Internal Revenue
bulletin

Bulletin No. 2004-4
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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. 2004–7, page 327.

LIFO; price indexes; department stores. The November 2003 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 2003.

Announcement 2004–7, page 365.

This document contains corrections to proposed regulations (REG–146893–02 and REG–115037–00, 2003–44 I.R.B. 967) under section 482 of the Code that provide guidance regarding the treatment of controlled services transactions and the allocation of income from intangibles.

EMPLOYEE PLANS

Notice 2004–8, page 333.

Roth IRAs; abuses; listed transactions. This notice describes certain transactions that are being entered into by individuals, their Roth IRAs, and their businesses. The Service and the Treasury have determined that these transactions are abusive, that they may result in the disallowance of one or more deductions or the application of an excise tax, and that the applicable transactions must be listed as tax-shelters.

EXEMPT ORGANIZATIONS

Rev. Rul. 2004–6, page 328.

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions, and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

EMPLOYMENT TAX

Rev. Rul. 2004–1, page 325.

Mileage allowance; accountable plans. This ruling clarifies when a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan.

ADMINISTRATIVE

Notice 2004–9, page 334.

This notice announces the extension of certain 2004 deadlines under revised regulations sections 1.6043–4T and 1.6045–3T for filing Form 8806 and furnishing Form 1099–CAP to clearing organizations. This notice also provides information to filers of Forms 1099–CAP and 1099–B to assist in complying with the reporting requirements set forth in revised sections 1.6043–4T and 1.6045–3T.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Announcements of Disbarments and Suspensions begin on page 362.
Finding Lists begin on page ii.
Index for January begins on page iv.

Department of the Treasury
Internal Revenue Service

Rev. Proc. 2004–13, page 335.
This procedure provides an updated list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Code. Section 7508 postpones specified acts for individuals serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Section 7508A permits a postponement of specified acts for taxpayers affected by a Presidentially declared disaster or a terroristic or military action. The list of acts in this procedure supplements the list of postponed acts in section 7508(a)(1) and regulations section 301.7508A–1(b). Rev. Proc. 2002–71 superseded.

Announcement 2004–4, page 357.
The Service and the Treasury Department announce that they are requesting comments from the public on proposed new Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities*. The form will be required to be filed by U.S. persons that own a foreign disregarded entity directly or, in certain circumstances, indirectly or constructively. The reporting of information on Form 8858 will be required under sections 6011, 6012, 6031, and 6038 of the Code and the related regulations, for annual accounting periods of tax owners of foreign disregarded entities beginning on or after January 1, 2004.

Announcement 2004–5, page 362.
The Service announces the availability of new Form 8806, *Information Return for Acquisition of Control or Substantial Change in Capital Structure*. This form is used by a reporting corporation to report an acquisition of control or a substantial change in the capital structure of a domestic corporation.

The IRS Mission

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

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.*

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

* **Beginning with Internal Revenue Bulletin 2003–43**, we are publishing the index at the end of the month, rather than at the beginning.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner withdraws ACQUIESCENCE in the following decision:

Sidney L. Olson and Miriam K. Olson v. Commissioner,[1]
48 T.C. 855 *supplemented,*
49 T.C. 84 (1967), *acq.*, 1968–2 C.B. 2
Docket Numbers: 1713–65, 1714–65, 1715–65, 1716–65, 3328–65

[1] Withdrawal of the Service's acquiescence relating to whether the distribution of the stock of a controlled corporation by a distributing corporation to the shareholders of the distributing corporation to prevent the potential union of the distributing corporation from claiming that the distributing and controlled corporations constitute a single employer for labor law purposes qualifies as a valid corporate business purpose under section 1.355–2(b) of the Income Tax Regulations.

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

Section 62.—Adjusted Gross Income Defined

Mileage allowance; accountable plans. This ruling clarifies when a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan.

Rev. Rul. 2004–1

ISSUE

Whether a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan so that it will be excluded from the courier's gross income and exempt from the withholding and payment of employment taxes.

FACTS

1. *Situation One*

Employer, a courier company, hires employee drivers to deliver packages locally. Drivers must own or lease an automobile (including vans, pickups, or panel trucks) for use in connection with the performance of services as couriers. When delivering packages, drivers incur the ordinary and necessary expenses of operating an automobile.

Employer charges customers for deliveries based on location, time of day, expedited service (if requested), mileage between pickup and delivery, size and weight of a package, and other factors. This per package charge is referred to as the "tag rate." The mileage component of the tag rate is computed as though each package were delivered separately. However, drivers often pick up multiple packages from one location, deliver multiple packages to another location, and travel overlapping routes between and among customers. Consequently, the tag rate may not accurately reflect the transportation expenses incurred with respect to a particular package.

Employer pays drivers a commission equal to X percent of the tag rate as compensation for services. Additionally, employer pays drivers a mileage allowance equal to Y percent of the tag rate to cover the expenses of operating their automobiles. Because the mileage allowance is computed based on a percentage of the tag rate, the mileage rate (cents per mile) paid with respect to any particular package varies depending on the number of miles traveled.

Employer determines the percentage of the tag rate paid as a mileage allowance annually and the percentage remains fixed throughout the calendar year. The percentage paid as a mileage allowance is based on employer's review of a sample of documents submitted by drivers (including receipts, logbooks, and invoices) reflecting the drivers' operating and fixed costs. Employer pays the mileage allowance only with respect to miles traveled while delivering packages.

Employer requires that, on a monthly basis, each driver provide information sufficient to substantiate the number of business miles traveled. Employer multiplies the number of miles traveled times the business standard mileage rate (as published by the Commissioner) to calculate the amount of travel expenses deemed substantiated. Employer subtracts the amount deemed substantiated from the mileage allowance paid and reports the excess as wages on the driver's Form W–2.

2. *Situation Two*

The facts are the same as in Situation One except employer pays drivers a commission equal to Z percent of the tag rate reduced by a mileage allowance equal to the number of miles traveled multiplied by the business standard mileage rate. Thus, drivers always receive Z percent of the tag rate, but the amount treated as a mileage allowance varies based on the number of business miles traveled and subsequently substantiated by drivers.

LAW

Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived, including compensation for services, fees, commissions, fringe benefits, and similar items.

Section 62(a)(2)(A) provides that, for purposes of determining adjusted gross income, an employee may deduct certain business expenses paid by the employee in connection with the performance of services as an employee of the employer under a reimbursement or other expense allowance arrangement.

Section 62(c) provides that, for purposes of section 62(a)(2)(A), an arrangement will in no event be treated as a reimbursement or other expense allowance arrangement if (1) the arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, and (2) the arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 1.62–2(c)(1) of the Income Tax Regulations provides that a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses. If an arrangement meets these requirements, all amounts paid under the arrangement are treated as paid under an accountable plan. Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W–2, and are exempt from the withholding and payment of employment taxes. *See* section 1.62–2(c)(4). Conversely, amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes. *See* section 1.62–2(c)(5).

Section 1.62–2(d)(1) provides that an arrangement meets the business connection requirements if it provides advances, allowances, or reimbursements only for business expenses that are allowable as deductions and that are paid or incurred by the employee in connection with the performance of services as an employee of the

employer. If, however, a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) deductible employee business expenses, the arrangement does not satisfy the business connection requirements and all amounts paid under the arrangement are treated as paid under a nonaccountable plan. *See* section 1.62–2(d)(3)(i); *see also* section 1.62–2(j), example (1) which describes the payment of a fixed amount as either compensation or travel allowance and concludes that the arrangement does not satisfy the business connection requirements.

Section 1.62–2(e)(2) provides that an arrangement reimbursing use of a passenger automobile meets the substantiation requirements if information sufficient to satisfy the substantiation requirements of section 274(d) is submitted to the payor. Section 274(d) provides that no deduction shall be allowed under section 162 with respect to any listed property (including passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. Section 1.274–5(g) grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of using a vehicle for local transportation. Pursuant to this grant of authority the Commissioner may prescribe rules under which such allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation of the amount of such transportation expenses, and (2) satisfying the requirements of an adequate accounting to the employer of the amount of such expenses. The Commissioner annually publishes a revenue procedure establishing a business standard mileage rate taxpayers may use to substantiate the amount of the deductible costs of operating an automobile for business purposes. *See*, for example, Rev. Proc. 2003–76, 2003–43 I.R.B. 924 (or any successor.) A taxpayer must nonetheless actually substantiate the elements of time, use, and business purpose relating to the expenses.

Section 1.62–2(f) provides that an arrangement meets the return requirements if it requires the employee to return to the payor within a reasonable period of time any amount paid under the arrangement in excess of substantiated expenses. However, section 1.62–2(f)(2) provides that a reimbursement or other expense allowance arrangement that provides mileage allowances for ordinary and necessary expenses of local travel will be treated as satisfying the return of excess requirements even though the arrangement does not require the employee to return the portion of such an allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. This exception applies only if the allowance is paid at a rate for each mile of travel that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return to the payor within a reasonable period of time any portion of such allowance which relates to miles of travel not substantiated.

In *Shotgun Delivery, Inc. v. United States*, 269 F.3d 969 (9th Cir. 2001), a courier company paid its drivers a commission equal to 40 percent of the tag rate. The commission was allocated between compensation paid at the minimum wage and a variable mileage reimbursement. The district court found that "because Shotgun's tag rates were not based solely on distance traveled, and since Shotgun drivers could double up on deliveries, Shotgun's reimbursement arrangement, was in fact, reimbursing its drivers in a manner not correlated to expenses Shotgun's employees incurred or were reasonably likely to incur." *Shotgun Delivery, Inc. v. United States*, 85 F.Supp. 2d 962, 965 (N.D. Cal. 2000.) Consequently, the district court concluded that Shotgun's reimbursement arrangement failed to meet the business connection requirements and held that the mileage reimbursements were paid under a nonaccountable plan. In affirming the district court's holding, the Ninth Circuit observed that such arrangements blur "the fundamental distinction between taxable compensation and tax-exempt reimbursement which underpins this entire aspect of the tax system" and concluded that "requiring a demonstrable connection to actual business expenses prevents companies from improperly sheltering otherwise taxable compensation under the guise of reimbursement." *Shotgun Delivery*, 269 F.3d at 974.

ANALYSIS

1. *Situation One*

In Situation One, the mileage allowance meets the business connection requirements of section 1.62–2(d). The mileage allowance is paid with respect to deductible employee business expenses reasonably expected to be incurred by the drivers. Employer reviews a sample of receipts, logbooks, and invoices annually to estimate the drivers' operating and fixed costs and, correspondingly, to set the percentage of the tag rate paid as a mileage allowance. Although the mileage allowance is computed on a basis similar to that used in computing the driver's compensation and, consequently, is paid at a variable mileage rate, the percentage of the tag rate paid as a mileage allowance remains fixed throughout the calendar year. Unlike the reimbursements at issue in *Shotgun Delivery, Inc. v. United States*, 269 F.3d 969 (9th Cir. 2001), the mileage allowance in Situation One is paid with respect to expenses reasonably expected to be incurred and does not vary inversely with the commission based on the number of hours worked.

Similarly, in Situation One the mileage allowance meets the substantiation requirements of section 1.62–2(e). Specifically, the drivers are required to substantiate monthly the time, use, and business purpose, *i.e.*, the number of business miles traveled, relating to their use of an automobile while delivering packages. In lieu of substantiating the actual amount of the driver's deductible transportation expenses, an amount is deemed substantiated equal to the number of miles traveled multiplied by the business standard mileage rate. An allowance paid with respect to ordinary and necessary transportation expenses that is reasonably calculated not to exceed the amount of anticipated expenses and is paid at a flat rate or stated schedule constitutes a mileage allowance pursuant to section 1.274–5(g) and the rules promulgated thereunder. *See* Rev. Proc. 2003–76. While the mileage allowance in Situation One is paid at a variable mileage rate, it is nonetheless computed based on a fixed percentage of the tag rate and is considered paid at a flat rate or stated schedule. Thus, drivers are deemed to have substantiated expenses at the busi-

ness standard mileage rate with respect to each mile of travel actually substantiated.

Finally, in Situation One the mileage allowance meets the return of excess requirements of section 1.62–2(f). Employer intends to pay the mileage allowance only with respect to miles of travel substantiated by the drivers. Consequently, drivers are not required to return the portion of the mileage allowance exceeding the amount of expenses deemed substantiated. *See* section 1.62–2(f)(2).

Having met the business connection, substantiation, and return of excess requirements of section 1.62–2(c)(1), the portion of the mileage allowance that is not in excess of the expenses deemed substantiated may be treated as paid under an accountable plan in accordance with section 62(c). Such amounts are excluded from the drivers' gross income and are exempt from the withholding and payment of employment taxes. The portion of the mileage allowance that is in excess of the expenses deemed substantiated is treated as paid under a nonaccountable plan. These amounts must be included in the drivers' gross income and are subject to the withholding and payment of employment taxes.

2. *Situation Two*

In Situation Two, the reimbursement arrangement does not meet the business connection requirements of section 1.62–2(d). A variable allocation between commission and mileage allowance ensures that each driver receives Z percent of the tag rate regardless of the amount of deductible employee business expenses incurred by the driver. A *bona fide* reimbursement arrangement must preclude the recharacterization as a mileage allowance of amounts otherwise payable as a commission. *See* section 1.62–2(j), example (1); *see also* H.R. Conf. Rep. No. 998, 100th Cong., 2d Sess. 202–206 (1988). Consequently, the reimbursement arrangement in Situation Two is treated as a nonaccountable plan, and all amounts paid under the plan must be included in the drivers' gross income and are subject to the withholding and payment of employment taxes.

HOLDING

Under the circumstances set forth in Situation One, a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan. The portion of the mileage allowance that is not in excess of the expenses deemed substantiated is excluded from the courier's gross income and is exempt from the withholding and payment of employment taxes. However, the portion of the mileage allowance that is in excess of the expenses deemed substantiated is treated as paid under a nonaccountable plan, must be included in the courier's gross income, and is subject to the withholding and payment of employment taxes. Under the circumstances set forth in Situation Two, a variable allocation between commission and mileage allowance does not meet the business connection requirements. Consequently, the reimbursement arrangement is treated as a nonaccountable plan, and all amounts paid under the plan must be included in the drivers' gross income and are subject to the withholding and payment of employment taxes.

DRAFTING INFORMATION

The principal author of this revenue ruling is Neil D. Shepherd of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Neil D. Shepherd at (202) 622-6040 (not a toll-free call).

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

26 CFR 1.274-5: Substantiation requirements.

Whether a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan so that it will be excluded from the courier's gross income and exempt from the withholding and payment of employment taxes. See Rev. Rul. 2004-1, page 325.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The November 2003 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 2003.

Rev. Rul. 2004–7

The following Department Store Inventory Price Indexes for November 2003 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, November 30, 2003.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Nov. 2002	Nov. 2003	Percent Change from Nov. 2002 to Nov. 2003[1]
1. Piece Goods	473.3	480.5	1.5
2. Domestics and Draperies	571.3	548.6	-4.0
3. Women's and Children's Shoes	652.4	649.8	-0.4
4. Men's Shoes	899.2	845.3	-6.0
5. Infants' Wear	622.7	598.3	-3.9
6. Women's Underwear	551.8	514.2	-6.8
7. Women's Hosiery	345.3	343.3	-0.6
8. Women's and Girls' Accessories	559.1	555.8	-0.6
9. Women's Outerwear and Girls' Wear	373.5	375.7	0.6
10. Men's Clothing	572.1	549.5	-4.0
11. Men's Furnishings	603.6	598.3	-0.9
12. Boys' Clothing and Furnishings	461.3	451.0	-2.2
13. Jewelry	871.7	866.8	-0.6
14. Notions	793.1	797.2	0.5
15. Toilet Articles and Drugs	972.5	976.2	0.4
16. Furniture and Bedding	622.2	612.9	-1.5
17. Floor Coverings	600.6	594.5	-1.0
18. Housewares	738.6	712.6	-3.5
19. Major Appliances	221.6	210.0	-5.2
20. Radio and Television	47.5	44.3	-6.7
21. Recreation and Education[2]	84.6	82.2	-2.8
22. Home Improvements[2]	125.2	124.9	-0.2
23. Automotive Accessories[2]	111.7	112.0	0.3
Groups 1–15: Soft Goods	575.9	567.7	-1.4
Groups 16–20: Durable Goods	404.5	388.9	-3.9
Groups 21–23: Misc. Goods[2]	95.4	93.9	-1.6
Store Total[3]	513.0	503.1	-1.9

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622–7924 (not a toll-free call).

Section 527.—Political Organizations

26 CFR 1.527–2: Definitions.
(Also § 501.)

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

Rev. Rul. 2004–6

Organizations that are exempt from federal income tax under § 501(a) as organizations described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) may, consistent with their exempt purpose, publicly advocate positions on public policy issues. This advocacy may include lobbying for legislation consistent with these positions. Because public policy advocacy may involve discussion of the positions of public officials who are also candidates for public office, a public policy advocacy communication may constitute an exempt function within the meaning of § 527(e)(2). If so, the organization would be subject to tax under § 527(f).

ISSUE

In each of the six situations described below, has the organization exempt from federal income tax under § 501(a) as an organization described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) that engages in public policy advocacy expended funds for an exempt function as described in § 527(e)(2)?

LAW

Section 501(c)(4) provides exemption from taxation for civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)–1 of the Income Tax Regulations states an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501(c)(5) provides exemption from taxation for labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)–1 requires that labor, agricultural, or horticultural organizations have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 501(c)(6) provides exemption from taxation for business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)–1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. A business league's activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Section 527 generally provides that political organizations that collect and expend monies for exempt function purposes as described in § 527(e)(2) are exempt from Federal income tax except on their investment income.

Section 527(e)(1) defines a political organization as a party, committee, association, fund or other organization (whether or not incorporated), organized and operated primarily for the purpose of accepting contributions or making expenditures, or both, for an exempt function.

Section 527(e)(2) provides that the term "exempt function" for purposes of § 527 means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. By its terms, § 527(e)(2) includes all attempts to influence the selection, nomination, election, or appointment of the described officials.

Section 527(f)(1) provides that an organization described in § 501(c) and exempt from tax under § 501(a) is subject to tax on any amount expended for an exempt function described in § 527(e)(2) at the highest tax rate specified in § 11(b). The tax is imposed on the lesser of the net investment income of the organization for the taxable year or the amount expended on an exempt function during the taxable year. A § 501(c) organization is taxed under § 527(f)(1) only if the expenditure is from its general treasury rather than from a separate segregated fund described in § 527(f)(3).

Section 527(f)(3) provides that if an organization described in § 501(c) and exempt from tax under § 501(a) sets up a separate segregated fund (which segregates monies for § 527(e)(2) exempt function purposes) that fund will be treated as a separate political organization described in § 527 and, therefore, be subject to tax as a political organization under § 527.

Section 527(i) provides that, in order to be tax-exempt, a political organization is required to give notice that it is a political organization described in § 527, unless excepted. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f) is not subject to this requirement. § 527(i)(5)(A).

Section 527(j) provides that, unless excepted, a tax-exempt political organization that has given notice under § 527(i) and does not timely make periodic reports of contributions and expenditures, or that fails to include the information required, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest corporate tax rate. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f), is not subject to the reporting requirements under § 527(j).

Section 1.527–2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Section 1.527–6(f) provides that an organization described in § 501(c) that is exempt under § 501(a) may, if it is consistent with its exempt status, establish and maintain a separate segregated fund to receive contributions and make expenditures in a political campaign.

Rev. Rul. 2003–49, 2003–20 I.R.B. 903 (May 19, 2003), discusses the reporting and disclosure requirements for political organizations in question and answer format. In Q&A–6, the ruling holds that while a § 501(c) organization that makes an expenditure for an exempt function under § 527(e)(2) is not required to file the notice required under § 527(i), if the § 501(c) organization establishes a separate segregated fund under § 527(f)(3), that fund is required to file the notice in order to be tax-exempt unless it meets one of the other exceptions to filing.

Certain broadcast, cable, or satellite communications that meet the definition of "electioneering communications" are regulated by the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. An exempt organization that violates the regulatory requirements of BCRA may well jeopardize its exemption or be subject to other tax consequences.

ANALYSIS OF FACTUAL SITUATIONS

An organization exempt from federal income tax under § 501(a) as an organization described in § 501(c) that, consistent with its tax-exempt status, wishes to engage in an exempt function within the meaning of § 527(e)(2) may do so with its own funds or by setting up a separate segregated fund under § 527(f)(3). If the organization chooses to establish a separate segregated fund, that fund, unless excepted, must give notice under § 527(i) in order to be tax-exempt. A separate segregated fund that has given notice under § 527(i) is then subject to the reporting requirements under § 527(j). *See* Rev. Rul. 2003–49. If the organization chooses to use its own funds, the organization is not subject to the notice requirements under § 527(i) and the reporting requirements under § 527(j), but is subject to tax under § 527(f)(1) on the lesser of its investment income or the amount of the exempt function expenditure.

All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is for an exempt function under § 527(e)(2) include, but are not limited to, the following:

a) The communication identifies a candidate for public office;

b) The timing of the communication coincides with an electoral campaign;

c) The communication targets voters in a particular election;

d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2) include, but are not limited to, the following:

a) The absence of any one or more of the factors listed in a) through f) above;

b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

In all of the situations, the advocacy communication identifies a candidate in an election, appears shortly before that election, and targets the voters in that election. Even though these factors are present, the remaining facts and circumstances must be analyzed in each situation to determine whether the advocacy communication is for an exempt function under § 527(e)(2).

Each of the situations assumes that:

1. All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under § 527(f)(3);

2. The organization would continue to be exempt under § 501(a), even if the described activity is not a § 501(c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of § 501(c); and

3. All advocacy communications described also include a solicitation of contributions to the organization.

Situation 1. *N*, a labor organization recognized as tax exempt under § 501(c)(5), advocates for the betterment of conditions of law enforcement personnel. Senator *A* and Senator *B* represent State *U* in the United States Senate. In year 200x, *N* prepares and finances full-page newspaper advertisements supporting increased spending on law enforcement, which would require a legislative appropriation. These advertisements are published in several large circulation newspapers in State *U* on a regular basis during year 200x. One of these full-page advertisements is published shortly before an election in which Senator *A* (but not Senator *B*) is a candidate for re-election. The advertisement published shortly before the election stresses the importance of increased federal funding of local law enforcement and refers to numerous statistics indicating the high crime rate in State *U*. The advertisement does not mention Senator *A*'s or Senator *B*'s position on law enforcement issues. The advertisement ends with the statement "Call or write Senator *A* and Senator *B* to ask them to support increased federal funding for local law enforcement." Law enforcement has not been raised as an issue distinguishing Senator *A* from any opponent. At the time this advertisement is published, no legislative vote or other major legislative activity is scheduled in the United States Senate on increased federal funding for local law enforcement.

Under the facts and circumstances in *Situation 1*, the advertisement is not for an exempt function under § 527(e)(2). Although *N*'s advertisement identifies Senator *A*, appears shortly before an election in which Senator *A* is a candidate, and targets voters in that election, it is part of an ongoing series of substantially similar advocacy communications by *N* on the same issue during year 200x. The advertisement identifies both Senator *A* and Senator *B*, who is not a candidate for re-election, as the representatives who would vote on this issue. Furthermore, *N*'s advertisement does not identify Senator *A*'s position on the issue, and law enforcement has not been raised as an issue distinguishing Senator *A* from any

opponent. Therefore, there is nothing to indicate that Senator *A*'s candidacy should be supported or opposed based on this issue. Based on these facts and circumstances, the amount expended by *N* on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 2. *O*, a trade association recognized as tax exempt under § 501(c)(6), advocates for increased international trade. Senator *C* represents State *V* in the United States Senate. *O* prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State *V* shortly before an election in which Senator *C* is a candidate for nomination in a party primary. The advertisement states that increased international trade is important to a major industry in State *V*. The advertisement states that S. 24, a pending bill in the United States Senate, would provide manufacturing subsidies to certain industries to encourage export of their products. The advertisement also states that several manufacturers in State *V* would benefit from the subsidies, but Senator *C* has opposed similar measures supporting increased international trade in the past. The advertisement ends with the statement "Call or write Senator *C* to tell him to vote for S. 24." International trade concerns have not been raised as an issue distinguishing Senator *C* from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers.

Under the facts and circumstances in *Situation 2*, the advertisement is not for an exempt function under § 527(e)(2). *O*'s advertisement identifies Senator *C*, appears shortly before an election in which Senator *C* is a candidate, and targets voters in that election. Although international trade issues have not been raised as an issue distinguishing Senator *C* from any opponent, the advertisement identifies Senator *C*'s position on the issue as contrary to *O*'s position. However, the advertisement specifically identifies the legislation *O* is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator *C*, is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by *O* on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 3. *P*, an entity recognized as tax exempt under § 501(c)(4), advocates for better health care. Senator *D* represents State *W* in the United States Senate. *P* prepares and finances a full-page newspaper advertisement that is published repeatedly in several large circulation newspapers in State *W* beginning shortly before an election in which Senator *D* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. The advertisement states that a public hospital is needed in a major city in State *W* but that the public hospital cannot be built without federal assistance. The advertisement further states that Senator *D* has voted in the past year for two bills that would have provided the federal funding necessary for the hospital. The advertisement then ends with the statement "Let Senator *D* know you agree about the need for federal funding for hospitals." Federal funding for hospitals has not been raised as an issue distinguishing Senator *D* from any opponent. At the time the advertisement is published, a bill providing federal funding for hospitals has been introduced in the United States Senate, but no legislative vote or other major legislative activity on that bill is scheduled in the Senate.

Under the facts and circumstances in *Situation 3*, the advertisement is for an exempt function under § 527(e)(2). *P*'s advertisement identifies Senator *D*, appears shortly before an election in which Senator *D* is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator *D* from any opponent, the advertisement identifies Senator *D*'s position on the hospital funding issue as agreeing with *P*'s position, and is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount expended by *P* on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

Situation 4. *R*, an entity recognized as tax exempt under § 501(c)(4), advocates for improved public education. Governor *E* is the governor of State *X*. *R* prepares and finances a radio advertisement urging an increase in state funding for public education in State *X*, which requires a legislative appropriation. The radio advertisement is first broadcast on several radio stations in State *X* beginning shortly before an election in which Governor *E* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue. The advertisement cites numerous statistics indicating that public education in State *X* is under-funded. While the advertisement does not say anything about Governor *E*'s position on funding for public education, it ends with "Tell Governor *E* what you think about our under-funded schools." In public appearances and campaign literature, Governor *E*'s opponent has made funding of public education an issue in the campaign by focusing on Governor *E*'s veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State *X* legislature on state funding of public education.

Under the facts and circumstances in *Situation 4*, the advertisement is for an exempt function under § 527(e)(2). *R*'s advertisement identifies Governor *E*, appears shortly before an election in which Governor *E* is a candidate, and targets voters in that election. Although the advertisement does not explicitly identify Governor *E*'s position on the funding of public schools issue, that issue has been raised as an issue in the campaign by Governor *E*'s opponent. The advertisement does not identify any specific legislation, is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue, and is not timed to coincide with a legislative vote or other major legislative action on that issue. Based on these facts and circumstances, the amount expended by *R* on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

Situation 5. *S*, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State *Y*. Governor *F* is the governor of State *Y*. *S* regularly prepares and finances television advertisements opposing the death penalty. These advertisements appear on several television stations in State *Y* shortly before each scheduled execution in State *Y*. One such advertisement opposing the death penalty appears on State *Y* television stations shortly before the scheduled execution of *G* and shortly before an election in which Governor *F* is a candidate for re-election. The advertisement broadcast shortly before the election provides statistics regarding developed countries that have abolished the death penalty and refers to studies indicating inequities related to the types of persons executed in the United States. Like the advertisements appearing shortly before other scheduled executions in State *Y*, the advertisement notes that Governor *F* has supported the death penalty in the past and ends with the statement "Call or write Governor *F* to demand that he stop the upcoming execution of *G*."

Under the facts and circumstances in *Situation 5*, the advertisement is not for an exempt function under § 527(e)(2). *S*'s advertisement identifies Governor *F*, appears shortly before an election in which Governor *F* is a candidate, targets voters in that election, and identifies Governor *F*'s position as contrary to *S*'s position. However, the advertisement is part of an ongoing series of substantially similar advocacy communications by *S* on the same issue and the advertisement identifies an event outside the control of the organization (the scheduled execution) that the organization hopes to influence. Further, the timing of the advertisement coincides with this specific event that the organization hopes to influence. The candidate identified is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by *S* on the advertisements is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 6. *T*, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State *Z*. Governor *H* is the governor of State *Z*. Beginning shortly before an election in which Governor *H* is a candidate for re-election, *T* prepares and finances a television advertisement broadcast on several television stations in State *Z*. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. The advertisement provides statistics regarding developed countries that have abolished the death penalty, and refers to studies indicating inequities related to the types of persons executed in the United States. The advertisement calls for the abolishment of the death penalty. The advertisement notes that Governor *H* has supported the death penalty in the past. The advertisement identifies several individuals previously executed in State *Z*, stating that Governor *H* could have saved their lives by stopping their executions. No executions are scheduled in State *Z* in the near future. The advertisement concludes with the statement "Call or write Governor *H* to demand a moratorium on the death penalty in State *Z*."

Under the facts and circumstances in *Situation 6*, the advertisement is for an exempt function under § 527(e)(2). *T*'s advertisement identifies Governor *H*, appears shortly before an election in which Governor *H* is a candidate, targets the voters in that election, and identifies Governor *H*'s position as contrary to *T*'s position. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. In addition, the advertisement does not identify and is not timed to coincide with a specific event outside the control of the organization that it hopes to influence. Based on these facts and circumstances, the amount expended by *T* on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

HOLDINGS

In Situations 1, 2, and 5, the amounts expended by *N*, *O*, and *S* are not exempt function expenditures under § 527(e)(2) and, therefore, are not subject to tax under § 527(f)(1). In Situations 3, 4, and 6, the amounts expended by *P*, *R* and *T* are exempt function expenditures under § 527(e)(2) and, therefore, are subject to tax under § 527(f)(1).

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith E. Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Judith E. Kindell at (202) 283–8964 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Abusive Roth IRA Transactions

Notice 2004–8

The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, that taxpayers are using to avoid the limitations on contributions to Roth IRAs. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, as well as substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 301.6111–2(b)(2) and 301.6112–1(b)(2) of the Procedure and Administration Regulations. This notice also alerts parties involved with these transactions of certain responsibilities that may arise from their involvement with these transactions.

Background

Section 408A was added to the Internal Revenue Code by section 302 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 105th Cong., 1st Sess. 40 (1997). This section created Roth IRAs as a new type of nondeductible individual retirement arrangement (IRA). The maximum annual contribution to Roth IRAs is the same maximum amount that would be allowable as a deduction under § 219 with respect to the individual for the taxable year over the aggregate amount of contributions for that taxable year to all other IRAs. Neither the contributions to a Roth IRA nor the earnings on those contributions are subject to tax on distribution, if distributed as a qualified distribution described in § 408A(d)(2).

A contribution to a Roth IRA above the statutory limits generates a 6-percent excise tax described in § 4973. The excise tax is imposed each year until the excess contribution is eliminated.

Facts

In general, these transactions involve the following parties: (1) an individual (the Taxpayer) who owns a pre-existing business such as a corporation or a sole proprietorship (the Business), (2) a Roth IRA within the meaning of § 408A that is maintained for the Taxpayer, and (3) a corporation (the Roth IRA Corporation), substantially all the shares of which are owned or acquired by the Roth IRA. The Business and the Roth IRA Corporation enter into transactions as described below. The acquisition of shares, the transactions or both are not fairly valued and thus have the effect of shifting value into the Roth IRA.

Examples include transactions in which the Roth IRA Corporation acquires property, such as accounts receivable, from the Business for less than fair market value, contributions of property, including intangible property, by a person other than the Roth IRA, without a commensurate receipt of stock ownership, or any other arrangement between the Roth IRA Corporation and the Taxpayer, a related party described in § 267(b) or 707(b), or the Business that has the effect of transferring value to the Roth IRA Corporation comparable to a contribution to the Roth IRA.

Analysis

The transactions described in this notice have been designed to avoid the statutory limits on contributions to a Roth IRA contained in § 408A. Because the Taxpayer controls the Business and is the beneficial owner of substantially all of the Roth IRA Corporation, the Taxpayer is in the position to shift value from the Business to the Roth IRA Corporation. The Service intends to challenge the purported tax benefits claimed for these arrangements on a number of grounds.

In challenging the purported tax benefits, the Service will, in appropriate cases, assert that the substance of the transaction is that the amount of the value shifted from the Business to the Roth IRA Corporation is a payment to the Taxpayer, followed by a contribution by the Taxpayer to the Roth IRA and a contribution by the Roth IRA to the Roth IRA Corporation. In such cases, the Service will deny or reduce the deduction to the Business; may require the Business, if the Business is a corporation, to recognize gain on the transfer under § 311(b); and may require inclusion of the payment in the income of the Taxpayer (for example, as a taxable dividend if the Business is a C corporation). *See Sammons v. United States*, 433 F.2d 728 (5th Cir. 1970); *Worcester v. Commissioner*, 370 F.2d 713 (1st Cir. 1966).

Depending on the facts of the specific case, the Service may apply § 482 to allocate income from the Roth IRA Corporation to the Taxpayer, Business, or other entities under the control of the Taxpayer. Section 482 provides the Secretary with authority to allocate gross income, deductions, credits or allowances among persons owned or controlled directly or indirectly by the same interests, if such allocation is necessary to prevent evasion of taxes or clearly to reflect income. The § 482 regulations provide that the standard to be applied is that of a person dealing at arm's length with an uncontrolled person. See generally § 1.482–1(b) of the Income Tax Regulations. To the extent that the consideration paid or received in transactions between the Business and the Roth IRA Corporation is not in accordance with the arm's length standard, the Service may apply § 482 as necessary to prevent evasion of taxes or clearly to reflect income. In the event of a § 482 allocation between the Roth IRA Corporation and the Business or other parties, correlative allocations and other conforming adjustments would be made pursuant to § 1.482–1(g). Also *see*, Rev. Rul. 78–83, 1978–1 C.B. 79.

In addition to any other tax consequences that may be present, the amount treated as a contribution as described above is subject to the excise tax described in § 4973 to the extent that it is an excess contribution within the meaning of § 4973(f). This is an annual tax that is imposed until the excess amount is eliminated.

Moreover, under § 408(e)(2)(A), the Service may take the position in appropriate cases that the transaction gives rise to one or more prohibited transactions between a Roth IRA and a disqualified person described in § 4975(e)(2). For example, the Department of Labor[1] has advised the Service that, to the extent that the Roth IRA Corporation constitutes a plan asset under the Department of La-

[1] Under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Labor has interpretive jurisdiction over § 4975 of the Internal Revenue Code.

bor's plan asset regulation (29 C.F.R. § 2510.3–101), the provision of services by the Roth IRA Corporation to the Taxpayer's Business (which is a disqualified person with respect to the Roth IRA under § 4975(e)(2)) would constitute a prohibited transaction under § 4975(c)(1)(C).[2] Further, the Department of Labor has advised the Service that, if a transaction between a disqualified person and the Roth IRA would be a prohibited transaction, then a transaction between that disqualified person and the Roth IRA Corporation would be a prohibited transaction if the Roth IRA may, by itself, require the Roth IRA Corporation to enter into the transaction.[3]

Listed Transactions

The following transactions are identified as "listed transactions" for purposes of §§ 1.6011–4(b)(2), 301.6111–2(b)(2) and 301.6112–1(b)(2) effective December 31, 2003, the date this document is released to the public: arrangements in which an individual, related persons described in § 267(b) or 707(b), or a business controlled by such individual or related persons, engage in one or more transactions with a corporation, including contributions of property to such corporation, substantially all the shares of which are owned by one or more Roth IRAs maintained for the benefit of the individual, related persons described in § 267(b)(1), or both. The transactions are listed transactions with respect to the individuals for whom the Roth IRAs are maintained, the business (if not a sole proprietorship) that is a party to the transaction, and the corporation substantially all the shares of which are owned by the Roth IRAs. Independent of their classification as "listed transactions," these transactions may already be subject to the disclosure requirements of § 6011 (§ 1.6011–4), the tax shelter registration requirements of § 6111 (§§ 301.6111–1T and 301.6111–2), or the list maintenance requirements of § 6112 (§ 301.6112–1).

Substantially similar transactions include transactions that attempt to use a single structure with the intent of achieving the same or substantially same tax effect for multiple taxpayers. For example, if the Roth IRA Corporation is owned by multiple taxpayers' Roth IRAs, a substantially similar transaction occurs whenever that Roth IRA Corporation enters into a transaction with a business of any of the taxpayers if distributions from the Roth IRA Corporation are made to that taxpayer's Roth IRA based on the purported business transactions done with that taxpayer's business or otherwise based on the value shifted from that taxpayer's business to the Roth IRA Corporation.

Persons required to register these tax shelters under § 6111 who have failed to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of investors under § 6112 who have fail to do so (or who fail to provide such lists when requested by the Service) may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on participants in this transaction or substantially similar transactions, including the accuracy-related penalty under § 6662, and as applicable, persons who participate in the reporting of this transaction or substantially similar transactions, including the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

The Service and the Treasury recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should consult with a tax advisor to ensure that their transactions are disclosed properly and to take appropriate corrective action.

Drafting Information

The principal author of this notice is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. However, other personnel from the Service and Treasury participated in its development. Mr. Rubin may be reached at (202) 283–9888 (not a toll-free call).

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[2] For the Roth IRA Corporation to be considered as holding plan assets under the Department of Labor's plan asset regulation, the Roth IRA's investment in the Roth IRA Corporation must be an equity interest, the Roth IRA Corporation's securities must not be publicly-offered securities, and the Roth IRA's investment in the Roth IRA Corporation must be significant. 29 C.F.R. §§ 2510.3–101(a)(2), 2510.3–101(b)(1), 2510.3–101(b)(2), and 2510.3–101(f). Although the Roth IRA Corporation would not be treated as holding plan assets if the Roth IRA Corporation constituted an operating company within the meaning of 29 C.F.R. § 2510.3–101(c), given the context of the examples described in this notice, it is unlikely that the Roth IRA Corporation would qualify as an operating company.

[3] See 29 C.F.R. § 2509.75–2(c).

Information Reporting Relating to Corporate Inversions

Notice 2004–9

SECTION 1. Purpose

This notice announces the extension of certain 2004 deadlines under revised §§ 1.6043–4T and 1.6045–3T of the Income Tax Regulations for filing Form 8806 and furnishing Form 1099–CAP to clearing organizations. This notice also provides information to filers of Forms 1099–CAP and 1099–B to assist in complying with the reporting requirements set forth in revised §§ 1.6043–4T and 1.6045–3T. The 2003 Forms 1099–CAP and 1099–B, and their instructions, do not reflect the provisions of the revised temporary regulations.

SECTION 2. Background

On December 30, 2003, the Internal Revenue Service (Service) issued temporary regulations under sections 6043(c) and 6045 of the Internal Revenue Code (T.D. 9101, 2004–5 I.R.B. _____ [68 FR 75119]). These regulations, which revise temporary regulations issued on November 18, 2002 (T.D. 9022, 2002–2 C.B. 909 [67 FR 69468]), require information reporting if a domestic corporation undergoes an acquisition of control or a substantial change in capital structure after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) of the Internal Revenue Code (Code). Pursuant to the revised regulations, a corporation must file Form 8806, "*Information Return for Acquisition of Control or Substantial Change in Capital Structure*," reporting and describing the acquisition of control or substantial change in capital structure. In addition, the revised regulations require the corporation to file Form 1099–CAP, "*Changes in Corporate Control and Capital Structure*," with the Service with respect to each of its shareholders that

is not an exempt recipient, and to furnish Form 1099–CAP to each such shareholder. The regulations also require a broker that holds stock on behalf of a customer in the corporation that the broker knows or has reason to know has engaged in a transaction described in these regulations to file Form 1099–B, "*Proceeds From Broker and Barter Exchange Transactions,*" with the Service with respect to its customer, and to furnish a copy of the Form 1099–B to the customer.

SECTION 3. Extension of Deadlines

Section 6081 of the Code provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by the Code or by regulations thereunder. Under the authority of section 6081, the Service is extending the deadlines set forth in revised §§ 1.6043–4T and 1.6045–3T for filing Forms 8806 with the Service and furnishing Forms 1099–CAP to clearing organizations for transactions occurring in calendar year 2003. Forms 8806 otherwise required to be filed with the Service by January 5, 2004, must be filed by January 12, 2004. Forms 1099–CAP otherwise required to be furnished to clearing organizations by January 5, 2004, must be furnished by January 12, 2004. This extension does not apply to any other deadline.

SECTION 4. Information for Filers of Form 1099–CAP

Under revised § 1.6043–4T(b), a reporting corporation must file Form 1099–CAP with respect to its shareholders who are not exempt recipients. The list of exempt recipients is set forth in § 1.6043–4T(b)(5), and includes brokers. Clearing organizations are not exempt recipients under the revised regulations. Therefore, corporations must file Form 1099–CAP with respect to shares held by a clearing organization, and furnish a copy of the form to the clearing organization. Pursuant to § 1.6043–4T(b)(4), Form 1099–CAP must be furnished to clearing organizations by January 5th of the year following the calendar year in which the transaction took place. Pursuant to Section 3 of this notice, Forms 1099–CAP otherwise due on January 5, 2004, must be furnished to clearing organizations no later than January 12, 2004. Taxpayers, however, are encouraged to comply as soon as possible prior to January 12, 2004.

The Depository Trust Company (DTC) is a clearing organization which holds a large percentage of publicly issued securities, and is likely to receive Forms 1099–CAP pursuant to the provisions of § 1.6043–4T(b). In anticipation of receiving such forms, DTC has established a specific mailing address. DTC requests that Forms 1099–CAP be delivered via express mail or other overnight service to:

Tax Information Reporting Services
Depository Trust & Clearing Corporation
55 Water Street — 25th Floor
New York, NY 10041
(212) 855–4703

The envelope should be marked with the words:

TIME CRITICAL TAX INFORMATION FORM 1099–CAP

DTC will also accept Form 1099–CAP electronically. Forms should be emailed to:

1099CAP@dtcc.com in Adobe Acrobat PDF file format

Furnishing Forms 1099 to payees electronically is permitted pursuant to section 401 of the Job Creation and Worker Assistance Act of 2002, if the rules set forth in § 31.6051–1T(j) are followed.

SECTION 5. Information for Filers of Form 1099–B

Pursuant to revised § 1.6045–3T(a), a broker that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know has engaged in a transaction under § 1.6043–4T(c) or (d) must file an information return with respect to the customer, unless the customer is an exempt recipient, and furnish a copy of the information return to the customer. Revised § 1.6045–3T(c) provides that the broker must use Form 1099–B, along with transmittal Form 1096, for this information reporting requirement. With respect to transactions in 2003, the broker may elect to use Form 1099–CAP in lieu of Form 1099–B.

In completing Form 1099–B, brokers should aggregate all proceeds (cash, stock, and other property) provided to the customer in Box 2 (Stocks, bonds, etc.). Brokers should use Box 5 (Description) to report the name and address of the corporation which engaged in the transaction and the number and class of shares exchanged by the customers (as required by § 1.6045–3T(d)(2) and (3)).

SECTION 6. DRAFTING INFORMATION

For further information regarding this notice, contact Nancy Rose of the Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, at (202) 622–4910 (not a toll-free call).

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26 CFR 301.7508–1: Time for performing certain acts postponed by reason of service in a combat zone or a Presidentially declared disaster.
(Also Part I, § 7508A; § 301.7508A–1.)

Rev. Proc. 2004–13

SECTION 1. PURPOSE

.01 This revenue procedure provides an updated list of time-sensitive acts, the performance of which may be postponed under sections 7508 and 7508A of the Internal Revenue Code (Code). Section 7508 of the Code postpones specified acts for individuals serving in the Armed Forces of the United States or serving in support of such Armed Forces in a combat zone. Section 7508A of the Code permits a postponement of specified acts for taxpayers affected by a Presidentially declared disaster or a terroristic or military action. The list of acts in this revenue procedure supplements the list of postponed acts in section 7508(a)(1) of the Code and section 301.7508A–1(b) of the Regulations on Procedure and Administration.

.02 This revenue procedure does not, by itself, provide any postponements under sections 7508 or 7508A. In order for taxpayers to be entitled to a postponement of any act listed in this revenue procedure, the IRS generally will publish a Notice or issue other guidance (including an IRS News Release) providing relief with respect to a specific combat zone, Presidentially declared disaster, or a terroristic or military action.

.03 This revenue procedure will be updated as needed when the IRS determines that additional acts should be included in the list of postponed acts or that certain acts should be removed from the list. Also, taxpayers may recommend that additional acts be considered for postponement under sections 7508 and 7508A. See section 17 of this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 7508(a)(1) of the Internal Revenue Code permits a postponement of certain time-sensitive acts for individuals serving in the Armed Forces or in support of such Armed Forces in an area designated by the President as a combat zone under section 112. Among these acts are the filing of returns, the payment of tax, the filing of a Tax Court petition, and the filing of a refund claim. In the event of service in a combat zone, the acts specified in section 7508(a)(1) of the Code are *automatically postponed*. In addition, if the Service publishes a Notice or other guidance providing additional relief under section 7508, some or all of the acts listed in this revenue procedure may be postponed. Likewise, acts not listed in this revenue procedure may be included in published guidance.

.02 Section 7508A of the Code provides that certain acts performed by taxpayers and the government may be postponed if the taxpayer is affected by a Presidentially declared disaster or a terroristic or military action. A "Presidentially declared disaster" is defined in section 1033(h)(3) of the Code. A "terroristic or military action" is defined in section 692(c)(2) of the Code. Section 301.7508A–1(d)(1) of the regulations defines seven types of affected taxpayers, including any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a "covered disaster area" and any business entity or sole proprietor whose principal place of business is located in a "covered disaster area." Postponements under section 7508A are not available simply because a disaster or a terroristic or military action has occurred. Generally, the IRS will publish a Notice or issue other guidance (including an IRS News Release) authorizing the postponement. Such guidance will describe the *acts* postponed, the *duration* of the postponement, and the *location* of the covered disaster area. See, for example, Notice 2001–68, 2001–2 C.B. 504, *supplementing* Notice 2001–61, 2001–2 C.B. 305. When a Notice or other guidance for a particular disaster is published, or issued, the guidance generally will refer to this revenue procedure and may provide for a postponement of all the acts listed in the regulations and this revenue procedure. Alternatively, the guidance may provide that only certain acts listed in this revenue procedure are postponed based on the time when the disaster occurred, its severity, and other factors.

SECTION 3. SCOPE

This revenue procedure applies to individuals serving in the Armed Forces in a combat zone, or in support of such Armed Forces, to affected taxpayers within the meaning of section 301.7508A–1(d)(1) of the regulations, and to taxpayers whom the IRS determines are affected by a terroristic or military action.

SECTION 4. APPLICATION

.01 The tables below list sections of the Internal Revenue Code and Treasury Regulations requiring the timely performance of specified acts that may be postponed under sections 7508 and 7508A.

.02 In order to avoid unnecessary duplication, the following tables do not include acts specified in sections 7508 or 7508A or the regulations thereunder. Thus, for example, no mention is made in the following tables of the filing of tax returns or the payment of taxes (or an installment thereof) because these acts are already covered by sections 7508 and 7508A and the regulations thereunder. Also, the following tables do not refer to the making of accounting method elections or any other elections required to be made on tax returns or attachments thereto. Reference to these elections is not necessary because postponement of the filing of a tax return automatically postpones the making of any election required to be made on the return or an attachment thereto.

.03 The following tables refer only to postponement of acts performed by taxpayers. Additional guidance will be published in the Internal Revenue Bulletin if a decision is made that acts performed by the government may be postponed under section 7508 or section 7508A.

SECTION 5. ACCOUNTING METHODS AND PERIODS

	Statute or Regulation	Act Postponed
1.	Chapter 1, Subchapter E of the Code	Any act relating to the adoption, election, retention, or change of any accounting method or accounting period, or to the use of an accounting method or accounting period, that is required to be performed on or before the due date of a tax return (including extensions). Examples of such acts include (a) the requirements in Rev. Proc. 2002–37, 2002–38, 2002–39 and 2003–62 that Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, be filed with the Director, Internal Revenue Service Center, on or before the due date (or the due date including extensions) of the tax return for the short period required to effect the change in accounting period; and (b) the requirement in Rev. Proc. 2002–9, 2002–1 C.B. 327, section 6.02 (3) that a copy of Form 3115 must be filed with the national office no later than when the original Form 3115 is filed with the timely filed tax return for the year of the accounting method change.

	Statute or Regulation	Act Postponed
2.	Treas. Reg. § 1.381(c)(4)–1(d)(2)	If the acquiring corporation is not permitted to use the method of accounting used by the acquiring corporation, the method of accounting used by the distributor/transferor corporation, or the principal method of accounting; or if the corporation wishes to use a new method of accounting, then the acquiring corporation must apply to the Commissioner to use another method. Treas. Reg. § 1.381(c)(4)–1(d)(2) requires applications to be filed not later than 90 days after the date of distribution or transfer. Rev. Proc. 83–77, 1983–2 C.B. 594, provides an automatic 90-day extension.
3.	Treas. Reg. § 1.381(c)(5)–1(d)(2)	If the acquiring corporation is not permitted to use the inventory method used by the acquiring corporation, the inventory method used by the distributor/transferor corporation, or the principal method of accounting, or wishes to use a new method of accounting, then the acquiring corporation must apply to the Commissioner to use another method. Treas. Reg. § 1.381(c)(5)–1(d)(2) requires applications to be filed not later than 90 days after the date of distribution or transfer. Rev. Proc. 83–77 provides an automatic 90-day extension.
4.	Treas. Reg. § 1.442–1(b)(1)	In order to secure prior approval of an adoption, change, or retention of a taxpayer's annual accounting period, the taxpayer generally must file an application on Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, with the Commissioner within such time as is provided in administrative procedures published by the Commissioner from time to time. *See*, for example, Rev. Procs. 2003–62, 2003–32 I.R.B. 299, 2002–37, 2002–1 C.B. 1030, 2002–38, 2002–1 C.B. 1037 and 2002–39, 2002–1 C.B. 1046.
5.	Treas. Reg. § 1.444–3T(b)(1)	A section 444 election must be made by filing Form 8716, *Election to Have a Tax Year Other Than a Required Tax Year*, with the Service Center. Generally, Form 8716 must be filed by the earlier of (a) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or (b) the due date (without regard to extensions) of the income tax return resulting from the section 444 election.
6.	Treas. Reg. § 1.446–1(e)(2)(i)	Section 6 of Rev. Proc. 2002–9, 2002–1 C.B. 327, 341, allows a taxpayer to change a method of accounting within the terms of the revenue procedure by attaching the application form to the timely filed return for the year of change. Section 6.02(3)(b) grants an automatic extension of 6 months within which to file an amended return with the application for the change following a timely filed original return for the year of change.
7.	Treas. Reg. § 1.446–1(e)(3)(i)	To secure the Commissioner's consent to a change in method of accounting, the taxpayer must file an application on Form 3115, *Application for Change in Accounting Method*, with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting (*i.e.*, must be filed by the last day of such taxable year). This filing requirement is also in Rev. Proc. 97–27, 1997–1 C.B. 680. (But see Rev. Proc. 2002–9 for automatic changes in method of accounting that can be made with the return.)
8.	Treas. Reg. § 1.461–1(c)(3)(ii)	A taxpayer may elect, with the consent of the Commissioner, to accrue real property taxes ratably in accordance with section 461(c). A written request for permission to make such an election must be submitted within 90 days after the beginning of the taxable year to which the election is first applicable. Rev. Proc. 83–77 provides an automatic 90-day extension.
9.	Treas. Reg. § 1.7519–2T(a)(2), (3) and (4)	A partnership or S corporation must file the Form 8752, *Required Payment or Refund Under Section 7519*, if the taxpayer has made an election under section 444 to use a taxable year other than its required taxable year and the election is still in effect. The Form 8752 must be filed and any required payment must be made by the date stated in the instructions to Form 8752.
10.	Rev. Proc. 92–29, section 6.02	A developer of real estate requesting the Commissioner's consent to use the alternative cost method must file a private letter ruling request within 30 days after the close of the taxable year in which the first benefited property in the project is sold. The request must include a consent extending the period of limitation on the assessment of income tax with respect to the use of the alternative cost method.

	Statute or Regulation	Act Postponed
1.	Treas. Reg. § 1.71–1T(b), Q&A–7	A payer spouse may send cash to a third party on behalf of a spouse that qualifies for alimony or separate maintenance payments if the payments are made to the third party at the written request or consent of the payee spouse. The request or consent must state that the parties intend the payment to be treated as an alimony payment to the payee spouse subject to the rules of section 71. The payer spouse must receive the request or consent prior to the date of filing of the payer spouse's first return of tax for the taxable year in which the payment was made.
2.	Treas. Reg. § 1.77–1	A taxpayer who receives a loan from the Commodity Credit Corporation may elect to include the amount of the loan in his gross income for the taxable year in which the loan is received. The taxpayer in subsequent taxable years must include in his gross income all amounts received during those years as loans from the Commodity Credit Corporation, unless he secures the permission of the Commissioner to change to a different method of accounting. Treas. Reg. § 1.77–1 requires such requests to be filed within 90 days after the beginning of the taxable year of change. Rev. Proc. 83–77 provides an automatic 90-day extension.
3.	Treas. Reg. § 1.110–1(b)(4)(ii)(A)	The lessee must expend its construction allowance on the qualified long-term real property within eight and one-half months after the close of the taxable year in which the construction allowance was received.
4.	Sec. 118(c)(2)	A contribution in aid of construction received by a regulated public utility that provides water or sewerage disposal services must be expended by the utility on qualifying property before the end of the second taxable year after the year in which it was received by the utility.
5.	Treas. Reg. § 1.170A–5(a)(2)	A contribution of an undivided present interest in tangible personal property shall be treated as made upon receipt by the donee of a formally executed and acknowledged deed of gift. The period of initial possession by the donee may not be deferred for more than one year.
6.	Sec. 172(b)(3)	A taxpayer entitled to a carryback period under section 172(b)(1) may elect to relinquish the entire carryback period. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss for which the election is to be effective.
7.	Sec. 172(f)(6)	A taxpayer entitled to a 10-year carryback under section 172(b)(1)(C) (relating to certain specified liability losses) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to that section. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss.
8.	Sec. 172(i)(3)	A taxpayer entitled to a 5-year carryback period under section 172(b)(1)(G) (relating to certain farming losses) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to that section. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss.
9.	Sec. 172(j)	A taxpayer entitled to a 5-year carryback period under section 172(h)(1)(H) (relating to taxable years ending during 2001 and 2002) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to that section. The taxpayer must make the election by the due date of the taxpayer's federal income tax return (including extensions) for the taxable year of the net operating loss.
10.	Sec. 468A(g)	A taxpayer that makes payments to a nuclear decommissioning fund with respect to a taxable year must make the payments within 2½ months after the close of such taxable year (the deemed payment date).

	Statute or Regulation	Act Postponed
11.	Sec. 530(h)	A trustee of a Coverdell education savings account must provide certain information concerning the account to the beneficiary by January 31 following the calendar year to which the information relates. In addition, Form 5498 must be filed with the IRS by May 31 following the calendar year to which the information relates.
12.	Sec. 563(a)	In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
13.	Sec. 563(b)	In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects on its return for the taxable year, be considered as paid during such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
14.	Sec. 563(c)	In the determination of the dividends paid deduction for purposes of part III, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the company designates such dividend as being taken into account, be considered as paid during such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
15.	Sec. 563(d)	For the purpose of applying section 562(a), with respect to distributions under subsection (a), (b), or (c) of section 562, a distribution made after the close of the taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year. The close of the taxable year is not affected by this revenue procedure; the 3½-month period within which the dividend is paid is the period extended.
16.	Treas. Reg. § 1.468A–3(h)(1)(v)	A taxpayer must file a request for a schedule of ruling amounts for a nuclear decommissioning fund by the deemed payment date (2½-months after the close of the taxable year for which the schedule of ruling amounts is sought).
17.	Treas. Reg. § 1.468A–3(h)(1)(vii)	A taxpayer has 30 days to provide additional requested information with respect to a request for a schedule of ruling amounts. If the information is not provided within the 30 days, the request will not be considered filed until the date the information is provided.
18.	Sec. 529(c)(3)(C)(i)	A rollover contribution to another qualified tuition program must be made no later than the 60th day after the date of a distribution from a qualified tuition program.
19.	Sec. 530(d)(4)(C)(i)	Excess contributions to a Coverdell education savings account must be distributed before a specified time in the taxable year following the taxable year in which the contribution is made.
20.	Sec. 530(d)(5)	A rollover contribution to another Coverdell education savings account must be made no later than the 60th day after the date of a payment or distribution from a Coverdell education savings account.
21.	Sec. 1031(a)	Any property received by the taxpayer shall be treated as property which is not like-kind property if - (A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (B) such property is received after the earlier of (i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

	Statute or Regulation	Act Postponed
22.	Treas. Reg. § 1.1033(c)(3)	Certain elections respecting the non recognition of gain on the involuntary conversion of property (Treas. Reg. §§ 1.1033(c)(1) and (2)) are required to be made within the time periods specified in Treas. Reg. § 1.1033(c)(3).
23.	Sec. 1043(a)	If an eligible person (as defined under section 1043(b)) sells any property pursuant to a certificate of divestiture, then at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.
24.	Sec. 1045(a)	A taxpayer other than a corporation may elect to roll over gain from the sale of qualified small business stock held for more than six months if other qualified small business stock is purchased by the taxpayer during the 60-day period beginning on the date of sale.
25.	Sec. 1382(d)	An organization, to which section 1382(d) applies, is required to pay a patronage dividend within 8½ months after the close of the year.
26.	Sec. 1388(j)(3)(A)	Any cooperative organization that exercises its option to net patronage gains and losses is required to give notice to its patrons of the netting by the 15th day of the 9th month following the close of the taxable year.
27.	Treas. Reg. § 301.7701–3(c)	The effective date of an entity classification election (Form 8832) cannot be more than 75 days prior to the date on which the election is filed.
28.	Treas. Reg. § 301.9100–2(a)(1)	An automatic extension of 12 months from the due date for making a regulatory election is granted to make certain elections, including the election to use other than the required taxable year under section 444, and the election to use LIFO under section 472.
29.	Treas. Reg. §§ 301.9100–2(b)–(d)	An automatic extension of 6 months from the due date of a return, excluding extensions, is granted to make the regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions (for example, a taxpayer has an automatic 6 month extension to file an application to change a method of accounting under Rev. Proc. 2002–9), provided the taxpayer (a) timely filed its return for the year of election, (b) within that 6-month extension period, takes the required corrective action to file the election in accordance with the statute, regulations, revenue procedure, revenue ruling, notice or announcement permitting the election, and (c) writes at the top of the return, statement of election or other form "FILED PURSUANT TO § 301.9100–2."
30.	Notice 2002–25	Notice 2002–25, 2002–1 C.B. 743, relaxes the contemporaneous written acknowledgment requirement for charitable contributions of $250 or more made after September 10, 2001, and before January 1, 2002, if taxpayers obtain the written acknowledgment or have evidence of a good-faith attempt to obtain it by October 15, 2002.

SECTION 7. CORPORATE ISSUES

	Statute or Regulation	Act Postponed
1.	Sec. 302(e)(1)	A corporation must complete a distribution in pursuance of a plan of partial liquidation of a corporation within the specified period.
2.	Sec. 303 and Treas. Reg. § 1.303–2	A corporation must complete the distribution of property to a shareholder in redemption of all or part of the stock of the corporation which (for Federal estate tax purposes) is included in determining the estate of a decedent. Section 303 and Treas. Reg. § 1.303–2 require, among other things, that the distribution occur within the specified period.
3.	Sec. 304(b)(3)(C)	If certain requirements are met, section 304(a) does not apply to a transaction involving the formation of a bank holding company. One requirement is that within a specified period (generally 2 years) after control of a bank is acquired, stock constituting control of the bank is transferred to a bank holding company in connection with the bank holding company's formation.

	Statute or Regulation	Act Postponed
4.	Secs. 316(b)(2)(A) and (B)(ii) and Treas. Reg. §§ 1.316–1(b)(2) and (5)	A personal holding company may designate as a dividend to a shareholder all or part of a distribution in complete liquidation described in section 316(b)(2)(B) and Treas. Reg. § 1–316–1(b) by, *inter alia*, including such amount as a dividend in Form 1099 filed in respect of such shareholder pursuant to section 6042(a) and the regulations thereunder and in a written statement of dividend payments furnished to such shareholder pursuant to section 6042(c) and Treas. Reg. 1.6042–4.
5.	Sec. 332(b) and Treas. Reg. §§ 1.332–3 and 1.332–4	A corporation must completely liquidate a corporate subsidiary within the specified period.
6.	Sec. 338(d)(3) and (h), and Treas. Reg. § 1.338–2	An acquiring corporation must complete a "qualified stock purchase" of a target corporation's stock within the specified acquisition period.
7.	Sec. 338(g) and Treas. Reg. § 1.338–2	An acquiring corporation may elect to treat certain stock purchases as asset acquisitions. The election must be made within the specified period.
8.	Sec. 338(h)(10) and Treas. Reg. § 1.338(h)(10)–1(c)	An acquiring corporation and selling group of corporations may elect to treat certain stock purchases as asset purchases, and to avoid gain or loss upon the stock sale. The election must be made within the specified period.
9.	Treas. Reg. § 1.381(c)(17)–1(c)	An acquiring corporation files a Form 976, *Claim for Deficiency Dividends Deduction by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*, within 120 days after the date of the determination under section 547(c) to claim a deduction of a deficiency dividend.
10.	Treas. Reg. § 1.441–3(b)	A personal service corporation may obtain the approval of the Commissioner to adopt, change, or retain an annual accounting period by filing Form 1128, *Application to Adopt, Change or Retain a Tax Year*, within such time as is provided in the administrative procedures published by the Commissioner. *See* Rev. Procs. 2002–38 and 2002–39.
11.	Sec. 562(b)(1)(B)	In the case of a complete liquidation (except in the case of a complete liquidation of a personal holding company or foreign personal holding company) occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.
12.	Sec. 562(b)(2)	In the case of a complete liquidation of a personal holding company occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction to the extent that such is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution.
13.	Sec. 597 and Treas. Reg. § 1.597–4(g)	A consolidated group of which an Institution (as defined by §1.591–1(b)) is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency (as defined by §1.591–1(b)) receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank (as defined by §1.591–1(b)). Except as otherwise provided in §1.597–4(g)(6), a consolidated group makes the election by sending a written statement by certified mail to the affected Institution on or before the later of 120 days after its placement in Agency (as defined by §1.591–1(b)) receivership or May 31, 1996.
14.	Sec. 1502 and Treas. Reg. § 1.1502–75(c)(1)(i)	A common parent must apply for permission to discontinue filing consolidated returns within a specified period after the date of enactment of a law affecting the computation of tax liability.

	Statute or Regulation	Act Postponed
15.	Sec. 6425 and Treas. Reg. § 1.6425–1	Corporations applying for an adjustment of an overpayment of estimated income tax must file Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax*, on or before the 15th day of the third month after the taxable year, or before the date the corporation first files its income tax return for such year, whichever is earlier.
16.	Rev. Proc. 2003–33, Section 5	If the filer complies with the procedures set forth in the revenue procedure, including a requirement that the filer file Form 8023, *Election Under Section 338(g) Corporate Qualified Stock Purchase*, within the specified period, the filer gets an automatic extension under Treas. Reg. § 301.9100–3 to file an election under section 338.

SECTION 8. EMPLOYEE BENEFIT ISSUES

	Statute or Regulation	Act Postponed
1.	Sec. 72(p)(2)(B) and (C), and Treas. Reg. § 1.72(p)–1, Q&A–10	A loan from a qualified employer plan to a participant in, or a beneficiary of, such plan must be repaid according to certain time schedules specified in section 72(p)(2)(B) and (C) (including, if applicable, any grace period granted pursuant to Treas. Reg. § 1.72(p)–1, Q&A–10).
2.	Sec. 72(t)(2)(A)(iv)	Under section 72(t)(2)(A)(iv), to avoid the imposition of a 10-percent additional tax on a distribution from a qualified retirement plan, the distribution must be part of a series of substantially equal periodic payments, made at least annually.
3.	Sec. 72(t)(2)(F)	To avoid the imposition of a 10-percent additional tax on a distribution from an individual retirement arrangement (IRA) for a first-time home purchase, such distribution must be used within 120 days of the distribution to pay qualified acquisition costs or rolled into an IRA.
4.	Sec. 83(b) and Treas. Reg. § 1.83–2(b)	If substantially nonvested property to which section 83 applies is transferred to any person, the service provider may elect to include the excess of the fair market value of the property over the amount paid (if any) for the property in gross income for the taxable year in which such property is transferred. This election must occur not later than 30 days after the date the property was transferred.
5.	Proposed Treas. Reg. § 1.125–1, Q&A–15	Cafeteria plan participants will avoid constructive receipt of the taxable amounts if they elect the benefits they will receive before the beginning of the period during which the benefits will be provided.
6.	Proposed Treas. Reg. § 1.125–1, Q&A–14 and Proposed Treas. Reg. § 1.125–2, Q&A–7	Cafeteria plan participants will not be in constructive receipt if, at the end of the plan year, they forfeit amounts elected but not used during the plan year.
7.	Proposed Treas. Reg. § 1.125–2, Q&A–5	Cafeteria plan participants may receive in cash the value of unused vacation days on or before the earlier of the last day of the cafeteria plan year or the last day of the employee's taxable year to which the unused days relate.
8.	Treas. Reg. § 1.162–27(e)(2)	A performance goal is considered preestablished if it is established in writing by the corporation's compensation committee not later than 90 days after the commencement of the period of service to which the performance goal relates if the outcome is substantially uncertain at the time the compensation committee actually establishes the goal. In no event, however, will the performance goal be considered pre-established if it is established after 25 percent of the period of service has elapsed.
9.	Sec. 220(f)(5)	A rollover contribution to an Archer MSA must be made no later than the 60th day after the day on which the holder receives a payment or distribution from an Archer MSA.

	Statute or Regulation	Act Postponed
10.	Sec. 220(h)	A trustee or custodian of an MSA (Archer MSA or Medicare+Choice MSA) must provide certain information concerning the MSA to the account holder by January 31 following the calendar year to which the information relates. In addition, MSA contribution information must be furnished to the account holder, and Form 5498, *IRA Contribution Information*, filed with the IRS, by May 31 following the calendar year to which the information relates.
11.	Secs. 401(a)(9), 403(a)(1), 403(b)(10), 408(a)(6), 408(b)(3) and 457(d)(2)	The first required minimum distribution from plans subject to the rules in section 401(a)(9) must be made no later than the required beginning date. Subsequent required minimum distributions must be made by the end of each distribution calendar year.
12.	Sec. 401(a)(28)(B)(i)	A qualified participant in an ESOP (as defined in section 401(a)(28)(B)(iii)) may elect within 90 days after the close of each plan year in the qualified election period (as defined in section 401(a)(28)(B)(iv)) to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (50 percent in the case of the last election).
13.	Sec. 401(a)(28)(B)(ii)	A plan must distribute the portion of the participant's account covered by an election under section 401(a)(28)(B)(i) within 90 days after the period during which an election can be made; or the plan must offer at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making the election under section 401(a)(28)(B)(i) and within 90 days after the period during which the election may be made, the plan must invest the portion of the participant's account in accordance with the participant's election.
14.	Sec. 401(a)(30) and Treas. Reg. § 1.401(a)–30 and § 1.402(g)–1	Excess deferrals for a calendar year, plus income attributable to the excess, must be distributed no later than the first April 15 following the calendar year.
15.	Sec. 401(b) and Treas. Reg. § 1.401(b)–1	A retirement plan that fails to satisfy the requirements of section 401(a) or section 403(a) on any day because of a disqualifying provision will be treated as satisfying such requirements on such day if, prior to the expiration of the applicable remedial amendment period, all plan provisions necessary to satisfy the requirements of section 401(a) or 403(a) are in effect and have been made effective for the whole of such period.
16.	Sec. 401(k)(8)	A cash or deferred arrangement must distribute excess contributions for a plan year, plus income attributable to the excess, pursuant to the terms of the arrangement no later than the close of the following plan year.
17.	Sec. 401(m)(6)	A plan subject to section 401(m) must distribute excess aggregate contributions for a plan year, plus income attributable to the excess, pursuant to the terms of the plan no later than the close of the following plan year.
18.	Sec. 402(g)(2)(A) and Treas. Reg. § 1.402(g)–1	An individual with excess deferrals for a taxable year must notify a plan, not later than a specified date following the taxable year that excess deferrals have been contributed to that plan for the taxable year. A distribution of excess deferrals identified by the individual, plus income attributable to the excess, must be accomplished no later than the first April 15 following the taxable year of the excess.
19.	Sec. 404(k)(2)(A)(ii)	An ESOP receiving dividends on stock of the C corporation maintaining the plan must distribute the dividend in cash to participants or beneficiaries not later than 90 days after the close of the plan year in which the dividend was paid.
20.	Secs. 408(i) and 6047(c)	A trustee or issuer of an individual retirement arrangement (IRA) must provide certain information concerning the IRA to the IRA owner by January 31 following the calendar year to which the information relates. In addition, IRA contribution information must be furnished to the owner, and Form 5498, *Individual Retirement Arrangement Information*, filed with the IRS, by May 31 following the calendar year to which the information relates.

	Statute or Regulation	Act Postponed
21.	Sec. 409(h)(4)	An employer required to repurchase employer securities under section 409(h)(1)(B) must provide a put option for a period of at least 60 days following the date of distribution of employer securities to a participant, and if the put option is not exercised, for an additional 60-day period in the following plan year. A participant who receives a distribution of employer securities under section 409(h)(1)(B) must exercise the put option provided by that section within a period of at least 60 days following the date of distribution, or if the put option is not exercised within that period, for an additional 60-day period in the following plan year.
22.	Sec. 409(h)(5)	An employer required to repurchase employer securities distributed as part of a total distribution must pay for the securities in substantially equal periodic payments (at least annually) over a period beginning not later than 30 days after the exercise of the put option and not exceeding 5 years.
23.	Sec. 409(h)(6)	An employer required to repurchase employer securities distributed as part of an installment distribution must pay for the securities not later than 30 days after the exercise of the put option under section 409(h)(4).
24.	Sec. 409(o)	An ESOP must commence the distribution of a participant's account balance, if the participant elects, not later than 1 year after the close of the plan year — i) in which the participant separates from service by reason of attaining normal retirement age under the plan, death or disability; or ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service (except if the participant is reemployed before distribution is required to begin).
25.	Treas. Reg. § 1.409(p)–1T(h)(1)	Under this section, an employer must distribute nonqualified deferred compensation on or before July 21, 2004, in order to avoid application of section 1.409(p)–1T(f)(2)(iv) of the temporary regulations regarding synthetic equity.
26.	Sec. 457(e)(16)(B)	An eligible rollover distribution from a section 457 eligible governmental plan may be rolled over to an eligible retirement plan no later than the 60th day following the day the distributee received the distributed property.
27.	Sec. 1042(a)(2)	A taxpayer must purchase qualified replacement property (defined in section 1042(c)(4)) within the replacement period, defined in section 1042(c)(3) as the period which begins 3 months before the date of the sale of qualified securities to an ESOP and ends 12 months after the date of such sale.
28.	Sec. 4972(c)(3)	Nondeductible plan contributions must be distributed prior to a certain date to avoid a 10 percent tax.
29.	Sec. 4979 and Treas. Reg. § 54.4979–1	A 10 percent tax on the amount of excess contributions and excess aggregate contributions under a plan for a plan year will be imposed unless the excess, plus income attributable to the excess is distributed (or, if forfeitable, forfeited) no later than 2½-months after the close of the plan year. In the case of an employer maintaining a SARSEP, employees must be notified of the excess by the employer within the 2½-month period to avoid the tax.
30.	Secs. 6033, 6039D, 6047, 6057, 6058, and 6059	Form 5500 and Form 5500–EZ, which are used to report annual information concerning employee benefit plans and fringe benefit plans, must be filed by a specified time. *General Advice* Affected filers are advised to follow the instructions accompanying the Form 5500 series (or other guidance published on the postponement) regarding how to file the forms when postponements are granted pursuant to section 7508 or section 7508A.

	Statute or Regulation	Act Postponed
		Combat Zone Postponements under Section 7508 In the case of taxpayers who are individuals, the IRS may permit a postponement of the filing of the Form 5500 or Form 5500–EZ under section 7508. Whatever postponement of the Form 5500 series filing due date is permitted by the IRS under section 7508 will also be permitted by the Department of Labor and the Pension Benefit Guaranty Corporation (PBGC) for similarly situated individuals who are plan administrators. *Postponements for Presidentially Declared Disasters and Terroristic or Military Actions under Section 7508A* In the case of "affected taxpayers," as defined in Treas. Reg. § 301.7508A–1(d), the IRS may permit a postponement of the filing of the Form 5500 or Form 5500–EZ. Taxpayers who are unable to obtain on a timely basis information necessary for completing the forms from a bank, insurance company, or any other service provider because such service providers' operations are located in a covered disaster area will be treated as "affected taxpayers." Whatever postponement of the Form 5500 series filing due date is permitted by the IRS under section 7508A will also be permitted by the Department of Labor and PBGC for similarly situated plan administrators and direct filing entities.
31.	Rev. Proc. 2003–44, Sections 9.02(1) and (2)	The correction period for self-correction of operational failures is the last day of the second plan year following the plan year for which the failure occurred. The correction period for self-correction of operational failures for transferred assets does not end until the last day of the first plan year that begins after the corporate merger, acquisition, or other similar employer transaction.
32.	Rev. Proc. 2003–44, Section 12.07	If the submission involves a plan with transferred assets and no new incidents of the failures in the submission occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the plan sponsor may calculate the amount of plan assets and number of plan participants based on the Form 5500 information that would have been filed by the plan sponsor for the plan year that includes the employer transaction if the transferred assets were maintained as a separate plan.
33.	Rev. Proc. 2003–44, Section 14.03	If an examination involves a plan with transferred assets and the IRS determines that no new incidents of the failures that relate to the transferred assets occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the sanction under Audit CAP will not exceed the sanction that would apply if the transferred assets were maintained as a separate plan.

SECTION 9. ESTATE, GIFT AND TRUST ISSUES

	Statute or Regulation	Act Postponed
1.	Sec. 643(g)	The trustee may elect to treat certain payments of estimated tax as paid by the beneficiary. The election shall be made on or before the 65th day after the close of the taxable year of the trust.
2.	Sec. 2011(c)	The executor of a decedent's estate must file a claim for a credit for state estate, inheritance, legacy or succession taxes by filing a claim within 4 years of filing Form 706, *United States Estate (and Generation Skipping Transfer) Tax Return*. (Section 2011 is amended effective for estates of decedents dying after 12/31/04).
3.	Sec. 2014(e)	The executor of a decedent's estate must file a claim for foreign death taxes within 4 years of filing Form 706, *United States Estate (and Generation Skipping Transfer) Tax Return*.

	Statute or Regulation	Act Postponed
4.	Sec. 2016 and Treas. Reg. § 20.2016–1	If an executor of a decedent's estate (or any other person) receives a refund of any state or foreign death taxes claimed as a credit on Form 706, the IRS must be notified within 30 days of receipt. (Section 2016 is amended effective for estates of decedents dying after 12/31/04).
5.	Sec. 2031(c)	If an executor of a decedent's estate elects on Form 706 to exclude a portion of the value of land that is subject to a qualified conservation easement, agreements relating to development rights must be implemented within 2 years after the date of the decedent's death.
6.	Sec. 2032(d)	The executor of a decedent's estate may elect an alternate valuation on a late filed Form 706 if the Form 706 is not filed later than 1 year after the due date.
7.	Sec. 2032A(c)(7)	A qualified heir, with respect to specially valued property, is provided a two-year grace period immediately following the date of the decedent's death in which the failure by the qualified heir to begin using the property in a qualified use will not be considered a cessation of qualified use and therefore will not trigger additional estate tax.
8.	Sec. 2032A(d)(3)	The executor of a decedent's estate has 90 days after notification of incomplete information/signatures to provide the information/signatures to the IRS regarding an election on Form 706 with respect to specially valued property.
9.	Sec. 2046	A taxpayer may make a qualified disclaimer no later than 9 months after the date on which the transfer creating the interest is made, or the date the person attains age 21.
10.	Sec. 2053(d) and Treas. Reg. §§ 20.2053–9(c) and 10(c)	If the executor of a decedent's estate elects to take a deduction for state and foreign death tax imposed upon a transfer for charitable or other uses, the executor must file a written notification to that effect with the IRS before expiration of the period of limitations on assessments (generally 3 years). (Section 2053 is amended effective for estates of decedents dying after 12/31/04).
11.	Sec. 2055(e)(3)	A party in interest must commence a judicial proceeding to change an interest into a qualified interest no later than the 90th day after the estate tax return (Form 706) is required to be filed or, if no return is required, the last date for filing the income tax return for the first taxable year of the trust.
12.	Sec. 2056(d)	A qualified domestic trust (QDOT) election must be made on Form 706, Schedule M, and the property must be transferred to the trust before the date on which the return is made. Any reformation to determine if a trust is a QDOT requires that the judicial proceeding be commenced on or before the due date for filing the return.
13.	Sec. 2056A(b)(2)	The trustee of a QDOT must file a claim for refund of excess tax no later than 1 year after the date of final determination of the decedent's estate tax liability.
14.	Sec. 2057(i)(3)(G)	A qualified heir, with respect to qualified family owned business, has a two-year grace period immediately following the date of the decedent's death in which the failure by the qualified heir to begin using the property in a qualified use will not be considered a cessation of qualified use and therefore will not trigger additional estate tax. (The section 2057 election is not available to estates of decedents dying after 12/31/03).
15.	Sec. 2057(i)(3)(H)	The executor of a decedent's estate has 90 days after notification of incomplete information/signatures to provide the information/signatures to the IRS regarding an election on Form 706 with respect to specially valued property.
16.	Sec. 2516	The IRS will treat certain transfers as made for full and adequate consideration in money or money's worth where husband and wife enter into a written agreement relative to their marital and property rights and divorce actually occurs within the 3-year period beginning on the date 1 year before such agreement is entered into.
17.	Sec. 2518(b)	A taxpayer may make a qualified disclaimer no later than 9 months after the date on which the transfer creating the interest is made, or the date the person attains age 21.

SECTION 10. EXEMPT ORGANIZATION ISSUES

	Statute or Regulation	Act Postponed
1.	Section 501(h)	Under section 501(h), certain eligible 501(c)(3) organizations may elect on Form 5768 to have their legislative activities measured solely by expenditures. From 5768 is effective beginning with a taxable period provided it is filed before the end of the organization's taxable period.
2.	Sec. 505(c)(1)	An organization must give notice by filing Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, to be recognized as an organization exempt under section 501(c)(9) or section 501(c)(17). Generally, if the exemption is to apply for any period before the giving of the notice, Treas. Reg. § 505(c)–1T, Q&A–6, of the regulations requires that Form 1024 be filed within 15 months from the end of the month in which the organization was organized.
3.	Sec. 508 and Treas. Reg. § 1.508–1	A purported section 501(c)(3) organization must generally file Form 1023, *Application for Recognition of Exemption*, to qualify for exemption. Generally, if the exemption is to apply for any period before the giving of the notice, the Form 1023 must be filed within 15 months from the end of the month in which the organization was organized.
4.	Section 527(i)(2)	Certain political organizations shall not be treated as tax-exempt section 527 organizations unless each such organization electronically files a notice (Form 8871) not less than 24 hours after the date on which the organization is established, or, in the case of a material change in the information required, not later than 30 days after such material change.
5.	Section 527(j)(2)	Under section 527(j)(2), certain tax-exempt political organizations that accept contributions or make expenditures for an exempt function under section 527 during a calendar year are required to file periodic reports on Form 8872, beginning with the first month or quarter in which they accept contributions or make expenditures, unless excepted. In addition, tax-exempt political organizations that make contributions or expenditures with respect to an election for federal office may be required to file pre-election reports for that election. A tax-exempt political organization that does not file the required Form 8872, or that fails to include the required information, must pay an amount calculated by multiplying the amount of the contributions or expenditures that are not disclosed by the highest corporate tax rate.
6.	Section 6033(g)(1) and Treas. Reg. § 1.6033–2(e)	Annual information returns (Forms 990) of certain tax-exempt political organizations described under section 527 must be filed on or before the 15th day of the 5th month following the close of the taxable year.
7.	Sec. 6072(e) and Treas. Reg. § 1. 6033–2(e)	Annual returns of organizations exempt under section 501(a) must be filed on or before the 15th day of the 5th month following the close of the taxable year.
8.	Rev. Proc. 80–27, Section 6.01	The central organization of a group ruling is required to report information regarding the status of members of the group annually (at least 90 days before the close of its annual accounting period).

SECTION 11. EXCISE TAX ISSUES

	Statute or Regulation	Act Postponed
1.	Treas. Reg. § 48.4101–1(h)(v)	A registrant must notify the IRS of any change in the information a registrant has submitted within 10 days.
2.	Sec. 4221(b) and Treas. Reg. § 48.4221–2(c)	A manufacturer is allowed to make a tax-free sale of articles for resale to a second purchaser for use in further manufacture. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.

	Statute or Regulation	Act Postponed
3.	Sec. 4221(b) and Treas. Reg. § 48.4221–3(c)	A manufacturer is allowed to make a tax-free sale of articles for export. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.
4.	Sec. 4221(e)(2)(A) and Treas. Reg. § 48.4221–7(c)	A manufacturer is allowed to make a tax-free sale of tires for use by the purchaser in connection with the sale of another article manufactured or produced by the purchaser. This rule ceases to apply six months after the earlier of the sale or shipment date unless the manufacturer receives certain proof.

SECTION 12. INTERNATIONAL ISSUES

	Statute or Regulation	Act Postponed
1.	Sec. 482 and Treas. Reg. § 1.482–1(g)(4)(ii)(C)	A claim for a setoff of a section 482 allocation by the IRS must be filed within 30 days of either the date of the IRS's letter transmitting an examination report with notice of the proposed adjustment or the date of a notice of deficiency.
2.	Sec. 482 and Treas. Reg. § 1.482–1(j)(2)	A claim for retroactive application of the final section 482 regulations, otherwise effective only for taxable years beginning after October 6, 1994, must be filed prior to the expiration of the statute of limitations for the year for which retroactive application is sought.
3.	Sec. 482 and Treas. Reg. § 1.482–7(j)(2)	A participant in a cost-sharing arrangement must provide documentation regarding the arrangement, as well as documentation specified in Treas. Reg. §§ 1.482–7(b)(4) and 1.482–7(c)(1), within 30 days of a request by the IRS.
4.	Treas. Reg. § 1.882–5(d)(2)(ii)(A)(2)	Liabilities of a foreign corporation that is not a bank must be entered on a set of books at a time reasonably contemporaneous with the time the liabilities are incurred.
5.	Treas. Reg. § 1.882–5(d)(2)(iii)(A)(1)	Liabilities of foreign corporations that are engaged in a banking business must be entered on a set of books relating to an activity that produces ECI before the close of the day on which the liability is incurred.
6.	Treas. Reg. § 1.884–2T(b)(3)(i)	Requirement that marketable securities be identified on the books of a U.S. trade or business within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets. This requirement applies when a taxpayer has elected to be treated as remaining engaged in a U.S. trade or business for branch profits tax purposes.
7.	Treas. Reg. § 1.884–4(b)(3)(ii)(B)	Requirement that a foreign corporation which identifies liabilities as giving rise to U.S. branch interest, send a statement to the recipients of such interest within two months of the end of the calendar year in which the interest was paid, stating that such interest was U.S. source income (if the corporation did not make a return pursuant to section 6049 with respect to the interest payment).
8.	Sec. 922(a)(1)(E) and Treas. Reg. § 1.922–1(j) (Q&A–19)	The FSC must appoint a new non-U.S. resident director within 30 days of the date of death, resignation, or removal of the former director, in the event that the sole non-U.S. resident director of a FSC dies, resigns, or is removed.
9.	Sec. 924(b)(2)(B) and Treas. Reg. § 1.924(a)–1T(j)(2)(i)	A taxpayer must execute an agreement regarding unequal apportionment at a time when at least 12 months remain in the period of limitations (including extensions) for assessment of tax with respect to each shareholder of the small FSC in order to apportion unequally among shareholders of a small FSC the $5 million foreign trading gross receipts used to determine exempt foreign trade income.
10.	Sec. 924(c)(2) and Treas. Reg. § 1.924(c)–1(c)(4)	The FSC must open a new qualifying foreign bank account within 30 days of the date of termination of the original bank account, if a FSC's qualifying foreign bank account terminates during the taxable year due to circumstances beyond the control of the FSC.
11.	Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(1)	The FSC must transfer funds from its foreign bank account to its U.S. bank account, equal to the dividends, salaries, or fees disbursed, and such transfer must take place within 12 months of the date of the original disbursement from the U.S. bank account, if dividends, salaries, or fees are disbursed from a FSC's U.S. bank account.

	Statute or Regulation	Act Postponed
12.	Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(2)	The FSC must reimburse from its own bank account any dividends or other expenses that are paid by a related person, on or before the due date (including extensions) of the FSC's tax return for the taxable year to which the reimbursement relates.
13.	Sec. 924(c)(3) and Treas. Reg. § 1.924(c)–1(d)(3)	If the Commissioner determines that the taxpayer acted in good faith, the taxpayer may comply with the reimbursement requirement by reimbursing the funds within 90 days of the date of the Commissioner's determination, notwithstanding a taxpayer's failure to meet the return-filing-date reimbursement deadline in Treas. Reg. § 1.924(c)–1(d)(2).
14.	Sec. 924(e)(4) and Treas. Reg. § 1.924(e)–1(d)(2)(iii)	If a payment with respect to a transaction is made directly to the FSC or the related supplier in the United States, the funds must be transferred to and received by the FSC bank account outside the United States no later than 35 days after the receipt of good funds (*i.e.*, date of check clearance) on the transaction.
15.	Temp. Treas. Reg. § 1.925(a)–1T(e)(4)	A FSC and its related supplier may redetermine a transfer pricing method, the amount of foreign trading gross receipts, and costs and expenses, provided such redetermination occurs before the expiration of the statute of limitations for claims for refund for both the FSC and related supplier, and provided the statute of limitations for assessment applicable to the party that has a deficiency in tax on account of the redetermination is open. *See* Treas. Reg. § 1.925(a)–1(c)(8)(i) for time limitations with respect to FSC administrative pricing grouping redeterminations and for a cross-reference to Temp. Treas. Reg. § 1.925(a)–1T(e)(4).
16.	Sec. 927(f)(3)(A) and Treas. Reg. § 1.927(f)–1(b) (Q&A–12)	A corporation may terminate its election to be treated as a FSC or a small FSC by revoking the election during the first 90 days of the FSC taxable year (other than the first year in which the election is effective) in which the revocation was to take effect.
17.	Sec. 927 and Temp. Treas. Reg. § 1.927(a)–1T (d)(2)(i)(B)	A taxpayer may satisfy the destination test with respect to property sold or leased by a seller or lessor if such property is delivered by the seller or lessor (or an agent of the seller or lessor) within the United States to a purchaser or lessee, if the property is ultimately delivered outside the United States (including delivery to a carrier or freight forwarder for delivery outside the United States) by the purchaser or lessee (or a subsequent purchaser or sublessee) within one year after the sale or lease.
18.	Sec. 927 and Temp. Treas. Reg. § 1.927(b)–1T(e)(2)(i)	A taxpayer that claims FSC commission deductions must designate the sales, leases, or rentals subject to the FSC commission agreement no later than the due date (as extended) of the tax return of the FSC for the taxable year in which the transaction(s) occurred.
19.	Sec. 927 and Treas. Reg. § 1.927(f)–1(a) (Q&A 4)	A transferee or other recipient of shares in the corporation (other than a shareholder that previously consented to the election) must consent to be bound by the prior election within 90 days of the first day of the FSC's taxable year to preserve the status of a corporation that previously qualified as a FSC or as a small FSC.
20.	Sec. 936 and Treas. Reg. § 1.936–10(c)	If a "qualified investment" in a Caribbean Basin country ceases to meet the qualification requirements, the taxpayer may correct any disqualifying events within a reasonable period of time, which is defined as not more than 60 days from the date that such events came to the attention of the taxpayer (or should have come to its attention by the exercise of reasonable diligence).
21.	Sec. 936 and Treas. Reg. § 1.936–11	A taxpayer that elects retroactive application of the temporary regulation regarding separate lines of business for taxable years beginning after December 31, 1995, must elect to do so prior to the expiration of the statute of limitations for the year in question.
22.	Treas. Reg. §§ 1.964–1(c)(3)(ii) and –1T(g)(2)	An election of, or an adoption of or change in a method of accounting of a CFC (controlled foreign corporation) requires the filing of a written statement jointly executed by the controlling U.S. shareholders of the CFC within 180 days after the close of the taxable year of the CFC.
23.	Sec. 982(c)(2)(A)	Any person to whom a formal document request is mailed shall have the right to bring a proceeding to quash such request not later than the 90th day after the day such request was mailed.

	Statute or Regulation	Act Postponed
24.	Treas. Reg. § 1.988–1(a)(7)(ii)	An election to have Treas. Reg. § 1.988–1(a)(2)(iii) apply to regulated futures contracts and nonequity options must be made on or before the first day of the taxable year, or if later, on or before the first day during such taxable year on which the taxpayer holds a contract described in section 988(c)(1)(D)(ii) and Treas. Reg. § 1.988–1(a)(7)(ii). A late election may be made within 30 days after the time prescribed for the election.
25.	Sec. 988(c)(1)(E)(iii)(V) (qualified fund) and Treas. Reg. § 1.988–1(a)(8)(i)(E)	A qualified fund election must be made on or before the first day of the taxable year, or if later, on or before the first day during such taxable year on which the partnership holds an instrument described in section 988(c)(1)(E)(i).
26.	Treas. Reg. § 1.988–3(b)	An election to treat (under certain circumstances) any gain or loss recognized on a contract described in Treas. Reg. § 1.988–2(d)(1) as capital gain or loss must be made by clearly identifying such transaction on taxpayer's books and records on the date the transaction is entered into.
27.	Treas. Reg. § 1.988–5(a)(8)(i)	Taxpayer must establish a record, and before the close of the date the hedge is entered into, the taxpayer must enter into the record for each qualified hedging transaction the information contained in Treas. Reg. §§ 1.988–5(a)(8)(i)(A) through (E).
28.	Treas. Reg. § 1.988–5(b)(3)(i)	Taxpayer must establish a record and before the close of the date the hedge is entered into, the taxpayer must enter into the record a clear description of the executory contract and the hedge.
29.	Treas. Reg. § 1.988–5(c)(2)	Taxpayer must identify a hedge and underlying stock or security under the rules of Treas. Reg. § 1.988–5(b)(3).
30.	Sec. 991	A corporation that elects IC-DISC treatment (other than in the corporation's first taxable year) must file Form 4876–A, *Election To Be Treated as an Interest Charge DISC*, with the regional service center during the 90-day period prior to the beginning of the tax year in which the election is to take effect.
31.	Sec. 991 and Treas. Reg. § 1.991–2(g)(2)	A corporation that filed a tax return as a DISC, but subsequently determines that it does not wish to be treated as a DISC, must notify the Commissioner more than 30 days before the expiration of period of limitations on assessment applicable to the tax year.
32.	Sec. 992 and Treas. Reg. § 1.992–2(a)(1)(i)	A qualifying corporation must file Form 4876–A, or attachments thereto, containing the consent of every shareholder of the corporation to be treated as a DISC as of the beginning of the corporation's first taxable year.
33.	Sec. 992 and Treas. Reg. § 1.992–2(b)(2)	A qualifying corporation must file consents of the shareholders of the corporation to be treated as a DISC with the service center with which the DISC election was first filed, within 90 days after the first day of the taxable year, or within the time granted for an extension to file such consents.
34.	Sec. 992 and Treas. Reg. § 1.992–2(e)(2)	A corporation seeking to revoke a prior election to be treated as a DISC, must file a statement within the first 90 days of the taxable year in which the revocation is to take effect with the service center with which it filed the election or, if the corporation filed an annual information return, by filing the statement at the service center with which it filed its most recent annual information return.
35.	Sec. 992 and Treas. Reg. § 1.992–3(c)(3)	A DISC that receives notification that it failed to satisfy the 95 percent of gross receipts test or the 95 percent assets test, or both tests, for a particular taxable year, must make a corrective deficiency distribution within 90 days of the date of the first written notification from the IRS.
36.	Sec. 993 and Treas. Reg. § 1.993–3(d)(2)(i)(*b*)	In certain cases, property may not qualify as export property for DISC purposes unless, among other things, such property is ultimately delivered, directly used, or directly consumed outside the U.S. within one year of the date of sale or lease of the property.

	Statute or Regulation	Act Postponed
37.	Sec. 1445 Treas. Reg. § 1.1445–1	Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*, must be filed by a buyer or other transferee of a U.S. real property interest, and a corporation, partnership, or fiduciary that is required to withhold tax. The amount withheld is to be transmitted with Form 8288, which is generally to be filed by the 20th day after the date of transfer.
38.	Sec. 1446	All partnerships with effectively connected gross income allocable to a foreign partner in any tax year must file forms 8804, *Annual Return for Partnership Withholding Tax*, and 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, on or before the 15th day of the 4th month following the close of the partnership's taxable year.
39.	Sec. 1446	Form 8813, *Partnership Withholding Tax Payment Voucher*, is used to pay the withholding tax under section 1446 for all partnerships with effectively connected gross income allocable to a foreign partner in any tax year. Form 8813 must accompany each payment of section 1446 tax made during the partnership's taxable year. Form 8813 is to be filed on or before the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's taxable year for U.S. income tax purposes.
40.	Sec. 6038A(d)(2) and Treas. Reg. § 1.6038A–4(d)(1)	A reporting corporation must cure any failure to furnish information or failure to maintain records within 90 days after the IRS gives notice of the failure to avoid the continuation penalty.
41.	Sec. 6038A(d)(2) and Treas. Reg. § 1.6038A–4(d)(1)	A reporting corporation must cure any failure to furnish information or failure to maintain records before the beginning of each 30-day period after expiration of the initial 90-day period to avoid additional continuation penalties.
42.	Sec. 6038A(e)(1) and Treas. Reg. § 1.6038A–5(b)	A reporting corporation must furnish an authorization of agent within 30 days of a request by the IRS to avoid a penalty.
43.	Sec. 6038A(e)(4)(A)	A reporting corporation must commence any proceeding to quash a summons filed by the IRS in connection with an information request within 90 days of the date the summons is issued.
44.	Sec. 6038A(e)(4)(B)	A reporting corporation must commence any proceeding to review the IRS's determination of noncompliance with a summons within 90 days of the IRS's notice of noncompliance.
45.	Sec. 6038A and Treas. Reg. § 1.6038A–3(b)(3)	A reporting corporation must supply an English translation of records provided pursuant to a request for production within 30 days of a request by the IRS for a translation to avoid a penalty.
46.	Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(2)	A reporting corporation must, within 60 days of a request by the IRS for records maintained outside the United States, either provide the records to the IRS, or move them to the United States and provide the IRS with an index to the records to avoid a penalty.
47.	Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(2)(i)	A reporting corporation must supply English translations of documents maintained outside the United States within 30 days of a request by the IRS for translation to avoid a penalty.
48.	Sec. 6038A and Treas. Reg. § 1.6038A–3(f)(4)	A reporting corporation must request an extension of time to produce or translate documents maintained outside the United States beyond the period specified in the regulations within 30 days of a request by the IRS to avoid a penalty.
49.	Sec. 6662(e) and Treas. Reg. § 1.6662–6(d)(2)(iii)(A)	A taxpayer must provide, within 30 days of a request by the IRS, specified "principal documents" regarding the taxpayer's selection and application of transfer pricing method to avoid potential penalties in the event of a final transfer pricing adjustment by the IRS. *See also* Treas. Reg. § 1.6666–6(d)(2)(iii)(C) (similar requirement re: background documents).
50.	Secs. 6038, 6038B, and 6046A	The filing of Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*, for those taxpayers who do not have to file an income tax return. The form is due at the time that an income tax return would have been due had the taxpayer been required to file an income tax return.

	Statute or Regulation	Act Postponed
1.	Treas. Reg. §§ 1.442–1(b)(1) and (3) and 1.706–1(b)(8)	A partnership may obtain approval of the Commissioner to adopt, change or retain an annual accounting period by filing Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, with such time as provided in administrative procedures published by the Commissioner.
2.	Treas. Reg. § 1.743–1(k)(2)	A transferee that acquires, by sale or exchange, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within 30 days of the sale or exchange. A transferee that acquires, on the death of a partner, an interest in a partnership with an election under section 754 in effect for the taxable year of the transfer, must notify the partnership, in writing, within one year of the death of the deceased partner.
3.	Treas. Reg. § 1.754–1(c)(1)	Generally, a partnership may revoke a section 754 election by filing the revocation no later than 30 days after the close of the partnership taxable year with respect to which the revocation is intended to take effect.
4.	Treas. Reg. § 1.761–2(b)(3)	A partnership may generally elect to be excluded from subchapter K. The election will be effective unless within 90 days after the formation of the organization any member of the organization notifies the Commissioner that the member desires subchapter K to apply to such organization and also advises the Commissioner that he has so notified all other members of the organization. In addition, an application to revoke an election to be excluded from subchapter K must be submitted no later than 30 days after the beginning of the first taxable year to which the revocation is to apply.
5.	Treas. Reg. § 1.761–2(c)	A partnership requesting permission to be excluded from certain provisions of subchapter K must submit the request to the Commissioner no later than 90 days after the beginning of the first taxable year for which partial exclusion is desired.
6.	Sec. 1361(e)	In general, the trustee of the electing small business trust (ESBT) must file the ESBT election within the 2-month and 16-day period beginning on the day the stock is transferred to the trust. *See* Treas. Reg. § 1.1361–1(m)(2)(ii).
7.	Treas. Reg. § 1.1361–1(j)(6)	The current income beneficiary of a qualified subchapter S trust (QSST) must make a QSST election within the 2-month and 16-day period from one of the dates prescribed in Treas. Reg. § 1.1361–1(j)(6)(iii).
8.	Treas. Reg. § 1.1361–1(j)(10)	The successive income beneficiary of a QSST may affirmatively refuse to consent to the QSST election. The beneficiary must sign the statement and file the statement with the IRS within 15 days and 2 months after the date on which the successive income beneficiary becomes the income beneficiary.
9.	Treas. Reg. § 1.1361–3(a)(4)	If an S corporation elects to treat an eligible subsidiary as a qualified subchapter S subsidiary (QSUB), the election cannot be effective more than 2 months and 15 days prior to the date of filing the election.
10.	Treas. Reg. § 1.1361–3(b)(2)	An S corporation may revoke a QSUB election by filing a statement with the service center. The effective date of a revocation of a QSUB election cannot be more than 2 months and 15 days prior to the filing date of the revocation.
11.	Treas. Reg. § 1.1362–2(a)(2), (4)	If a corporation revokes its subchapter S election after the first 2½-months of its taxable year, the revocation will not be effective until the following taxable year. An S corporation may rescind a revocation of an S election at any time before the revocation becomes effective.

	Statute or Regulation	Act Postponed
12.	Sec. 1362(b)(3)	If a corporation files a subchapter S election after the first 2½-months of a corporation's taxable year, that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.
13.	Sec. 1378(b) and Treas. Reg. § 1.1378–1(c)	An S or electing S corporation may obtain the approval of the Commissioner to adopt, change or retain an annual accounting period by filing Form 1128, *Application to Adopt, Change, or Retain a Tax Year*, within such time as is provided in administrative procedures published by the Commissioner. *See* Rev. Procs. 2002–38 and 2002–39.

SECTION 14. PROCEDURE & ADMINISTRATION ISSUES

.01 Bankruptcy and Collection

	Statute or Regulation	Act Postponed
1.	Treas. Reg. §§ 301.6036–1(a)(2) and (3)	A court-appointed receiver or fiduciary in a non-bankruptcy receivership, a fiduciary in aid of foreclosure who takes possession of substantially all of the debtor's assets, or an assignee for benefit of creditors, must give written notice within ten days of his appointment to the IRS as to where the debtor will file his tax return.
2.	Sec. 6320(a)(3)(B), 6320(c) and Treas. Reg. §§ 301.6320–1(b), (c) and (f)	A taxpayer has 30 days after receiving a notice of a lien to request a Collection Due Process (CDP) administrative hearing. After a determination at the CDP hearing, the taxpayer may appeal this determination within 30 days to the United States Tax Court or a United States district court.
3.	Sec. 6330(a)(3)(B) and (d)(1) and Treas. Reg. §§ 301.6330–1(b), (c) and (f)	The taxpayer must request a Collections Due Process (CDP) administrative hearing within 30 days after the IRS sends notice of a proposed levy. After a determination at the CDP hearing, the taxpayer may appeal this determination within 30 days to the United States Tax Court or a United States district court.
4.	Sec. 6331(k)(1) and Treas. Reg. § 301.7122–1(g)(2)	If a taxpayer submits a good-faith revision of a rejected offer in compromise within 30 days after the rejection, the Service will not levy to collect the liability before deciding whether to accept the revised offer.
5.	Sec. 6331(k)(2) and Treas. Reg. § 301.6331–4(a)(1)	If, within 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, no levy may be made while the rejection or termination is being considered by Appeals.
6.	Sec. 7122(d)(2) and Treas. Reg. § 301.7122–1(f)(5)(i)	A taxpayer must request administrative review of a rejected offer in compromise within 30 days after the date on the letter of rejection.

.02 Information Returns

	Statute or Regulation	Act Postponed
1.	Sec. 6050I	Any person engaged in a trade or business receiving more than $10,000 cash in one transaction (or 2 or more related transactions) must file an information return, Form 8300, *Report of Cash Payments over $10,000 Received in a Trade or Business*, by the 15th day after the date the cash was received. Additionally, a statement must be provided to the person with respect to whom the information is required to be furnished by Jan. 31st of the year following.
2.	Sec. 6050L	Returns relating to certain dispositions of donated property, Forms 8282, *Donee Information Return*, must be filed within 125 days of the disposition.

.03 Miscellaneous

	Statute or Regulation	Act Postponed
1.	Sec. 1314(b)	A taxpayer may file a claim for refund or credit of tax based upon the mitigation provisions of sections 1311 through 1314 if, as of the date a determination (as defined in section 1313(a)) is made, one year remains on the period for filing a claim for refund.
2.	Sec. 6015	A requesting spouse must request relief under section 6015 within 2 years of the first collection activity against the requesting spouse.
3.	Sec. 6411	Taxpayers applying for a tentative carryback adjustment of the tax for the prior taxable year must file Form 1139 (for corporations) or Form 1045 (for entities other than corporations) within 12 months after the end of such taxable year that generates such net operating loss, net capital loss, or unused business credit from which the carryback results.
4.	Sec. 6656(e)(2)	A taxpayer who is required to deposit taxes and fails to do so is subject to a penalty under section 6656. Under section 6656(e)(2), the taxpayer may, within 90 days of the date of the penalty notice, designate to which deposit period within a specified tax period the deposits should be applied.

SECTION 15. TAX CREDIT ISSUES

	Statute or Regulation	Act Postponed
1.	Section 42(e)(3)(A)(ii)	A taxpayer has a 24-month measuring period in which the requisite amount of rehabilitation expenditures has to be incurred in order to qualify for treatment as a separate new building.
2.	Treas. Reg. § 1.42–5(c)(1)	The taxpayer must make certain certifications at least annually to the Agency.
3.	Treas. Reg. § 1.42–5(c)(1)(iii)	The taxpayer must receive an annual income certification from each low-income tenant with documentation to support the certification.
4.	Treas. Reg. § 1.42–8(a)(3)(v)	The taxpayer and an Agency may elect to use an appropriate percentage under section 42(b)(2)(A)(ii)(I) by notarizing a binding agreement by the 5th day following the end of the month in which the binding agreement was made.
5.	Treas. Reg. § 1.42–8(b)(1)(vii)	The taxpayer and an Agency may elect an appropriate percentage under section 42(b)(2)(A)(ii)(II) by notarizing a binding agreement by the 5th day following the end of the month in which the tax-exempt bonds are issued.
6.	Sec. 42(d)(2)(D)(ii)(IV)	In order to claim section 42 credits on an existing building, section 42(d)(2)(B)(ii)(I) requires that the building must have been placed in service at least ten years before the date the building was acquired by the taxpayer. A building is not considered placed in service for purposes of section 42(d)(2)(B)(ii) if the building is resold within a 12-month period after acquisition by foreclosure of any purchase-money security interest.
7.	Sec. 42(g)(3)(A)	A building shall be treated as a qualified low-income building only if the project meets the minimum set aside requirement by the close of the first year of the credit period of the building.
8.	Sec. 42(h)(6)(J)	A low-income housing agreement commitment must be in effect as of the beginning of the year for a building to receive credit. If such a commitment was not in effect, the taxpayer has a one-year period for correcting the failure.
9.	Sec. 42(h)(1)(E) and (F)	The taxpayer's basis in the building project, as of the later of the date which is 6 months after the date the allocation was made or the close of the calendar year in which the allocation is made, must be more than 10 percent of the taxpayer's reasonably expected basis in the project.
10.	Sec. 47(c)(1)(C) and Treas. Reg. § 1.48–12(b)(2)	A taxpayer has a 24- or 60-month measuring period in which the requisite amount of rehabilitation expenditures have to be incurred in order to satisfy the "substantial rehabilitation" test.

	Statute or Regulation	Act Postponed
11.	Treas. Reg. § 1.48–12(d)(7)	In the historic rehabilitation context, if the taxpayer fails to receive final certification of completed work prior to the date that is 30 months after the date that the taxpayer filed the return on which the credit is claimed, the taxpayer must, prior to the last day of the 30th month, consent to extending the statute of limitations by submitting a written statement to the Service.
12.	Sec. 51(d)(12)(A)(ii)(II) and 51A(d)(1)	An employer seeking the Work Opportunity Credit or the Welfare-to-Work Credit with respect to an individual must submit Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits*, to the State Employment Security Agency not later than the 21st day after the individual begins work for the employer.

SECTION 16. TAX-EXEMPT BOND ISSUES

	Statute or Regulation	Act Postponed
1.	Treas. Reg. § 1.25–4T(c)	On or before the date of distribution of mortgage credit certificates under a program or December 31, 1987, the issuer must file an election not to issue an amount of qualified mortgage bonds. An election may be revoked, in whole or in part, at any time during the calendar year in which the election was made.
2.	Treas. Reg. §§ 1.141–12(d)(3) and 1.142–2(c)(2)	An issuer must provide notice to the Commissioner of the establishment of a defeasance escrow within 90 days of the date such defeasance escrow is established in accordance with Treas. Reg. § 1.141–12(d)(1) or 1.142–2(c)(1).
3.	Sec. 142(d)(7)	An operator of a multi-family housing project for which an election was made under section 142(d) must submit to the Secretary an annual certification as to whether such project continues to meet the requirements of section 142(d).
4.	Sec. 142(f)(4) and Treas. Reg. § 1.142(f)(4)–1	A person engaged in the local furnishing of electric energy or gas (a local furnisher) that uses facilities financed with exempt facility bonds under section 142(a)(8) and expands its service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f), may make an election to ensure that those bonds will continue to be treated as exempt facility bonds. The election must be filed with the IRS on or before 90 days after the date of the service area expansion that causes the bonds to cease to meet the applicable requirements.
5.	Sec. 146(f) and Notice 89–12	If an issuing authority's volume cap for any calendar year exceeds the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority, such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes. Such election must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.
6.	Sec. 148(f)(3) and Treas. Reg. § 1.148–3(g)	An issuer of a tax-exempt municipal obligation must make any required rebate payment no later than 60 days after the computation date to which the payment relates. A rebate payment is paid when it is filed with the IRS at the place or places designated by the Commissioner. A payment must be accompanied by the form provided by the Commissioner for this purpose.
7.	Treas. Reg. § 1.148–5(c)	An issuer of a tax-exempt municipal obligation must make a yield reduction payment on or before the date of required rebate installment payments as described in Treas. Reg. § 1.148–3(f), (g), and (h).

	Statute or Regulation	Act Postponed
8.	Sec. 148(f)(4)(C)(xvi) and Treas. Reg. § 1.148–7(k)(1)	As issuer of a tax-exempt municipal obligation that elects to pay certain penalties in lieu of rebate must make any required penalty payments not later than 90 days after the period to which the penalty relates.
9.	Sec. 149(e)	An issuer of a tax-exempt municipal obligation must submit to the Secretary a statement providing certain information regarding the municipal obligation not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the municipal obligation is issued.

SECTION 17. INQUIRIES

If you wish to recommend that other acts qualify for postponement, please write to the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division), CC:PA:APJP:B2, 1111 Constitution Avenue, NW, Washington, DC 20224. Please mark "7508A List" on the envelope. In the alternative, e-mail your comments to: *Notice.Comments@irscounsel.treas.gov*, and refer to Rev. Proc. 2004–13 in the Subject heading.

SECTION 18. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2002–71, 2002–2 C.B. 850, is superseded.

SECTION 19. EFFECTIVE DATE

This revenue procedure is effective for acts that may be performed on or after January 26, 2004.

SECTION 20. DRAFTING INFORMATION

The principal author of this revenue procedure is Marcy W. Mendelsohn of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue procedure, contact Ms. Mendelsohn at (202) 622–4940 (not a toll-free call).

Part IV. Items of General Interest

Information Reporting With Respect to Foreign Disregarded Entities

Announcement 2004–4

The Internal Revenue Service (the "Service") and the Treasury Department (the "Treasury") announce that they are requesting comments from the public on proposed new Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities*. The form will be required to be filed by U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively (for example, U.S. persons that own a 10 percent or greater interest in an FDE indirectly through a controlled foreign corporation (CFC) or controlled foreign partnership (CFP)). An FDE is an entity that is created or organized in a foreign jurisdiction and that is disregarded as separate from its owner for U.S. income tax purposes under section 301.7701–2 and –3 of the Income Tax Regulations. The reporting of information on Form 8858 will be required under the authority of sections 6011, 6012, 6031 and 6038 of the Internal Revenue Code and the related regulations, for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004. Attached to this announcement is a copy of the proposed form, with respect to which the Service and the Treasury are requesting comments from the public.

BACKGROUND

Proposed Form 8858 was developed to enable the Service to administer more efficiently the provisions of the tax law with respect to U.S. persons that own FDEs. The promulgation of the elective entity classification regulations in 1997 has facilitated the use of FDEs by U.S. persons with cross-border investments or operations. The Service has had significant difficulties administering the relevant provisions of the tax law because the information reporting requirements still date from a time when the substantive entity classification rules did not contemplate disregarded entities. The current lack of relevant information reporting with respect to FDEs has hindered the Service's ability to identify potential compliance issues efficiently and effectively. The Service is committed to reducing the length of the corporate examination process and improving the currency of examinations. The information to be reported on Form 8858 will help the Service identify issues more efficiently, ensuring that the Service can better focus resources and reduce exam cycle time.

PROPOSED FORM 8858

Proposed Form 8858 is three pages long, and consists of one section and five schedules, plus a separate Schedule M. The introductory section of proposed Form 8858 requests identifying information. The schedules to proposed Form 8858 include requests for abbreviated income statement information (Schedule C), abbreviated balance sheet information (Schedule F), and summary information regarding taxable income or earnings and profits (Schedule H). Schedule C–1 requests information relating to the foreign currency rules applicable to foreign disregarded entities, and Schedule G consists of six specific yes/no questions. Schedule M requests information regarding related party transactions between an FDE owned by a CFP or a CFC and a related person other than the CFP or CFC. Information regarding transactions between an FDE and its tax owner or between or among FDEs of the same tax owner is not requested, except where such information is required to administer provisions of the tax law that recognize inter-branch transactions, such as the foreign currency rules.

To ensure that taxpayer burden is minimized, each item of information requested on proposed Form 8858 has been evaluated to make certain that it is necessary to the administration of the tax law and that it is not duplicative of information already required to be reported. Proposed Form 8858 requests only the minimum information needed to identify the tax items that are attributable to an FDE. Almost all of the items of information requested from U.S. persons on proposed Form 8858 with respect to an FDE are currently required to be reported by such U.S. persons on an aggregate basis on, for example, Form 5471 (in the case of FDEs of CFCs) or Form 8865 (in the case of FDEs of CFPs).

Consistent with the objectives of proposed Form 8858 and consistent with section 6038 of the Code, with a view to minimizing taxpayer burden and aiding Service efforts to reduce exam cycle time, the Service and the Treasury also intend to review Forms 5471 and 8865 to ensure that the information requested on these forms enables the Service to administer effectively the tax law applicable to U.S. owners of CFCs and CFPs, is necessary to the administration of the tax law, and is not duplicative of information required to be reported on proposed Form 8858 or other forms.

GENERAL QUESTIONS ABOUT FORM 8858

Who will be required to file Form 8858?

Form 8858 will be required to be filed by U.S. persons that are tax owners (as defined below) of FDEs, or that own certain interests in foreign tax owners of FDEs.

Specifically, U.S. persons that are tax owners of FDEs would complete the entire Form 8858 except for Schedule M. In the case of U.S. persons that are required to file a Form 5471 with respect to a CFC that is a tax owner of an FDE, such U.S. persons that are Category 4 filers of Form 5471 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 5 filers of Form 5471 (*i.e.*, noncontrolling shareholders) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 5 filers of Form 5471.

In the case of U.S. persons that are required to file a Form 8865 with respect to a CFP that is a tax owner of an FDE, such U.S. persons that are Category 1 filers of Form 8865 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 2 filers of Form 8865 (*i.e.*, noncontrolling partners) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 2 filers of Form 8865.

Who is the tax owner of an FDE?

For purposes of completing the Form 8858, the tax owner of the FDE is the person that is treated as owning the assets and liabilities of the FDE for purposes of U.S. income tax law.

Who is the direct owner of an FDE?

For purposes of completing the Form 8858, the direct owner of an FDE is the legal owner of the disregarded entity.

For example, assume A, a U.S. individual, is a 60 percent partner of CFP, a controlled foreign partnership. FDE 1 is a foreign disregarded entity owned by CFP, and FDE 2 is a foreign disregarded entity owned by FDE 1. In this example, FDE 1 is the direct owner of FDE 2, and CFP is the direct owner of FDE 1. CFP is the tax owner with respect to both FDE 1 and FDE 2. A would be required to file the Forms 8858 relating to FDE 1 and FDE 2.

When will Form 8858 be required to be filed?

Form 8858 will be due when the filer's U.S. income tax or information return is due, including extensions.

How will Form 8858 be filed?

The filer will be required to file Form 8858 as an attachment to the filer's U.S. income tax or information return. In the case of a filer that is not the tax owner of the FDE, the filer will be required to attach Form 8858 to any form filed by the filer with respect to the foreign entity that is the tax owner of the FDE.

For example, where a U.S. person indirectly owns an FDE through a CFC, the CFC is the tax owner of the FDE. In this instance, the U.S. person will be required to file a Form 8858 because it indirectly owns the FDE through a CFC. The Form 8858 will be required to be filed as an attachment to the Form 5471 filed with the U.S. person's U.S. income tax return.

A separate Form 8858, including Schedule M if required to be filed, will be required for each FDE.

Will there be any exceptions to filing Form 8858?

Instructions for the Form 8858 will provide filing exceptions similar to those set forth in the instructions for Form 5471 and Form 8865. For example, exceptions from filing for multiple filers of the same information, for members of consolidated groups, and for owners of dormant FDEs will apply for purposes of Form 8858.

What is the effective date for Form 8858?

Form 8858 will be required to be filed for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004.

Can Form 8858 be filed electronically?

The instructions for filing Form 8858 will include information on electronic filing.

REQUEST FOR COMMENTS ON THE FORM

The Service and the Treasury are requesting comments about proposed Form 8858. The Service and the Treasury are particularly interested in receiving comments on matters that should be addressed in the instructions to Form 8858, such as whether clarification is needed as to specific aspects of the filing requirements or the information requested on the form. The Service and the Treasury also are requesting comments about current Forms 5471 and 8865, in particular whether any modifications are necessary in light of proposed Form 8858 to ensure that the information requested on Forms 5471 and 8865 is necessary to the administration of the tax law and is not duplicative of information required to be reported on proposed Form 8858 or other forms. Written comments should be sent to: Tax Products Coordinating Committee, Internal Revenue Service, SE:W:CAR:MP:T, Room 6406, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Alternatively, comments may be e-mailed to *tfpmail@publish.no.irs.gov*. Comments must be received by March 1, 2004.

The principal author of this announcement is Alexandra Helou of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury and the IRS participated in its development. For further information regarding this announcement, contact Alexandra Helou at (202) 622–3840 (not a toll-free call).

Form **8858**

(December 2004)

Department of the Treasury
Internal Revenue Service

Information Return of U.S. Persons With Respect To Foreign Disregarded Entities

► **See separate instructions.**

Information furnished for the foreign disregarded entity's annual accounting period (see instructions) beginning , 20 , and ending , 20

OMB No. 1545-XXXX

Name of person filing this return	**Filer's identifying number**
Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)	
City or town, state, and ZIP code	
Filer's tax year beginning , 20 , and ending , 20	

Important: *Fill in all applicable lines and schedules. All information* ***must*** *be in English. All amounts* ***must*** *be stated in U.S. dollars unless otherwise indicated.*

1a Name and address of foreign disregarded entity			**b** U.S. identifying number, if any
c Country(ies) under whose laws organized and entity type under local tax law		**d** Date(s) of organization	**e** Effective date as foreign disregarded entity
f If benefits under a U.S. tax treaty were claimed with respect to income of the foreign disregarded entity, enter the treaty and article number	**g** Country in which principal business activity is conducted	**h** Principal business activity	**i** Functional currency

2 Provide the following information for the foreign disregarded entity's accounting period stated above.

a Name, address, and identifying number of branch office or agent (if any) in the United States	**b** Name and address (including corporate department, if applicable) of person(s) with custody of the books and records of the foreign disregarded entity, and the location of such books and records, if different

3 For the **tax owner** of the foreign disregarded entity (if different from the filer) provide the following:

a Name and address	**b** Tax year	**c** U.S. identifying number, if any
	d Country under whose laws organized	**e** Functional currency

4 For the **direct owner** of the foreign disregarded entity (if different from the tax owner) provide the following:

a Name and address	**b** Country under whose laws organized	**c** U.S. identifying number, if any
		d Functional currency

5 Provide a list or an organizational chart identifying the name, placement, percentage of ownership, and tax classification of all entities in the chain between the tax owner and the foreign disregarded entity, and all entities in which the foreign disregarded entity has a 10% or more direct or indirect interest. See instructions.

Schedule C Income Statement (see page XX of the instructions)

Important: *Report all information in functional currency in accordance with U.S. GAAP. Also, report each amount in U.S. dollars translated from functional currency (using GAAP translation rules). However, if the functional currency is the U.S. dollar, complete only the U.S. Dollars column. See instructions for special rules for foreign disregarded entities that use DASTM.*

			Functional Currency	U.S. Dollars
1	Gross receipts or sales (net of returns and allowances)	1		
2	Cost of goods sold	2		
3	Gross profit (subtract line 2 from line 1)	3		
4	Other income	4		
5	Total income (add lines 3 and 4)	5		
6	Total deductions	6		
7	Other adjustments	7		
8	Net income (loss) per books	8		

For Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 21457L Form **8858** (12-2004)

Schedule C-1 Section 987 Gain or Loss Information

			Amount stated in functional currency of foreign disregarded entity	Amount stated in functional currency of recipient
1	Remittances from the foreign disregarded entity	1		
2	Section 987 gain (loss) of recipient	2		

		Yes	No
3	Were all remittances from the foreign disregarded entity reflected on the books of the direct owner?		
4	Did the tax owner change its method of accounting for section 987 gain or loss with respect to remittances from the foreign disregarded entity during the tax year?		

Schedule F Balance Sheet

Important: *Report all amounts in U.S. dollars computed in functional currency and translated into U.S. dollars in accordance with U.S. GAAP. See page XX of the instructions for an exception for foreign disregarded entities that use DASTM.*

Assets		(a) Beginning of annual accounting period	(b) End of annual accounting period
1 Cash and other current assets	1		
2 Other assets	2		
3 Total assets	3		
Liabilities and Owner's Equity			
4 Liabilities	4		
5 Owner's equity	5		
6 Total liabilities and owner's equity	6		

Schedule G Other Information

		Yes	No
1	During the tax year, did the foreign disregarded entity own an interest in any trust?		
2	During the tax year, did the foreign disregarded entity own at least a 10% interest, directly or indirectly, in any foreign partnership?		
3	Were substantially all of the assets of the foreign disregarded entity sold, exchanged, transferred, or otherwise disposed of during the tax year?		
4	*Answer the following question only if the foreign disregarded entity made its election to be treated as disregarded from its owner during the tax year:* Did the tax owner claim a loss with respect to stock or debt of the foreign disregarded entity as a result of the election?		
5	*Answer the following question only if the foreign disregarded entity is owned directly or indirectly by a domestic corporation and the foreign disregarded entity incurred a net operating loss for the tax year:* Is the foreign disregarded entity a separate unit as defined in Regulation section §1.1503-2(c)(3) and (4)? (If yes, see the instructions)		
6	*Answer the following question only if the tax owner of the foreign disregarded entity is a controlled foreign corporation (CFC):* Were there any intracompany transactions between the foreign disregarded entity and the CFC or any other branch of the CFC during the tax year, in which the foreign disregarded entity acted as a manufacturing, selling, or purchasing branch?		

Schedule H Current Earnings and Profits or Taxable Income (see page XX of the instructions)

Important: *Enter the amounts on lines 1 through 6 in functional currency.*

1	Current year net income or (loss) per foreign books of account	1	
2	Total net additions	2	
3	Total net subtractions	3	
4	Current earnings and profits (or taxable income—see instructions) (line 1 plus line 2 minus line 3)	4	
5	DASTM gain or loss (if applicable)	5	
6	Combine lines 4 and 5	6	
7	Current earnings and profits (or taxable income) in U.S. dollars (line 6 translated at the appropriate exchange rate as defined in section 989(b) and the related regulations (see instructions)). Enter exchange rate used for line 7 ▶	7	

SCHEDULE M (Form 8858)
(December 2004)
Department of the Treasury
Internal Revenue Service

Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer or Other Related Entities

► **Attach to Form 8858.** ► **See separate instructions.**

OMB No. 1545-XXXX

Name of person filing Form 8858	**Identifying number**

Name of foreign disregarded entity	Name of tax owner

Important: *Complete a* ***separate*** *Schedule M for each foreign disregarded entity for which the tax owner is a controlled foreign corporation or controlled foreign partnership. Enter the totals for each type of transaction that occurred during the annual accounting period between the foreign disregarded entity and the persons listed in the applicable columns (b) through (f). All amounts must be stated in U.S. dollars translated from functional currency at the appropriate exchange rate for the foreign disregarded entity's tax year (see page XX of the instructions).*

Enter the relevant functional currency and the exchange rate used throughout this schedule ►

Check the box that identifies the status of the tax owner and complete lines 1 through 19 with respect to the applicable columns (b) through (f):

☐ **Controlled Foreign Partnership**						
	(a) Transactions of foreign disregarded entity	**(b)** U.S. person filing this return	**(c)** Any domestic corporation or partnership controlling or controlled by the filer	**(d)** Any foreign corporation or partnership controlling or controlled by the filer (other than the tax owner)	**(e)** Any U.S. person with a 10% or more direct interest in the controlled foreign partnership (other than the filer)	
☐ **Controlled Foreign Corporation**						
	(a) Transactions of foreign disregarded entity	**(b)** U.S. person filing this return	**(c)** Any domestic corporation or partnership controlled by the filer	**(d)** Any foreign corporation or partnership controlled by the filer (other than tax owner)	**(e)** 10% or more U.S. shareholder of any corporation controlling the tax owner	**(f)** 10% or more U.S. shareholder, or other owner, of any entity controlling the tax owner
1	Sales of inventory					
2	Sales of property rights					
3	Compensation received for certain services					
4	Commissions received					
5	Rents, royalties, and license fees received					
6	Dividends/Distributions received					
7	Interest received					
8	Other					
9	Add lines 1 through 8					
10	Purchases of inventory					
11	Purchases of tangible property other than inventory					
12	Purchases of property rights					
13	Compensation paid for certain services					
14	Commissions paid					
15	Rents, royalties, and license fees paid					
16	Interest paid					
17	Add lines 10 through 16					
18	Amounts borrowed (see page xx of the instructions)					
19	Amounts loaned (see page xx of the instructions)					

For Paperwork Reduction Act Notice, see the Instructions for Form 8858. Cat. No. 37387C **Schedule M (Form 8858) (12-2004)**

New Form 8806, Information Return for Acquisition of Control or Substantial Change in Capital Structure

Announcement 2004–5

The IRS has released new **Form 8806,** *Information Return for Acquisition of Control or Substantial Change in Capital Structure.* A reporting corporation must use Form 8806 to report an acquisition of control or a substantial change in the capital structure of a domestic corporation.

You can obtain Form 8806 by telephone or by using IRS electronic information services.

Request by	Number or address
Telephone	**1–800–TAX–FORM** (1–800–829–3676)
Person computer:	
IRS web site	**www.irs.gov**
File transfer protocol	**ftp.irs.gov**

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

Announcement 2004-6

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

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

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

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

Name	Address	Designation	Effective Date
Baxley II, Milton	Gainesville, FL	CPA	October 24, 2003

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Nietupski, John E.	Springfield, MA	Enrolled Agent	Indefinite from October 15, 2005
Roberts, Dennis C.	Oklahoma City, OK	Attorney	Indefinite from October 27, 2003
Waldo-Grant, Barbara A.	Grand Rapids, MI	Enrolled Agent	Indefinite from November 1, 2003
Naylor, Dale C.	El Cajon, CA	Enrolled Agent	Indefinite from November 12, 2003
Schlude, Richard M.	Wilkes Barre, PA	Enrolled Agent	Indefinite from November 19, 2003
Stern, Samuel L.	Robbinsdale, MN	Attorney	Indefinite from November 19, 2003
Robles, Michael	Dallas, TX	CPA	Indefinite from December 1, 2003
Young Jr., Donald A.	Redondo Beach, CA	Enrolled Agent	December 1, 2003 to August 31, 2004
Hitchcock, William C.	Irvine, CA	Enrolled Agent	Indefinite from December 30, 2003
Willms, Bryant E.	Lee Summit, MO	Enrolled Agent	January 1, 2004 to December 31, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Greene, Marvin	Chicago, IL	CPA	Indefinite from October 21, 2003
Bolusky, Eric B.	Perkins, OK	Attorney	Indefinite from October 21, 2003
Crutchfield Jr., Ernest	Latty, OH	Enrolled Agent	Indefinite from October 21, 2003
Covey, Charles	Gladstone, MO	CPA	Indefinite from October 23, 2003
Prosperi, Arnold P.	Jupiter Island, FL	Attorney	Indefinite from November 24, 2003
Lucas, Christopher	Overland Park, KS	Attorney	Indefinite from November 24, 2003
Ramsey, Henry A.	Burnet, TX	CPA	Indefinite from December 15, 2003

Resignations of Enrolled Agents

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

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

Name	Address	Date of Resignation
Pettyplace, Edward F.	Sacramento, CA	January 30, 2004

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Correction

Announcement 2004–7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–146893–02, REG–115037–00, 2003–44 I.R.B. 967) and notice of public hearing that was published in the **Federal Register** on Wednesday, September 10, 2003 (68 FR 53448). The proposed regulations provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles in particular when one controlled taxpayer performs activities that increase (or are expected to increase) the valve of an intangible owned by another controlled taxpayer.

FOR FURTHER INFORMATION CONTACT: J. Peter Luedtke or Helen Hong-George, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 482 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations and notice of public hearing (REG–146893–02, REG–115037–00), that was the subject of FR Doc. 03–22550, are corrected as follows:

1. On page 53448, column 1, in the preamble under the paragraph heading "DATES", second line of the paragraph, the language "must be received December 9, 2003." is corrected to read "must be received by December 9, 2003."

2. On page 53449, column 2, in the preamble under the paragraph heading "2. Income Attributable to Intangibles", fifth line of the paragraph, the language, "property. The Taxpayers and other" is corrected to read "property. Taxpayers and other".

3. On page 53455, column 3, in the preamble under the paragraph heading "10. Total Services Costs—§1.482–9(j)", the last line of the paragraph, the language, "analysis of the result expressed as ration" is corrected to read "analysis of the result expressed as the ratio".

4. On page 53464, column 3, following §1.482–6(c)(3)(i)(B)(*2*), paragraph (c)(3)(ii) is added to read as follows:

§1.482–6 Profit split method.

*****

(c) ***

(3) *** (i) ***

(ii) ***

*****

5. On page 53473, columns 2 and 3, §1.482–9(f)(2)(iv)(A) through (C) introductory text are corrected to read as follows:

§1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

*****

(f) ***

(2) ***

(iv) Measurement of limitation on allocations: The rules of paragraphs (f)(2)(i) and (ii) of this section are expressed in this paragraph (f)(2)(iv) in equations and a table.

(A) The minimum arm's length markup necessary for an allocation by the Commissioner (Z) is the sum of the markup charged by the taxpayer (X) and the applicable number of percentage points determined under paragraph (f)(2)(ii) of this section (Y). Where the markup charged by the taxpayer is not less than zero, the minimum arm's length markup necessary for allocation by the Commissioner (Z) also equals the lesser of—

(*1*) The sum of six percentage points and half of the markup charged by the taxpayer (X); and

(*2*) Ten percentage points.

(B) The equations in paragraph (f)(2)(iv)(A) of this section may also be expressed as follows:

$Z = X + Y = \min((6\% + 0.5 \times X), 10\%)$ where $X \geq 0$.

(C) The following table illustrates the results of these calculations in representative cases:

*****

6. On page 53480, column 1, §1.482–9(l)(4), *Example 12*, the last line of the paragraph, the language, "therefore Company Y is considered to obtain." is corrected to read "therefore Company Y is considered to obtain a benefit from the activities."

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on December 16, 2003, 8:45 a.m., and published in the issue of the Federal Register for December 17, 2003, 68 F.R. 70214)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

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

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

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2003–27 through 2003–52 is in Internal Revenue Bulletin 2003–52, dated December 29, 2003.

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

Key to Abbreviations:

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

EMPLOYEE PLANS

EMPLOYMENT TAX

ESTATE TAX

EXCISE TAX

EXEMPT ORGANIZATIONS

GIFT TAX

INCOME TAX