and priority against third parties; judgment creditor (Ct.D. 2063) 49, 6, **697**
Lifetime learning credit, hope credit, information reporting (Notice 59) 49, 16, **707**; (Notice 46) 36, 21, **290**
Low-income housing credit:
Housing credit carryovers (RP 45) 34, 8, **223**
HUD programs (RR 49) 40, 4, **451**
Satisfactory bond; "bond factor" amounts for the period July-September 1998 (RR 45) 38, 4, **364**
Medical Savings Account, cut-off year corrected (ANN 88) 41, 14, **483**
Methods of accounting:
Automatic consent (RP 60) 51, 16, **759**
Notice and Consent requirements (ANN 87) 40, 11, **458**
Optional standard mileage rates for 1999 (RP 63) 52, 25, **818**
Partnership property and interest, REG-209682-94, C.B. 1998-1, **994**, changed (ANN 79) 34, 31, **246**
Penalties; substantial understatement (RP 62) 52, 23, **816**
Per diem allowances for 1999 (RP 64) 52, 32, **825**
Private delivery services; timely filing or payment (Notice 47) 37, 8, **319**
Proposed regulations:
26 CFR 1.32-3, added; EIC eligibility requirements (REG-116608-97) 29, 12, **78**
26 CFR 1.41-0, -1, -4, revised; 1.41-2, amended; 1.41-3 redesignated as 1.41-3A, added; new 1.41-3, added; 1.41-5 redesignated as 1.41-4A, amended; 1.41-6 redesignated as 1.41-5, amended; 1.41-7 redesignated as 1.41-5A, amended; 1.41-8 redesignated as 1.41-6, amended; 1.41-9 redesignated as 1.41-7; new 1.41-8, added; 1.41-0A, added; 1.218-0, removed (REG-105170-97) 50, 10, **729**
26 CFR 1.62-2(e)(2), revised; 1.62-2T, removed; 1.274-5, added; -5T, 1.274(d)-1, amended; substantiation of business expenses, use of mileage

INCOME TAX—Continued

- rates to substantiate automobile expenses (REG-122488-97) 42, 19, **508**
26 CFR 1.83-6, 1.1032-2, amended; 1.1032-3, added; treatment of a disposition by one corporation of the stock of another corporation in a taxable transaction (REG-106221-98) 41, 10, **479**
26 CFR 1.408A-0 through -9 and intermediary sections, added; Roth IRAs, questions and answers (REG-115393-98) 39, 34, **427**
26 CFR 1.529-0 through -6 and intermediary sections, added; Qualified State Tuition Programs (REG-106177-97) 37, 33, **344**
26 CFR 1.671-4, 1.6049-7, 301.6109-1, amended; reporting requirements for widely held fixed investment trusts (REG-209813-96) 35, 9, **259**
26 CFR 1.936-1T, added; termination of Puerto Rico and possession tax credit, new lines of business prohibited (REG-115446-97) 36, 23, **292**
26 CFR 1.985-8, 1.1001-5, added; conversion to the euro (REG-110332-98) 33, 18, **212**
26 CFR 1.1092(c)-1, added; equity options without standard terms, special rules and definitions (REG-104641-97) 29, 9, **75**
26 CFR 1.1366-1, -2, removed; 1.1366-0 through -5 and intermediary sections, added; 1.1367-0, -1, amended; 1.1367-3, removed; 1.1368-0, -1, -2, -3, amended; 1.1368-4, revised; pass through of items of an S corporation to its shareholders (REG-209446- 82) 36, 24, **293**
26 CFR 1.6031(a)-1(e)(1)(iv), added; 301.6011-3, added; 301.6031-1, revised; 301.6721-1, amended; partnership returns required on magnetic media (REG-102023-98) 48, 6, **683**
26 CFR 1.6038-3, added; information returns for certain foreign partnerships (REG-118966-97) 39, 29, **422**
26 CFR 1.6038B-1, amended; 1.6038B- 2, added; reporting of certain transfers to foreign corporations and foreign partnerships (REG-118926-97) 39, 23, **416**
26 CFR 1.6046A-1, added; return re-

INCOME TAX—Continued

- quirement for U.S. persons owning interests in foreign partnerships (REG-209060-86) 39, 18, **411**
26 CFR 54.9811-1, added; HIPAA Newborns' and Mothers' Health Protection Act (REG-109708-97) 45, 29, **614**
26 CFR 301.6402-5(h), added; -6(n), revised; tax refund offset program (REG-104565-97) 39, 21, **414**
Public hearing on REG-251698-97, (ANN 82) 35, 17, **267**
Qualified Funeral Trust, guidance (Notice 6) 3, 52; (Notice 66) 52, 17, **810**
Qualified offer rule; award of administrative and litigation costs (Notice 55) 46, 26, **642**
Qualified small business stock (RP 48) 38, 7, **367**
Qualified student loan interest (Notice 54) 46, 25, **641**
Qualified Zone Academy Bonds (RP) 3, 100; limitations for 1999 (RP 57) 48, 5, **682**
Regulations:
26 CFR 1.32-3T, added; EIC eligibility requirements (TD 8773) 29, 4, **70**
26 CFR 1.62-2, 1-274(d)-1, amended; 1.62-2T, 1.274(d)-1T, added; substantiation requirements (TD 8784) 42, 4, **493**
26 CFR 1.108-4, added; 1.108(c)-1, redesignated; 1.108-6, added; 1.108(a)-1, -2, -(b)-1, 1.1016-7, -8, removed; 1.1017-1, revised; 1.1017-2, removed; 301.9100-13T, removed; basis reduction due to discharge of indebtedness (TD 8787) 46, 5, **621**
26 CFR 1.367(a)-1T, -3, amended; 1.367(a)-3T, removed; 1.367(a)-8, 1.367(b)-1, -4, added; 1.367(d)-1T, amended; 1.6038B-1, added; 1.6038B-1T; 7.367(b)-1, -4, -7, amended; certain transfers of stock or securities by U.S. persons to foreign corporations (TD 8770) 27, 4, **3**
26 CFR 1.368-1(e)(6), revised; continuity of interest requirement for corporate reorganizations (TD 8783) 41, 4, **473**
26 CFR 1.411(d)-4, amended; permitted elimination of preretirement optional forms of benefit (TD 8769) 28, 4, **50**

INCOME TAX—Continued

- 26 CFR 1.460-6T, removed; 1.460-6(i), (j), added; election not to apply look-back method in *de minimis* cases (TD 8775) 31, 4, **110**
- 26 CFR 1.465-27, added; qualified nonrecourse financing under section 465(b)(6) (TD 8777) 34, 4, **219**
- 26 CFR 1.861-18, added; transactions involving computer programs (TD 8785) 42, 5, **494**
- 26 CFR 1.863-3, revised; 1.936-4, -5, -6, -7, removed; 1.863-3(f), (h), amended; 1.936-6(a)(5) Q and A 7a, added; source of income from sales of inventory (TD 8786) 44, 4, **563**; corrected (ANN 109) 50, 20, **739**
- 26 CFR 1.927(e)-1T, removed; 1.927(e)(1), added; source rules for foreign sales corporation transfer pricing (TD 8782) 41, 5, **474**
- 26 CFR 1.936-11T, added; termination of Puerto Rico and possession tax credit; new lines of business prohibited (TD 8778) 36, 4, **273**
- 26 CFR 1.985-1, 1.985-4, amended; functional currency; 1.985-8T spe-

INCOME TAX—Continued

- cial rules; euro conversion; 1.001-5T added (TD 8776) 33, 6, **200**
- 26 CFR 1.6662-0, -2, -3, -4, 1.6664-0, amended; 1.6662-7(d), 1.6664-4(g), revised; accuracy-related penalty (TD 8790) 50, 4, **723**
- 26 CFR 54.9801-1T, amended; -2, revised; 54.9811-1T, added; 54.9831-1T(b)(1), revised; interim rules for group health plans and health insurance issuers under the Newborns' and Mothers' Health Protection Act (TD 8788) 45, 6, **591**
- 26 CFR 301.7623-1, revised; 301.7623-1T, removed; rewards for information relating to violations of internal revenue laws (TD 8780) 39, 14, **407**
- REIT impermissible tenant service income under section 856(d)(7) (RR 60) 51, 6, **749**
- Rescission of notice deficiency (RP 54) 43, 7, **529**
- Residential rental property, exempt facility bond (RR 47) 39, 4, **397**

INCOME TAX—Continued

- Returns preparers:
Identifying numbers (Notice 63) 51, 15, **758**
- Sales or exchanges:
S corporations:
Late election relief for (RP 55) 46, 27, **643**
- SRLY notice (Notice 38) 34, 7, **222**
- Stock and securities:
Distribution; limitations of newly formed controlled corporations (RR 44) 37, 4, **315**
- T-bill rate for 1998 (RR 55) 47, 5, **665**
- Revenue Procedure 98-32, 1998-21 I.R.B. 6, corrected (ANN 104) 47, 13, **673**
- Taxpayer Relief Act of 1997, section 1510, request for comments (ANN 62) 29, 13, **79**
- Trials no penalty for missing or incorrect (ANN 73) 31, 14, **120**
- Veterans of Foreign Wars Post 5316 (ANN 61) 27, 38, **37**
- Waiver of period of stay in foreign country (RP 38) 27, 29, **28**

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 ap-

plies 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.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—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 List¹

Bulletin 2001-1

Revenue Procedures:

2001-1, 2001-1 I.R.B. *1*

2001-2, 2001-1 I.R.B. *79*

2001-3, 2001-1 I.R.B. *111*

2001-4, 2001-1 I.R.B. *121*

2001-5, 2001-1 I.R.B. *164*

2001-6, 2001-1 I.R.B. *194*

2001-7, 2001-1 I.R.B. *236*

2001-8, 2001-1 I.R.B. *239*

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2000-27 through 2000-52 is in Internal Revenue Bulletin 2001-1, dated January 2, 2001.

Finding List of Current Actions on Previously Published Items¹

Bulletin 2001-1

Revenue Procedures:

2000-1

Superseded by
Rev. Proc. 2001-1, 2001-1 I.R.B. 1

2000-2

Superseded by
Rev. Proc. 2001-2, 2001-1 I.R.B. 79

2000-3

Superseded by
Rev. Proc. 2001-3, 2001-1 I.R.B. 111

2000-4

Superseded by
Rev. Proc. 2001-4, 2001-1 I.R.B. 121

2000-5

Superseded by
Rev. Proc. 2001-5, 2001-1 I.R.B. 164

2000-6

Superseded by
Rev. Proc. 2001-6, 2001-1 I.R.B. 194

2000-7

Superseded by
Rev. Proc. 2001-7, 2001-1 I.R.B. 236

2000-8

Superseded by
Rev. Proc. 2001-8, 2001-1 I.R.B. 239

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2000-27 through 2000-52 is in Internal Revenue Bulletin 2001-1, dated January 2, 2001.



PUBLICATIONS ★ PERIODICALS ★ ELECTRONIC PRODUCTS

Order processing code

* **3333**

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	021-066-00005-2	Subject Bibliography listing Cum. Bulletins available thru 1998-2	FREE	FREE
	048-004-02333-4	Cum. Bulletin 1994-2 (July-Dec)	\$62	
	048-004-02335-1	Cum. Bulletin 1995-1 (Jan-June)	63	
	048-004-02338-5	Cum. Bulletin 1995-2 (July-Dec)	58	
	048-004-02366-1	Cum. Bulletin 1996-1 (Jan-June)	77	
	048-004-02376-8	Cum. Bulletin 1996-2 (July-Dec)	57	
	048-004-02384-9	Cum. Bulletin 1996-3 (1996 Tax Legislation)	84	
	048-004-02385-7	Cum. Bulletin 1997-1 (Jan-June)	75	
	048-004-02397-1	Cum. Bulletin 1997-2 (July-Dec)	68	
	048-004-02424-1	Cum. Bulletin 1997-3	62	
	048-004-02425-0	Cum. Bulletin 1997-4 Vol. 1	74	
	048-004-02430-6	Cum. Bulletin 1997-4 Vol. 2	76	
	048-004-02405-5	Cum. Bulletin 1998-1 (Jan-June)	86	
	048-004-02422-5	Cum. Bulletin 1998-2 (July-Dec)	70	

Total for Publications

Standing Order Service *

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:

(enter account information at right)

VISA MasterCard Discover/NOVUS

Superintendent of Documents Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (_____) _____

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

YES! Open a Deposit Account for me so I can order future publications quickly and easily. I'm enclosing the \$50 initial deposit.



New Deposit Account?



Check here

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRB	Internal Revenue Bulletin	\$170	
		Optional - Add \$50 to open Deposit Account. Also check box in upper right.		
Total for Subscriptions				
Total for Publications and Subscriptions				

NOTE: All prices include regular shipping and handling. Subscription prices are subject to change at any time. International customers, please add 25%.

Check method of payment:

Check payable to Superintendent of Documents

Deposit Account -

VISA MasterCard Discover/NOVUS

(expiration date)

Thank you for your order!

Authorizing signature

7/00

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone with area code

E-mail address

Purchase order number (optional)

Phone orders: (202) 512-1800
 Fax orders: (202) 512-2250
 Mail orders: Superintendent of Documents
 P.O. Box 371954
 Pittsburgh, PA 15250-7954
 Online orders: <http://bookstore.gpo.gov/irs>

DO NOT SEND THIS ORDER FORM TO IRS.

* Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA, or MasterCard Discover/NOVUS account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Tax Info for Business at the bottom of the page. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, W:CAR:MP:FP, Washington, DC 20224.

Internal Revenue Service

Washington, DC 20224

Official Business
Penalty for Private Use, \$300