

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2001-50, page 343.

Built-in gains tax. The built-in gains tax under section 1374 of the Code will not apply to the timber, coal, and domestic iron ore transactions described in the four situations in the ruling.

T.D. 8965, page 344.

Final regulations under sections 6221 through 6233 of the Code implement the unified partnership audit procedures.

REG-107151-00, page 370.

Proposed regulations under section 1041 of the Code relate to the tax treatment of certain redemptions, during marriage or incident to divorce, of stock owned by a spouse or former spouse. A public hearing is scheduled for December 14, 2001.

Announcement 2001-101, page 374.

This document informs issuers of tax-exempt bonds that, effective immediately, the Service will put into effect procedures to provide relief to issuers affected by the September 11, 2001, terrorist attack. Affected issuers are provided additional time to file forms required under section 149(e) of the Code and to make payments required under section 148(f) of the Code.

EMPLOYEE PLANS

Notice 2001-65, page 369.

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

Announcement 2001-103, page 375.

Filing of certain schedules of Form 5500 due October 15, 2001. As a result of the disruption in financial markets caused by the events of September 11, 2001, this announcement provides limited relief from the penalties for failure to file a complete and accurate Schedule B and Schedule R of a Form 5500 that is due on or before October 15, 2001.

Announcement 2001-104, page 376.

GUST approved opinion letters and advisory letters. This announcement describes the issuance of GUST approved opinion letters and advisory letters in the instance of master & prototype and volume submitter specimen plans and reminds employers of the need to timely adopt their GUST approved plans.

(Continued on the next page)

Finding Lists begin on page ii.



EXEMPT ORGANIZATIONS

Announcement 2001-105, page 376.

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

ADMINISTRATIVE

Rev. Proc. 2001-51, page 369.

Section 1374 rulings. This procedure modifies Rev. Proc. 2001-3 (2001-1 I.R.B. 111) by removing section 5.06 from the No-Rule list. This concerns the application of section 1374 of the Code to certain timber, coal, and domestic iron ore transactions. Rev. Proc. 2001-3 modified.

The IRS Mission

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

and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 1374.—Tax Imposed on Certain Built-In Gains

26 CFR 1.1374-4: Recognized built-in gain or loss.

Built-in gains tax. The built-in gains tax under § 1374 will not apply to the timber, coal and domestic iron ore transactions described in the four situations in the ruling.

Rev. Rul. 2001-50

ISSUE

Is the S corporation's gain recognized in each of the situations described below recognized built-in gain for purposes of § 1374 of the Internal Revenue Code?

FACTS

Situation 1: An S corporation holds timber property with built-in gain on the date its election to convert from a C corporation to an S corporation is effective (or acquires timber property with built-in gain from a C corporation in a transaction to which § 1374(d)(8) applies). During the 10-year period beginning with the first day of the first taxable year for which the corporation was an S corporation (or beginning on the day of the § 1374(d)(8) transaction) (the recognition period), the S corporation cuts the timber and sells the resulting wood products and recognizes that built-in gain in a transaction to which § 631 does not apply.

Situation 2: An S corporation holds timber property with built-in gain on the date its election to convert from a C corporation to an S corporation is effective (or acquires timber property with built-in gain from a C corporation in a transaction to which § 1374(d)(8) applies). During the recognition period, the S corporation recognizes that built-in gain on cutting the timber pursuant to an election under § 631(a).

Situation 3: An S corporation holds timber property with built-in gain on the date its election to convert from a C corporation to an S corporation is effective (or acquires timber property with built-in gain from a C corporation in a transaction to which § 1374(d)(8) applies). During the recognition period, the S corporation recognizes that built-in gain on the disposal of the timber under a contract to which § 631(b) applies.

Situation 4: An S corporation holds coal or domestic iron ore property with built-in gain on the date its election to convert from a C corporation to an S corporation is effective (or acquires coal or domestic iron ore property with built-in gain from a C corporation in a transaction to which § 1374(d)(8) applies). During the recognition period, the S corporation recognizes that built-in gain on the disposal of the coal or domestic iron ore under a contract to which § 631(c) applies.

LAW AND ANALYSIS

Section 1374 imposes a corporate-level tax on an S corporation's net recognized built-in gain during the recognition period in the case of a C corporation's conversion to S corporation status (§ 1374(a)) or an S corporation's acquisition of assets in a transaction in which the S corporation's basis in the acquired assets is determined by reference to the basis of such assets in the hands of a C corporation (§ 1374(d)(8)). Recognized built-in gain includes any gain recognized on the disposition of an asset during the recognition period, except to the extent the S corporation establishes that it did not hold the asset on the conversion date or § 1374(d)(8) transaction date, or that the gain recognized was greater than the excess of the asset's fair market value over its adjusted basis on the conversion date or § 1374(d)(8) transaction date (§ 1374(d)(3)). Section 1374(d)(3) applies to any gain recognized during the recognition period in a transaction treated as a sale or exchange for Federal income tax purposes (§ 1.1374-4(a) of the Income Tax Regulations). In Example 1 of § 1.1374-4(a)(3), X is a C corporation that elects to become an S corporation effective January 1, 1996. On that date, X owns a working interest in an oil and gas property with a fair market value of \$250,000 and an adjusted basis of \$500,000. During the recognition period, X produces and sells oil extracted from the oil and gas property for \$75,000. The example concludes that the \$75,000 is not recognized built-in gain under § 1374 because, as of the beginning of the recognition period, X held only a working interest in the oil and gas property, and not the oil itself.

Section 631(a) provides that, under certain circumstances, a taxpayer's cutting of

timber is treated as a sale or exchange of the timber in the year it is cut. Section 631(b) provides that, under certain circumstances, a taxpayer's disposition of timber shall be treated as giving rise to gain or loss on a sale of such timber. Section 631(c) provides that, under certain circumstances, a taxpayer's disposition to unrelated parties of coal or domestic iron ore shall be treated as giving rise to gain or loss on a sale of such coal or iron ore. In general, § 631 permits a taxpayer to benefit from capital gain treatment in circumstances that would otherwise give rise to ordinary income.

If an S corporation holds timber property on the date its election to convert from a C corporation to an S corporation is effective and, during the recognition period, cuts the timber and sells the resulting wood products in a transaction to which § 631 does not apply, the tax consequences to the S corporation under § 1374 are determined using the same analysis contained in Example 1 of § 1.1374-4(a)(3). The wood products sold as inventory during the recognition period did not constitute separate assets held by the S corporation on the conversion date and thus their production and sale do not constitute a partial disposition of the timber property. See Rev. Rul. 72-515 (1972-2 C.B. 466) (treating growing timber as part of the underlying real property for purposes of § 1031). Accordingly, the S corporation's income on the sale of the resulting wood products during the recognition period is not recognized built-in gain within the meaning of § 1374(d)(3) and is not taxed under § 1374.

Notwithstanding the treatment accorded income under § 631, the income received from the sale of the resulting wood product, produced coal, or produced iron ore involves the receipt of normal operating business income in the nature of rent or royalties. See Rev. Rul. 77-109 (1977-1 C.B. 87) (holding that payments received from a disposal of coal to which § 631(c) does not apply is ordinary income). The receipt of normal operating business income in the nature of rents and royalties is not subject to tax under § 1374. There is no indication that Congress intended the capital gain tax rate benefits provided by section § 631 to cause normal operating business income from the cutting of tim-

ber or the extraction of minerals to be subject to tax under § 1374. Moreover, § 631(c) is designed to favor domestic production of iron ore and sales of coal and iron ore to unrelated parties. Applying § 1374 to income taxed under § 631(c) could have the anomalous effect of taxing sales of domestic iron ore more heavily than sales of foreign production and taxing sales of coal and iron to unrelated parties more heavily than sales to related parties. Accordingly, an S corporation's gain recognized pursuant to § 631(a), § 631(b), or § 631(c) during the recognition period is not recognized built-in gain within the meaning of § 1374(d)(3).

HOLDINGS

The S corporation's gain recognized in the transactions described in Situation 1, 2, 3, and 4 is not recognized built-in gain for purposes of § 1374.

See also Rev. Proc. 2001-51 (2001-43 I.R.B. 369), which modifies Rev. Proc. 2001-3 (2001-1 I.R.B. 111), by deleting therefrom section 5.06 (the no-rule under § 1374, regarding the tax imposed on certain built-in gains).

DRAFTING INFORMATION

The principal author of this revenue ruling is Cristian P. Silva of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Mr. Silva at (202) 622-7750 (not a toll-free call).

Section 6221.—Tax Treatment Determined at Partnership Level

26 CFR 301.6221-1: Tax treatment determined at partnership level.

T.D. 8965

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 301 and 602

Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and amended by the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act). The unified partnership audit procedures provide administrative rules for the auditing of a partnership and its partners.

EFFECTIVE DATES: These regulations are effective October 4, 2001.

FOR FURTHER INFORMATION CONTACT: William Heard at (202) 622-7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545-0790. Responses to these collections of information are both mandatory and voluntary and are required to receive a benefit.

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

The collections of information required by §§ 301.6222(b)-1, 301.6227(c)-1, and 301.6227(d)-1 are reflected on Form 8082, "Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)." The burden associated with them is reflected on that form.

The remaining collections of information: §§ 301.6222(a)-2, 301.6222(b)-2, 301.6222(b)-3(a)(2), 301.6223(b)-1(b), 301.6223(c)-1(a), 301.6223(e)-2(a), 301.6223(g)-1, 301.6223(h)-1, 301.6224(b)-1(b), 301.6224(c)-1(c), 301.6224(c)-3(c), 301.6229(b)-2(b), 301.6230(b)-1, 301.6230(e)-1, 301.6231(a)(1)-1(b), 301.6231(a)(7)-1, 301.6231(c)-1(d), 301.6231(c)-2(d), are not reflected on the Form 8082. The estimated annual burden per respondent varies from .25 hours to .75 hours, depending on individual circumstances, with an estimated average of .5 hours.

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

Background

These regulations finalize the regulations proposed December 13, 1984 (L.R. 242-84, 1984-2 C.B. 917 [49 FR 48573]), April 18, 1986 (L.R. 205-82, 1986-1 C.B. 782 [51 FR 13231]), and January 26, 1999 (REG-106564-98, 1999-1 C.B. 714 [64 FR 3886]) and issued as temporary regulations on December 13, 1984 (T.D. 7996, 1985-1 C.B. 357 [49 FR 48536]), March 5, 1987 (T.D. 8128, 1987-1 C.B. 325 [52 FR 6779]), and January 26, 1999 (T.D. 8808, 1999-1 C.B. 682 [64 FR 3837]). On January 26, 1999, proposed regulations (REG-106564-98, 1999-1 C.B. 714) were published in the **Federal Register** (64 FR 3886). These regulations implemented the amendments to the unified partnership audit rules made by the 1997 and 1998 Acts. In addition, the preamble to those proposed regulations stated that the IRS planned on finalizing all of the unified partnership audit procedure regulations as part of this project (*i.e.*, those regulations proposed on December 13, 1984, and April 18, 1986). No written comments were received in response to the January 26, 1999, notice of proposed rulemaking. Contemporaneous with the issuance of proposed regulations, Treasury and the IRS issued temporary regulations containing substantially similar rules. Taxpayers and the IRS have been operating under these rules since they were promulgated as temporary regulations.

The proposed regulations under §§ 301.6221 thru 301.6233 are adopted, as revised by this Treasury decision.

Explanation of Provisions

These final regulations contain regulations substantially similar to the previously proposed and currently effective temporary regulations under sections 6221 through 6231, inclusive. The substantive changes from the provisions in the proposed and temporary regulations are as follows:

1. Clarification of § 301.6223(a)-2T

Section 6223 requires the IRS to provide partners with notice of partnership

proceedings. Under section 6223, the IRS must notify each partner of the beginning of an administrative proceeding by sending out a notice of the beginning of an administrative proceeding (NBAP). Under § 301.6223(a)-2T, if the IRS has issued an NBAP but decides not to propose any adjustments to the partnership return as filed, the IRS has 45 days to withdraw the NBAP. If the IRS does not withdraw the NBAP, however, it is not required to issue a notice of final partnership administrative adjustment (FPAA). This has led to some confusion among partnerships who postpone raising adjustments that may result in refunds or offsets while they await the outcome of the partnership-level audit. The issue of whether the IRS is required to issue an FPAA after issuance of an NBAP was litigated in *Atlantic Richfield Co. v. Dept. of Treasury*, 1996 U.S. Dist. LEXIS 19891, (D.D.C. Dec. 31, 1996). In that case, the court held that the IRS is not required to issue an FPAA even if it does not withdraw the NBAP. If the IRS does not issue an FPAA the partners will be unable to request favorable adjustments unless they have filed a timely administrative adjustment request (AAR) seeking a change in the treatment of partnership items. Accordingly, a sentence has been added to § 301.6223(a)-2 to explicitly inform taxpayers that the IRS does not have to issue an FPAA notwithstanding the issuance of (and failure to withdraw) an NBAP.

2. Elections Made Under § 301.6223(e)-2T

As stated above, section 6223 requires the IRS to provide partners with an NBAP and an FPAA. If the IRS fails to provide a partner with timely notice, the partner may, under § 301.6223(e)-2T(c)(2), elect to have either the FPAA, a court decision, a consistent settlement agreement, or conversion to nonpartnership items apply to that partner's partnership items. That election must be mailed within 45 days after "that notice was mailed." Section 301.6223(e)-2T(c)(2). To remove any ambiguity regarding which notice triggers the right to make an election under section 6223(e), the final regulations amend the temporary regulations to make it clear that the 45-day period for making the election under section 6223(e) relates to the mailing of the FPAA, not the NBAP. The final regulations also clarify that, in accordance with *Wind Energy Technology Associates III v. Commissioner*, 94 T.C.

787 (1990), the issuance of an NBAP fewer than 120 days before the issuance of the FPAA does not invalidate the FPAA. Instead, a taxpayer will have 45 days from the mailing of the FPAA to make the elections provided in section 6223(e).

3. Effect of a Nonresident Alien Partner on the Small Partnership Exception of Section 6231(a)(1)(B)(i)

For purposes of the unified partnership audit rules, section 6231(a)(1)(B)(i) contains an exception from the definition of a *partnership* for certain small partnerships. Under this rule, a *partnership* does not include any partnership having 10 or fewer partners, each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. The proposed regulations stated that "the 10 or fewer limitation . . . is applied to the number of natural persons (other than nonresident aliens) . . ." Some practitioners have read this provision to mean that a nonresident alien can be a partner in a small partnership that is not subject to the unified partnership audit rules, but that such partners are not counted toward the 10 partner limitation. To clarify that a partnership that has a nonresident alien partner cannot qualify for the small partnership exception of section 6231(a)(1)(B)(i), this parenthetical has been removed in § 301.6231(a)(1)-1(a)(1) of the final regulations.

4. Definition of Affected Item

Under the unified partnership audit rules, special procedures apply with respect to affected items, that is, items that are affected by partnership items. Section 301.6231(a)(5)-1T defines the term *affected item* as including, among other things, a partner's basis in the partner's partnership interest, the application of the section 465 at-risk rules to a partner, and any addition to tax or additional amount to the extent that they are not partnership items. Generally, affected items are directly assessed following partnership proceedings. If the item requires partnership-level determinations, however, the IRS must assert changes to affected items in a partner-level deficiency proceeding following the completion of the partnership-level proceeding.

The IRS promulgated § 301.6231(a)(5)-1T before the enactment of section

469, the passive loss rules. Because the application of the passive loss rules to a partner is similar to the existing list of affected items, the final regulations provide that the application of the passive loss rules under section 469 to a partner with respect to a loss flowing from a partnership is an affected item to the extent it is not a partnership item.

5. Husbands and Wives Owning Partnership Interests Separately or Jointly

The temporary regulations under section 6231 describe the treatment of spouses under the unified partnership audit rules where: (1) a married couple owns an interest in a partnership as joint property; and (2) a married individual owns an interest in a partnership as separate property. Section 301.6231(a)(12)-1T applies when a married couple owns a partnership interest as joint property. It provides that, with limited exceptions, spouses holding a joint interest in a partnership are both treated as partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. This regulation interprets section 6231(a)(12), which provides that a husband and wife who have a joint interest in a partnership shall be treated as one person, except as otherwise provided in regulations.

Section 301.6231(a)(2)-1T applies when one spouse owns a partnership interest as separate property. It provides that, with limited exceptions, a spouse who files a joint return with an individual holding a separate interest in a partnership is treated as a partner for purposes of subchapter C of chapter 63. This regulation interprets section 6231(a)(2), which provides that the term *partner* includes any person whose income tax liability is determined in whole or in part by taking into account directly or indirectly partnership items.

In *Callaway v. Commissioner*, 231 F.3d 106 (2d Cir. 2000), the U.S. Court of Appeals for the Second Circuit considered § 301.6231(a)(2)-1T in holding that a wife was not bound by the outcome of a unified partnership proceeding where her husband's partnership items converted to nonpartnership items during the proceeding. The partnership interest at issue in *Callaway* was the husband's separate property. The court reasoned that the wife was treated as a partner under the regulation only because she filed a joint return

with a person who owned a partnership interest; therefore, her tax liability was determined in part by taking into account partnership items. Once the husband's partnership items converted to nonpartnership items, the wife's tax liability was no longer affected by any partnership items and there was no longer any reason for her to participate in or be bound by the partnership proceedings.

In so holding, the Callaway court distinguished *Dubin v. Commissioner*, 99 T.C. 325 (1992). In *Dubin*, the Tax Court held that a wife was bound by the outcome of a unified partnership audit proceeding even though her husband's partnership items converted to nonpartnership items prior to the conclusion of the proceeding. In *Dubin*, unlike *Callaway*, the husband and wife owned the interest as joint property. Therefore, each was treated as having a share of partnership items that could be affected by the partnership proceeding independently of the other's share.

To resolve questions concerning the treatment of partnership items when a conversion event occurs with respect to a spouse, §§ 301.6231(a)(2)-1T and 301.6231(a)(12)-1T have been amended to be consistent with the *Callaway* opinion.

6. Partnership-Level Determinations of Penalties

Before the 1997 Act, the IRS could impose penalties on a partner only through the application of the deficiency procedures after the completion of a partnership-level proceeding. Forcing the IRS to open deficiency proceedings against the individual partners was inconsistent with the efficiency goal of the partnership audit rules. The 1997 Act cured this problem by providing that, for partnership taxable years ending after August 5, 1997, partnership-level proceedings include the determination of applicable penalties at the partnership level. Partners may now raise any partner-level defenses to the imposition of penalties only in a subsequent refund action.

The temporary regulations issued on January 26, 1999 (the 1999 Regulations), revised §§ 301.6221-1T, 301.6224(c)-3T(b)(1), and 301.6231(a)(6)-1T to conform those regulations to the statutory change. The revised regulations mandate

that the partnership's penalty defenses are to be resolved during the partnership proceeding; individual defenses can only be brought by the partner in a subsequent refund action. In addition, the 1999 Regulations modify the computational adjustment rules to allow the IRS to assess penalties under those procedures. Finally, the 1999 Regulations specify that partnership-level determinations of a penalty may be the subject of a settlement agreement between the IRS and a partner in a partnership. If they are, then the IRS must offer consistent settlement terms with respect to those partnership-level determinations of the penalty (and other settled partnership items) to other partners in the partnership, subject to the limitations of section 6224(c)(2) and the regulations thereunder.

The final regulations make additional changes to the regulations under subchapter C of chapter 63 to conform those regulations to the new statutory treatment of penalties. Specifically, the final regulations amend § 301.6224(c)-1T to clarify that a settlement agreement between the tax matters partner and the IRS with respect to penalties, like a settlement agreement with respect to partnership items, binds partners other than notice partners and members of a notice group. Similarly, the final regulations amend § 301.6224(c)-2T to clarify that a settlement agreement between a pass-thru partner and the IRS with respect to penalties binds indirect partners, as would a settlement agreement with respect to partnership items. In addition, the final regulations amend § 301.6229(f)-1T to clarify that the rules applicable to partial settlements of partnership items also apply to partnership-level determinations of penalties.

The final regulations also amend § 301.6226(f)-1T to reflect the 1997 Act changes to section 6226(f). The 1997 Act grants courts jurisdiction to determine penalties, additions to tax, or additional amounts relating to an adjustment to partnership items. The final regulations do not, however, amend § 301.6226(e)-1T to require that a partnership contesting an FPAA, in a United States district court or the United States Court of Federal Claims, deposit tax attributable to partnership-level determinations of penalties as a condition of bringing the proceeding. Be-

cause the 1997 Act amends section 6226(f), but not section 6226(e), it appears that Congress did not intend to require a deposit of penalties attributable to partnership-level determinations as a condition of bringing such an action. This rule is applicable to civil actions beginning on or after October 4, 2001.

Treasury and the IRS also amended § 301.6226(e)-1T to clarify that, in the case of a petition filed by a 5-percent group or pass-thru partner, the members of the group or the indirect partners holding an interest in the partnership through the pass-thru partner must deposit the aggregate amount by which their tax liabilities would be increased if the treatment of partnership items on the partners' returns were made consistent with the treatment of partnership items on the partnership return. This clarification is applicable to civil actions beginning on or after March 30, 2002.

7. Applicability Dates

This document contains final regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by TEFRA, and amended by the 1997 Act and the 1998 Act. Proposed regulations were published on December 13, 1984, April 18, 1986, and January 26, 1999. Temporary regulations were published on December 13, 1984 (effective December 10, 1984), March 5, 1987 (effective September 3, 1982), and January 26, 1999 (effective January 26, 1999). The final regulations published in this document apply to unified partnership proceedings with respect to partnership taxable years beginning on or after October 4, 2001. For unified partnership proceedings with respect to partnership taxable years beginning before October 4, 2001, taxpayers and practitioners are directed to the temporary regulations that were in effect for the period in question.

Effective Date

These regulations are effective as of October 4, 2001.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in

§ 301.6229(b)–2(b) does not have a significant impact on a substantial number of small entities. This certification is based on the fact that the notification is only required for the few partnerships whose Tax Matters Partners are debtors in a bankruptcy proceeding under Title 11 of the United States Code. Moreover, the time required to prepare and file the notification is minimal and will not have a significant impact on those few small entities that file the notification. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required for § 301.6229(b)–2(b).

The other information collections imposed by this Treasury decision are not subject to the Regulatory Flexibility Act because the notice of proposed rulemaking with respect to these requirements was published prior to March 29, 1996. Nevertheless, we believe that these information collections will not have a significant impact on a substantial number of small entities. This is based on the fact that most of the information collections only apply to entities under audit, and the remaining information collections apply only to a small number of small businesses, namely small partnerships who elect to have the provisions of subchapter C of chapter 63 apply, and small business partners that report partnership items inconsistently with the reporting of that item on the partnership return. Moreover, the time required to prepare and file the required statements is minimal on those few small entities that file the statements.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Horace Howells, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301 - - PROCEDURE AND ADMINISTRATION

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

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

Section 301.6231(c)–1 also issued under 26 U.S.C. 6231(c)(1) and (3).

Section 301.6231(c)–2 also issued under 26 U.S.C. 6231(c)(1) and (3). * * *

Par. 2. Section 301.6221–1 is added to read as follows:

§ 301.6221–1 Tax treatment determined at partnership level.

(a) *In general.* A partner's treatment of partnership items on the partner's return may not be changed except as provided in sections 6222 through 6231 and the regulations thereunder. Thus, for example, if a partner treats an item on the partner's return consistently with the treatment of the item on the partnership return, the IRS generally cannot adjust the treatment of that item on the partner's return except through a partnership-level proceeding. Similarly, the taxpayer may not put partnership items in issue in a proceeding relating to nonpartnership items. For example, the taxpayer may not offset a potential increase in taxable income based on changes to nonpartnership items by a potential decrease based on partnership items.

(b) *Restrictions inapplicable after items become nonpartnership items.* Section 6221 and paragraph (a) of this section cease to apply to items arising from a partnership with respect to a partner when those items cease to be partnership items with respect to that partner under section 6231(b).

(c) *Penalties determined at partnership level.* Any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item shall be determined at the partnership level. Partner-level defenses to such items can only be asserted through refund actions following assessment and payment. Assessment of any penalty, addition to tax, or additional amount that relates to an ad-

justment to a partnership item shall be made based on partnership-level determinations. Partnership-level determinations include all the legal and factual determinations that underlie the determination of any penalty, addition to tax, or additional amount, other than partner-level defenses specified in paragraph (d) of this section.

(d) *Partner-level defenses.* Partner-level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item may not be asserted in the partnership-level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner-level defenses are limited to those that are personal to the partner or are dependent upon the partner's separate return and cannot be determined at the partnership level. Examples of these determinations are whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b) (penalties applicable only where return is filed), or section 6664(c)(1) (reasonable cause exception) subject to partnership-level determinations as to the applicability of section 6664(c)(2).

(e) *Cross-references.* See §§ 301.6231(c)–1 and 301.6231(c)–2 for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6221–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6221–1T [Removed]

Par. 2a. Section 301.6221–1T is removed.

Par. 3. Section 301.6222(a)–1 is added to read as follows:

§ 301.6222(a)–1 Consistent treatment of partnership items.

(a) *In general.* The treatment of a partnership item on the partner's return must be consistent with the treatment of that item by the partnership on the partnership return in all respects including the amount, timing, and characterization of the item.

(b) *Treatment must be consistent with partnership return.* The treatment of a partnership item on the partner's return must be consistent with the treatment of that item on the partnership return. Thus, a partner who treats an item consistently with a schedule or other information furnished to the partner by the partnership has not satisfied the requirement of paragraph (a) of this section if the treatment of that item is inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule, see § 301.6222(b)-3.

(c) *Examples.* The following examples illustrate the principles of this section:

Example 1. B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 2001, P receives an advance payment for services to be performed in 2002 and reports this amount as income for calendar year 2001. However, B reports B's distributive share of this amount on B's income tax return for 2002 and not on B's return for 2001. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example 2. Partnership P incurred certain start-up costs before P was actively engaged in its business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of that item by P.

Example 3. D is a partner in partnership P. P reports a loss of \$100,000 on its return, \$5,000 of which it reports on the Schedule K-1 attached to its return as D's distributive share. However, P reports \$15,000 as D's distributive share of P's loss on the Schedule K-1 furnished to D. D reports the \$15,000 loss on D's income tax return. D has not satisfied the consistent reporting requirement. See, however, § 301.6222(b)-3 for an election to be treated as having reported the inconsistency.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(a)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(a)-1T [Removed]

Par. 3a. Section 301.6222(a)-1T is removed.

Par. 4. Section 301.6222(a)-2 is added to read as follows:

§ 301.6222(a)-2 Application of consistent reporting and notification rules to indirect partners.

(a) *In general.* The consistent reporting requirement of § 301.6222(a)-1 is gener-

ally applied with respect to the source partnership. For purposes of this section, the term *source partnership* means the partnership (within the meaning of section 6231(a)(1)) from which the partnership item originates.

(b) *Indirect partner files consistently with source partnership.* An indirect partner who treats an item from a source partnership in a manner consistent with the treatment of that item on the source partnership's return satisfies the consistency requirement of section 6222(a) regardless of whether the indirect partner treats that item in a manner consistent with the treatment of that item by the pass-thru partner through which the indirect partner holds the interest in the source partnership. Under these circumstances, therefore, the Internal Revenue Service shall not send to the indirect partner the notice described in section 6231(b)(1)(A).

(c) *Indirect partner files inconsistently with source partnership—(1) Indirect partner notifies the Internal Revenue Service of inconsistency.* An indirect partner who—

(i) Treats an item from a source partnership in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)-1, shall not be subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(2) *Indirect partner does not notify the Internal Revenue Service of inconsistency.* Except as provided in paragraph (c)(3) of this section, an indirect partner who—

(i) Treats an item from a source partnership in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Fails to file a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)-1, is subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(3) *Indirect partner files consistently with a pass-thru partner that notifies the Internal Revenue Service of the inconsistency.* If an indirect partner treats an item

from a source partnership in a manner consistent with the treatment of that item by a pass-thru partner through which the indirect partner holds the interest in the source partnership and that pass-thru partner—

(i) Treats that item in a manner inconsistent with the treatment of that item on the source partnership's return; and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)-1, the indirect partner is not subject to a computational adjustment to conform to the treatment of that item on the return of the source partnership.

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. One of the partners in Partnership A is Partnership B, which has four equal partners C, D, E, and F. Both A and B are partnerships within the meaning of section 6231(a)(1). On its return, A reports \$100,000 as B's distributive share of A's ordinary income. B, however, reports only \$80,000 as its distributive share of the income and does not notify the Internal Revenue Service of this inconsistent treatment with respect to A. C reports \$20,000 as its distributive share of the item. Although C reports the item consistently with B, C is subject to a computational adjustment to conform the treatment of that item on C's return to the treatment of that item on A's return.

Example 2. Assume the same facts as in *Example 1*, except that B notified the Internal Revenue Service of its inconsistent treatment with respect to source partnership A. C is not subject to a computational adjustment.

Example 3. Assume the same facts as in *Example 1*. D reports only \$15,000 as D's distributive share of the income and does not report the inconsistency. F reports only \$9,000 as its distributive share of the item but reports this inconsistency with respect to source partnership A. D is subject to a computational adjustment to conform the treatment of that item on D's return to the treatment of that item on A's return. F is not subject to a computational adjustment.

Example 4. Assume the same facts as in *Example 3*, except that F reported the inconsistency with respect to B and did not report the inconsistency with respect to source partnership A. F is subject to a computational adjustment to conform the treatment of that item on F's return to the treatment of that item on A's return.

Example 5. Assume the same facts as in *Example 1*. E reports \$25,000 as its distributive share of the item. Regardless of whether E reports the inconsistency between its treatment of the item and that by B, E is neither subject to a computational adjustment to conform E's treatment of that item to that of B nor subject to the notice described in section 6231(b)(1)(A) with respect to any such notification of inconsistent treatment.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For

years beginning prior to October 4, 2001, see § 301.6222(a)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(a)–2T [Removed]

Par. 4a. Section 301.6222(a)–2T is removed.

Par. 5. Section 301.6222(b)–1 is added to read as follows:

§ 301.6222(b)–1 Notification to the Internal Revenue Service when partnership items are treated inconsistently.

(a) *In general.* The statement identifying an inconsistency described in section 6222(b)(1)(B) shall be filed by filing the form prescribed for that purpose in accordance with the instructions accompanying that form.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)–1T [Removed]

Par. 5a. Section 301.6222(b)–1T is removed.

Par. 6. Section 301.6222(b)–2 is added to read as follows:

§ 301.6222(b)–2 Effect of notification of inconsistent treatment.

(a) *In general.* Generally, if a partner treats a partnership item on the partner's return in a manner inconsistent with the treatment of that item on the partnership return, the Internal Revenue Service may make a computational adjustment to conform the treatment of the item by the partner with the treatment of that item on the partnership return. Any additional tax resulting from that computational adjustment may be assessed without either the commencement of a partnership proceeding or notification to the partner that all partnership items arising from that partnership will be treated as nonpartnership items. However, if a partner notifies the Internal Revenue Service of the inconsistent treatment of a partnership item in the manner prescribed in § 301.6222(b)–1, the Internal Revenue Service generally may not make an adjustment with respect to that partnership item unless the Internal Revenue Service—

(1) Conducts a partnership-level proceeding; or

(2) Notifies the partner under section 6231(b)(1)(A) that all partnership items arising from that partnership will be treated as nonpartnership items. See, however, §§ 301.6231(c)–1 and 301.6231(c)–2 for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(b) *Partner protected only to extent of notification.* (1) A partner who reports the inconsistent treatment of partnership items on the partner's return is protected from computational adjustments under section 6222(c) only with respect to those partnership items the inconsistent treatment of which is reported. Thus, if a partner notifying the Internal Revenue Service with respect to one item fails to report the inconsistent treatment of another item, the partner is subject to a computational adjustment with respect to that other item.

(2) The following example illustrates the principles of this paragraph (b):

Example. Partner A of Partnership P treats a deduction and a capital gain arising from P on A's return in a manner that is inconsistent with the treatment of those items by P. A reports the inconsistent treatment of the deduction but not of the gain. A is subject to a computational adjustment under section 6222(c) with respect to the gain.

(c) *Adjustments in a separate proceeding not limited to conforming adjustments.* (1) If the Internal Revenue Service conducts a separate proceeding with a partner whose partnership items are treated as nonpartnership items under section 6231(b), the Internal Revenue Service is not limited to making adjustments that merely conform the partner's return to the partnership return.

(2) *Example.* The following example illustrates the principles of this paragraph (c):

Example. Partnership P allocates to E, one of its partners, a loss of \$8,000. E, however, claims a loss of \$9,000 and reports the inconsistent treatment. The Internal Revenue Service notifies E that it will treat all of E's partnership items arising from P as nonpartnership items. As a result of a separate proceeding with E, the Internal Revenue Service may issue a deficiency notice which could include reducing the loss to \$3,000.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)–2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)–2T [Removed]

Par. 6a. Section 301.6222(b)–2T is removed.

Par. 7. Section 301.6222(b)–3 is added to read as follows:

§ 301.6222(b)–3 Partner receiving incorrect schedule.

(a) *In general.* A partner shall be treated as having complied with section 6222(b)(1)(B) and § 301.6222(b)–1 with respect to a partnership item if the partner—

(1) Demonstrates that the treatment of the partnership item on the partner's return is consistent with the treatment of that item on the schedule prescribed by the Internal Revenue Service and furnished to the partner by the partnership showing the partner's share of income, credits, deductions, etc.; and

(2) Elects in accordance with the rules prescribed in paragraph (b) of this section to have this section apply with respect to that item.

(b) *Election provisions—(1) Time and manner of making election.* The election described in paragraph (a) of this section shall be made by filing a statement with the Internal Revenue Service office issuing the notice of computational adjustment within 30 days after the notice is mailed to the partner.

(2) *Contents of statement.* The statement described in paragraph (b)(1) of this section shall be—

(i) Clearly identified as an election under section 6222(b)(2);

(ii) Signed by the partner making the election; and

(iii) Accompanied by copies of the schedule furnished to the partner by the partnership and of the notice of computational adjustment. The partner need not enclose a copy of the notice of computational adjustment, however, if the partner clearly identifies the notice of computational adjustment. Generally, the requirement described in paragraph (a)(1) of this section will be satisfied by attaching to the statement a copy of the schedule furnished to the partner by the partnership. However, if it is not clear from the information contained on the schedule that the treatment of the partnership item on the schedule is consistent with the partner's treatment of such item on the partner's re-

turn, the statement shall also include an explanation of how the treatment of such item on the schedule is consistent with the treatment on the partner's return with respect to the characterization, timing, and amount of such item.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6222(b)-3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6222(b)-3T [Removed]

Par. 7a. Section 301.6222(b)-3T is removed.

Par. 8. Section 301.6223(a)-1 is added to read as follows:

§ 301.6223(a)-1 Notice sent to tax matters partner.

(a) *In general.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code, a notice is treated as mailed to the tax matters partner on the earlier of—

(1) The date on which the notice is mailed to "THE TAX MATTERS PARTNER" at the address of the partnership (as provided on the partnership return, except as updated under § 301.6223(c)-1); or

(2) The date on which the notice is mailed to the person who is the tax matters partner at the address of that person (as provided on the partner's return, except as updated under § 301.6223(c)-1) or the partnership. See § 301.6223(c)-1 for rules relating to the information used by the Internal Revenue Service in providing notices, etc.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Partnership P designates B as its tax matters partner in accordance with § 301.6231(a)(7)-1(b). On December 1, a notice of the beginning of an administrative proceeding is mailed to "THE TAX MATTERS PARTNER" at the address of P. On January 10, a copy of the notice is mailed to B at B's address. December 1 is treated as the date that the notice was mailed to the tax matters partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(a)-1T [Removed]

Par. 8a. Section 301.6223(a)-1T is removed.

Par. 9. Section 301.6223(a)-2 is added to read as follows:

§ 301.6223(a)-2 Withdrawal of notice of the beginning of an administrative proceeding.

(a) *In general.* If the Internal Revenue Service, within 45 days after the day on which the notice specified in section 6223(a)(1) is mailed to the tax matters partner, decides not to propose any adjustments to the partnership return as filed, the Internal Revenue Service may withdraw the notice specified in section 6223(a)(1) by mailing a letter to that effect to the tax matters partner within that 45-day period. Even if the Internal Revenue Service does not withdraw the notice specified in section 6223(a)(1), the Internal Revenue Service is not required to issue a notice of final partnership administrative adjustment. If the Internal Revenue Service withdraws the notice specified in section 6223(a)(1), neither the Internal Revenue Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Except as provided in paragraph (b) of this section, a notice specified in section 6223(a)(1) which has been withdrawn shall be treated for purposes of subchapter C of chapter 63 of the Internal Revenue Code as if that notice had never been mailed to the tax matters partner.

(b) *Internal Revenue Service may not reissue notice except under certain circumstances.* If the notice specified in section 6223(a)(1) was mailed to the tax matters partner with respect to a partnership taxable year and that notice was later withdrawn as provided in paragraph (a) of this section, the Internal Revenue Service shall not mail a second notice specified in section 6223(a)(1) with respect to that taxable year unless—

(1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) The prior proceeding involved the misapplication or erroneous interpretation of an established Internal Revenue Service position existing at the time of the previous examination, or the failure to make an adjustment based on such a position; or

(3) Other circumstances exist which indicate that failure to reissue the notice would be a serious administrative omission.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(a)-2T [Removed]

Par. 9a. Section 301.6223(a)-2T is removed.

Par. 10. Section 301.6223(b)-1 is added to read as follows:

§ 301.6223(b)-1 Notice group.

(a) *In general.* If a group of partners having in the aggregate a 5 percent or more interest in the profits of a partnership requests and designates one of their members to receive the notices described in sections 6223(a)(1) and (2), the member so designated shall be treated as a partner to whom section 6223(a) applies. Thus, the designated representative is entitled to receive any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request from the group.

(b) *Request for notice—(1) In general.* The Internal Revenue Service shall mail to the member of the notice group designated to receive such notice any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request for notice from the group if such request for notice is made in accordance with the rules prescribed in this paragraph (b).

(2) *Content of request.* The request for notice from a notice group shall—

(i) Identify the partnership by name, address, and taxpayer identification number;

(ii) Specify the taxable year or years for which the notice group is formed;

(iii) Designate the member of the group to receive the notices;

(iv) Set out the name, address, taxpayer identification number, and profits interest of each member of the group; and

(v) Be signed by all partners comprising the notice group.

(3) *Place for filing.* The request for notice from a notice group generally must be filed with the service center where the partnership return is filed. However, if the notice group representative knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed that notice.

(4) *Copy to be sent to the tax matters partner.* A copy of the request for notice from a notice group shall be provided to the tax matters partner by the notice group representative within 30 days after the request is filed with the Internal Revenue Service.

(5) *Years covered by request.* A request for notice by a notice group may relate only to partnership taxable years that have ended before the request is filed. A request, however, may relate to more than one partnership taxable year if the 5 percent or more profits interest requirement of section 6223(b)(2) is satisfied for each year to which the request relates.

(c) *Composition of notice group—(1) In general.* A notice group shall be comprised only of persons who were partners at some time during the partnership taxable year for which the group is formed. If a notice group is formed for more than one taxable year, each member of the group must have been a partner at some time during at least one of the taxable years for which the group is formed. A notice group may include a partner entitled to separate notice. See section 6231(d) and § 301.6231(d)-1 for rules relating to determining the interest of a partner in the profits of a partnership for a partnership taxable year for purposes of section 6223(b). See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(2) *Partner may be a member of only one group.* A partner cannot be a member of more than one notice group with respect to the same partnership for the same partnership taxable year. See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(3) *Partner may join group after formation.* A partner may join a notice group at any time after the formation of that group by filing, with the Internal Revenue Service office where the notice group

filed its request, a statement that it is joining the notice group. The statement shall identify the partner joining the notice group, the partnership, and the members of the notice group by name, address, and taxpayer identification number and shall be signed by the joining partner. A copy of the statement shall be provided by the joining partner to both the tax matters partner and the notice group representative within 30 days after the request is filed with the Internal Revenue Service. The partner shall become a member of the notice group for each partnership taxable year for which the group was formed and for which the partner was a partner at any time during such partnership taxable year.

(4) *Date on which a partner becomes a member of notice group.* A partner shall become a member of a notice group on the 30th day after the day on which the Internal Revenue Service receives—

(i) A request for notice from a notice group that identifies that partner as a member of that notice group; or

(ii) A statement filed in accordance with paragraph (c)(3) of this section that states that the partner is joining the notice group.

(5) *No withdrawal from notice group.* A partner who has signed a notice group request filed with the Internal Revenue Service remains a member of that notice group until the group terminates. A partner cannot withdraw from the notice group.

(6) *Indirect and pass-thru partners—(i) Pass-thru partners and unidentified indirect partners.* A pass-thru partner may become a member of a notice group as provided in this section. For purposes of applying the aggregate interest requirement specified in paragraph (a) of this section to a pass-thru partner, the partnership interest held by the pass-thru partner shall not include any interest held through the pass-thru partner by an indirect partner that has been identified as provided in section 6223(c)(3) and § 301.6223(c)-1 before the date on which the pass-thru partner becomes a member of the notice group.

(ii) *Indirect partners identified before the pass-thru partner joins a notice group.* An indirect partner may become a member of a notice group with respect to a partnership taxable year only if—

(A) The indirect partner held an interest in the partnership (either directly or

through one or more pass-thru partners) at some time during that taxable year; and

(B) The indirect partner was identified as provided in section 6223(c)(3) and § 301.6223(c)-1 on or before the date on which the pass-thru partner became a member of a notice group.

(d) *Termination of notice group.* Unless the original request for notice from the notice group or a subsequent statement filed by the representative (in accordance with paragraphs (b)(3) and (4) of this section) designates a successor to the designated group representative, the group terminates if the representative dies (or, in the case of an entity, if the entity is dissolved), resigns, or is adjudicated incompetent.

(e) *Notice group is not a 5-percent group.* The forming of a notice group under this section does not constitute the forming of a 5-percent group for purposes of litigation. A notice group is formed solely for the purpose of receiving notices. A 5-percent group is formed solely for the purpose of filing a petition for judicial review or appealing a judicial determination. See § 301.6226(b)-1. Thus, a member of a notice group may choose not to join a 5-percent group formed by other members of the notice group.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(b)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(b)-1T [Removed]

Par. 10a. Section 301.6223(b)-1T is removed.

Par. 11. Section 301.6223(c)-1 is added to read as follows:

§ 301.6223(c)-1 *Additional information regarding partners furnished to the Internal Revenue Service.*

(a) *In general.* In addition to the names, addresses, and profits interests as shown on the partnership return, the Internal Revenue Service will use additional information as provided in this section for purposes of administering subchapter C of chapter 63 of the Internal Revenue Code.

(b) *Procedure for furnishing additional information—(1) In general.* Any person

may furnish additional information at any time by filing a written statement with the Internal Revenue Service. However, the information contained in the statement will be considered for purposes of determining whether a partner is entitled to a notice described in section 6223(a) only if the Internal Revenue Service receives the statement at least 30 days before the date on which the Internal Revenue Service mails the notice to the tax matters partner. Similarly, information contained in the statement generally will not be taken into account for other purposes by the Internal Revenue Service until 30 days after the statement is received.

(2) *Where statement must be filed.* A statement furnished under this section generally must be filed with the service center where the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice.

(3) *Contents of statement.* The statement shall—

(i) Identify the partnership, each partner for whom information is supplied, and the person supplying the information by name, address, and taxpayer identification number;

(ii) Explain that the statement is furnished to correct or supplement earlier information with respect to the partners in the partnership;

(iii) Specify the taxable year to which the information relates;

(iv) Set out the corrected or additional information; and

(v) Be signed by the person supplying the information.

(c) *No incorporation by reference to previously furnished documents.* Incorporation by reference of information contained in another document previously furnished to the Internal Revenue Service will not be given effect for purposes of section 6223(c) or 6229(e). For example, reference to a return filed by a pass-thru partner which contains identifying information with respect to the indirect partners of that pass-thru partner is not sufficient to identify the indirect partners unless a copy of the document referred to

is attached to the statement. Furthermore, reference to a prior general notification to the Internal Revenue Service that a partner who would otherwise be the tax matters partner is a debtor in a bankruptcy proceeding or has had a receiver appointed for the partner in a receivership proceeding is not sufficient unless a copy of the notification document referred to is attached to the statement.

(d) *Information supplied by a person other than the tax matters partner.* The Internal Revenue Service may require appropriate verification in the case of information furnished by a person other than the tax matters partner. The 30-day period referred to in paragraph (b)(1) of this section shall not begin until that verification is supplied.

(e) *Power of attorney—(1) In general.* This paragraph (e) applies to powers of attorney with respect to proceedings under subchapter C of chapter 63 of the Internal Revenue Code (chapter 63C) that begin on or after January 2, 2002.

(2) *Specifically for purposes of subchapter C of chapter 63 of the Internal Revenue Code.* A power of attorney specifically for purposes of subchapter C of chapter 63 of the Internal Revenue Code shall be furnished in accordance with paragraph (b)(2) of this section.

(3) *Existing power of attorney.* A power of attorney granted to another person by a partner for other tax purposes shall not be given effect for purposes of subchapter C of chapter 63 unless the partner specifically requests that the power be given such effect in a statement furnished to the Internal Revenue Service in accordance with paragraph (b) of this section.

(f) *Internal Revenue Service may use other information.* In addition to the information on the partnership return and that supplied on statements filed under this section, the Internal Revenue Service may use other information in its possession (for example, a change in address reflected on a partner's return) in administering subchapter C of chapter 63 of the Internal Revenue Code. However, the Internal Revenue Service is not obligated to search its records for information not expressly furnished under this section.

(g) *Effective date.* Except as provided in paragraph (e)(1) of this section, this section is applicable to partnership tax-

able years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(c)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(c)-1T [Removed]

Par. 11a. Section 301.6223(c)-1T is removed.

Par. 12. Section 301.6223(e)-1 is added to read as follows:

§ 301.6223(e)-1 *Effect of Internal Revenue Service's failure to provide notice.*

(a) *Notice group.* Section 6223(e)(1)(B)(ii) applies with respect to a notice group only if the request for notice described in § 301.6223(b)-1 is received by the Internal Revenue Service at least 30 days before the notice is mailed to the tax matters partner.

(b) *Indirect partners—(1) In general.* For purposes of section 6223(e), the Internal Revenue Service's failure to provide notice to a pass-thru partner entitled to notice under section 6223(b) is deemed a failure to provide notice to indirect partners holding an interest in the partnership through the pass-thru partner. However, this rule does not apply if the indirect partner—

(i) Receives notice from the Internal Revenue Service;

(ii) Is identified as provided in section 6223(c)(3) and § 301.6223(c)-1 at least 30 days before the notice is mailed to the tax matters partner; or

(iii) Is a member of a notice group entitled to notice under paragraph (a) of this section.

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example 1. Partnership ABC has as one of its partners, A, a partnership with three partners, X, Y, and Z. ABC does not have more than 100 partners, and partnership A is entitled to notice under section 6223(a). In addition, Z was identified as provided in section 6223(c)(3) and § 301.6223(c)-1 on May 1, 2002. The Internal Revenue Service mailed a notice to the tax matters partner of ABC on July 1, 2002, but failed to provide notice to partnership A. Notwithstanding the Internal Revenue Service's notice to the tax matters partner, the Internal Revenue Service is deemed to have failed to provide notice to X and Y. The Internal Revenue Service's failure to provide notice to A, however, has no effect on Z; whether notice was provided to Z is determined independently.

Example 2. Assume the same facts as in *Example 1*, except that the Internal Revenue Service provided notice to partnership A but did not provide separate notice to Z. Notwithstanding the Internal Revenue Service's notice to partnership A, the Internal Revenue Service is deemed to have failed to provide notice to Z.

Example 3. Assume the same facts as in *Example 1*, except that partnership ABC has more than 100 partners and partnership A is entitled to notice under section 6223(b) because it had at least a 1 percent profits interest in partnership ABC. In addition, X became a member of a notice group on June 1, 2002, and the Internal Revenue Service mailed a notice to the designated member of that notice group. The Internal Revenue Service also mailed a separate notice to Z. The Internal Revenue Service's failure to provide notice to partnership A only affects Y, who is deemed not to have been provided notice by the Internal Revenue Service.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(e)-1T [Removed]

Par. 12a. Section 301.6223(e)-1T is removed.

Par. 13. Section 301.6223(e)-2 is added to read as follows:

§ 301.6223(e)-2 Elections if Internal Revenue Service fails to provide timely notice.

(a) *In general.* This section applies in any case in which the Internal Revenue Service fails to timely mail any notice described in section 6223(a) of the Internal Revenue Code to a partner entitled to such notice within the period specified in section 6223(d). The failure to issue any notice within the period specified in section 6223(d) does not invalidate the notice of the beginning of an administrative proceeding or final partnership administrative adjustment (FPAA). An untimely FPAA enables the recipient of the untimely notice to make the elections described in paragraphs (b), (c), and (d) of this section. The period within which to make the elections described in paragraphs (b), (c), and (d) of this section commences with the mailing of an FPAA to the partner. In the absence of an election, paragraphs (b) and (c) of this section provide for the treatment of a partner's partnership items.

(b) *Proceeding finished.* If at the time the Internal Revenue Service mails the partner an FPAA—

(1) The period within which a petition for review of the FPAA under section 6226 may be filed has expired and no petition has been filed; or

(2) The decision of a court in an action begun by such a petition has become final, the partner may elect in accordance with paragraph (d) of this section to have that adjustment, that decision, or a settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the adjustment relates apply to that partner. If the partner does not make an election in accordance with paragraph (d) of this section, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(c) *Proceeding still going on.* If at the time the Internal Revenue Service mails the partner an FPAA, paragraphs (b)(1) and (2) of this section do not apply, the partner shall be a party to the proceeding unless the partner elects, in accordance with paragraph (d) of this section, to have—

(1) A settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the proceeding relates apply to the partner; or

(2) The partnership items of the partner for the partnership taxable year to which the proceeding relates treated as having become nonpartnership items as of the day on which the Internal Revenue Service mails the partner the FPAA.

(d) *Election*—(1) *In general.* The election described in paragraph (b) or (c) of this section shall be made in the manner prescribed in this paragraph (d). The election shall apply to all partnership items for the partnership taxable year to which the election relates.

(2) *Time and manner of making election.* The election shall be made by filing a statement with the Internal Revenue Service office mailing the FPAA within 45 days after the date on which the FPAA was mailed to the partner making the election.

(3) *Contents of statement.* The statement shall—

(i) Be clearly identified as an election under section 6223(e)(2) or (3);

(ii) Specify the election being made (that is, application of final partnership administrative adjustment, court decision, consistent settlement agreement, or non-partnership item treatment);

(iii) Identify the partner making the election and the partnership by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election relates; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(e)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(e)-2T [Removed]

Par. 13a. Section 301.6223(e)-2T is removed.

Par. 14. Section 301.6223(f)-1 is added to read as follows:

§ 301.6223(f)-1 Duplicate copy of final partnership administrative adjustment.

(a) *In general.* Section 6223(f) does not prohibit the Internal Revenue Service from issuing a duplicate copy of the notice of final partnership administrative adjustment (for example, in the event the original notice is lost).

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(f)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(f)-1T [Removed]

Par. 14a. Section 301.6223(f)-1T is removed.

Par. 15. Section 301.6223(g)-1 is added to read as follows:

§ 301.6223(g)-1 Responsibilities of the tax matters partner.

(a) *Notices described in section 6223(a)*—(1) *Notice of beginning of proceeding.* Except as otherwise provided in § 301.6223(a)-2, the tax matters partner shall, within 75 days after the Internal Revenue Service mails the notice specified in section 6223(a)(1), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue

Service under section 6223. See § 301.6230(e)-1 for information to be furnished to the Internal Revenue Service.

(2) *Notice of final partnership administrative adjustment.* The tax matters partner shall, within 60 days after the Internal Revenue Service mails the notice specified in section 6223(a)(2), forward a copy of that notice to each partner not entitled to notice from the Internal Revenue Service under section 6223.

(3) *Requirement inapplicable in certain cases.* The tax matters partner is not required to send notice to a partner if—

(i) Before the expiration of the applicable 75-day or 60-day period, the partnership items of that partner have become nonpartnership items (for example, by settlement);

(ii) That partner is an indirect partner and has not been identified to the tax matters partner at least 30 days before the tax matters partner is required to send such notice;

(iii) That partner is treated as a partner solely by virtue of § 301.6231(a)(2)-1;

(iv) That partner was a member of a notice group as of the date on which the notice was mailed to the tax matters partner (see § 301.6223(b)-1(c)(4) for the date on which a partner becomes a member of a notice group);

(v) The notice has already been provided to that partner by another person; or

(vi) The notice is withdrawn by the Internal Revenue Service under § 301.6223(a)-2.

(b) *Other notices or information—(1) In general.* The tax matters partner shall furnish to the partners specified in paragraph (b)(2) of this section information with respect to the following—

(i) Closing conference with the examining agent;

(ii) Proposed adjustments, rights of appeal, and requirements for filing of a protest;

(iii) Time and place of any Appeals conference;

(iv) Acceptance by the Internal Revenue Service of any settlement offer;

(v) Consent to the extension of the period of limitations with respect to all partners;

(vi) Filing of a request for administrative adjustment (including a request for substituted return treatment under § 301.6227(c)-1) on behalf of the partnership;

(vii) Filing by the tax matters partner or any other partner of any petition for judicial review under sections 6226 or 6228(a);

(viii) Filing of any appeal with respect to any judicial determination provided for in sections 6226 or 6228(a); and

(ix) Final judicial redetermination.

(2) *Partners to be notified.* The tax matters partner shall provide information with respect to any action or other matter specified in paragraph (b)(1) of this section to all notice group representatives and all other partners except partners—

(i) Whose partnership items become nonpartnership items before the expiration of the period specified in paragraph (b)(3) of this section for furnishing that information;

(ii) Who are indirect partners and who are not identified to the tax matters partner at least 30 days before the tax matters partner is required to provide the information;

(iii) Who are treated as partners solely by virtue of § 301.6231(a)(2)-1;

(iv) Who are members of a notice group as of the date on which the tax matters partner takes that action or receives information with respect to that matter (see § 301.6223(b)-1(c)(4) for the date on which a partner becomes a member of a notice group); or

(v) Who have already received information with respect to the action or matter from any other person.

(3) *Time for furnishing information.* The tax matters partner shall furnish information with respect to an action or other matter described in paragraph (b)(1) of this section within 30 days of taking the action or receiving information with respect to that matter.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(g)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(g)-1T [Removed]

Par. 15a. Section 301.6223(g)-1T is removed.

Par. 16. Section 301.6223(h)-1 is added to read as follows:

§ 301.6223(h)-1 *Responsibilities of pass-thru partner.*

(a) *In general.* The pass-thru partner shall, within 30 days of receiving notice or any other information regarding a partnership proceeding from the Internal Revenue Service, the tax matters partner, or another pass-thru partner, forward a copy of that notice or information to the person or persons holding an interest through the pass-thru partner in the profits or losses of the partnership for the partnership taxable year to which the notice or information relates. In the case of a pass-thru partner that is a partnership within the meaning of section 6231(a)(1), the tax matters partner of such partnership shall forward copies of the notice or information to the partners of such partnership.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(h)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6223(h)-1T [Removed]

Par. 16a. Section 301.6223(h)-1T is removed.

Par. 17. Section 301.6224(a)-1 is added to read as follows:

§ 301.6224(a)-1 *Participation in administrative proceedings.*

(a) *In general.* Every partner in the partnership, including an indirect partner, has the right to participate in any phase of administrative proceedings. However, except as provided in section 6223 and the regulations thereunder, neither the Internal Revenue Service nor the tax matters partner is required to provide notice of any proceeding to the partners. Consequently, a partner who wishes, for example, to be present during a preliminary discussion between an examining agent and the tax matters partner should make special arrangements with the tax matters partner to obtain information as to the time and place of the discussion. The Internal Revenue Service and the tax matters partner will determine the time and place for all administrative proceedings. Arrangements will generally not be changed merely for the convenience of another partner.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For

years beginning prior to October 4, 2001, see § 301.6224(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(a)–1T [Removed]

Par. 17a. Section 301.6224(a)–1T is removed.

Par. 18. Section 301.6224(b)–1 is added to read as follows:

§ 301.6224(b)–1 Partner may waive rights.

(a) *In general.* A partner may at any time waive any right that the partner has or any restriction on action by the Internal Revenue Service under subchapter C of chapter 63 of the Internal Revenue Code.

(b) *Form and manner of making waiver.* The waiver described in paragraph (a) of this section shall be made by a written statement. If the Internal Revenue Service furnishes a form to be used for this purpose, the partner may make the waiver by completing the form in accordance with the form's instructions. If such a form is not furnished, the statement shall—

(1) Be clearly identified as a waiver under section 6224(b);

(2) Identify the partner and the partnership by name, address, and taxpayer identification number;

(3) Specify the right or restriction being waived and the taxable year(s) to which the waiver applies;

(4) Be signed by the partner making the waiver; and

(5) Be filed with the service center where the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed such notice.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(b)–1T [Removed]

Par. 18a. Section 301.6224(b)–1T is removed.

Par. 19. Section 301.6224(c)–1 is added to read as follows:

§ 301.6224(c)–1 Tax matters partner may bind nonnotice partners.

(a) *In general.* In the absence of a showing of fraud, malfeasance, or misrepresentation of fact, if the tax matters partner enters into a settlement agreement with the Internal Revenue Service with respect to partnership items, including partnership-level determinations relating to any penalty, addition to tax, or additional amounts that relate to adjustments to partnership items, and expressly states that the agreement shall be binding on the other partners, then that agreement shall be binding on all partners except those who—

(1) Are, as of the day on which the agreement is entered into, either notice partners or members of a notice group (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group); or

(2) Have, at least 30 days before the day on which the agreement is entered into, filed with the Internal Revenue Service the statement described in paragraph (c) of this section.

(b) *Indirect partners*—(1) *In general.* If, under paragraph (a) of this section, a pass-thru partner is not bound by an agreement entered into by the tax matters partner, all indirect partners holding an interest in the partnership through that pass-thru partner shall not be bound by that agreement. If, however, the pass-thru partner is bound by an agreement entered into by the tax matters partner, paragraph (a) of this section shall be applied separately to each indirect partner holding an interest in the partnership through the pass-thru partner to determine whether the indirect partner is also bound by the agreement.

(2) *Example.* The following example illustrates the principles of this section:

Example. Partnership P has over 100 partners. Partnership J is a partner in partnership P with a profits interest of less than 1 percent. Partnership J has three partners, A, B, and C. A is a member of a notice group with respect to partnership P, but B and C are not. On July 1, 2002, B filed the statement described in paragraph (c) of this section not to be bound by any settlement agreement entered into by the tax matters partner of partnership P. On August 1, 2002, the tax matters partner of partnership P enters into a settlement agreement with the Internal

Revenue Service and states that the agreement is binding on other partners as provided in section 6224(c)(3). Because partnership J is bound by the settlement agreement, paragraph (a) of this section is applied separately to each of the indirect partners to determine whether they are bound. A is not bound by the agreement because A was a member of a notice group on the day the agreement was entered into and B is not bound because B filed the statement not to be bound at least 30 days before the agreement was entered into. C is bound by the settlement agreement.

(c) *Statement not to be bound*—(1) *Contents of statement.* The statement referred to in paragraph (a)(2) of this section shall—

(i) Be clearly identified as a statement to deny settlement authority to the tax matters partner under section 6224(c)(3)(B);

(ii) Identify the partner and partnership by name, address, and taxpayer identification number;

(iii) Specify the taxable year or years to which the statement applies; and

(iv) Be signed by the partner filing the statement.

(2) *Place where statement is to be filed.* The statement described in paragraph (c)(1) of this section generally shall be filed with the Internal Revenue Service service center where the partnership return is filed. However, if the partner knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed that notice.

(3) *Consolidated statements.* The statement described in paragraph (c)(1) of this section may be filed with respect to more than one partner if the requirements of that paragraph (c)(1) (including signatures) are satisfied with respect to each partner.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)–1T [Removed]

Par. 19a. Section 301.6224(c)–1T is removed.

Par. 20. Section 301.6224(c)–2 is added to read as follows:

§ 301.6224(c)-2 *Pass-thru partner binds indirect partners.*

(a) *Pass-thru partner binds unidentified indirect partners*—(1) *In general.* If a pass-thru partner enters into a settlement agreement with the Internal Revenue Service with respect to partnership items, that agreement binds all indirect partners holding an interest in that partnership through the pass-thru partner except those indirect partners who have been identified as provided in section 6223(c)(3) and § 301.6223(c)-1 at least 30 days before the date on which the agreement is entered into. A settlement with respect to partnership items includes partnership-level determinations relating to any penalty, addition to tax, and additional amounts that relate to adjustments to partnership items. However, if, in addition to the interest in the partnership held through the pass-thru partner entering into a settlement agreement, an indirect partner holds a separate interest in that partnership, either directly or indirectly through a different pass-thru partner, then the indirect partner shall not be bound by that settlement agreement with respect to the interests held directly or indirectly through a pass-thru partner other than the pass-thru partner entering into the settlement agreement.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. Partnership J is a partner in partnership P. C is a partner in J but has not been identified as provided in section 6223(c)(3) and § 301.6223(c)-1. The only interest that C holds in P is through J. The tax matters partner of J enters into a settlement agreement with the Internal Revenue Service with respect to partnership items arising from P. C is bound by the settlement agreement entered into by the tax matters partner of J.

(b) *Person in pass-thru partner authorized to enter into settlement agreement that binds indirect partners.* In the case of a pass-thru partner that is—

(1) A partnership within the meaning of section 6231(a)(1), the tax matters partner of that partnership;

(2) A partnership other than a partnership described in paragraph (b)(1) of this section, any general partner of that partnership;

(3) An S corporation, any officer of that S corporation; or

(4) A trust, estate, or nominee, any person authorized in writing to act on behalf

of that trust, estate, or nominee, may enter into a settlement agreement with the Internal Revenue Service on behalf of its respective entity that would bind the unidentified indirect partners that hold a partnership interest through the pass-thru partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)-2T [Removed]

Par. 20a. Section 301.6224(c)-2T is removed.

Par. 21. Section 301.6224(c)-3 is added to read as follows:

§ 301.6224(c)-3 *Consistent settlements.*

(a) *In general.* If the Internal Revenue Service enters into a settlement agreement with any partner with respect to partnership items, whether comprehensive or partial, the Internal Revenue Service shall offer to any other partner who so requests in accordance with paragraph (c) of this section, settlement terms consistent with those contained in the settlement agreement entered into.

(b) *Requirements for consistent settlement terms*—(1) *In general.* Consistent settlement terms are those based on the same determinations with respect to partnership items. However, consistent settlement terms also may include partnership-level determinations of any penalty, addition to tax, or additional amount that relates to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by another party with respect to any item that is not a partnership item other than a partnership-level determination of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. Consistent agreements must be identical to the original settlement (that is, the settlement upon which the offered settlement terms are based). A consistent agreement must mirror the original settlement and may not be limited to selected items from the original settlement. Once a partner has settled a partnership item, or a partnership-level deter-

mination of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, that partner may not subsequently request settlement terms consistent with a settlement that contains the previously settled item. The requirement for consistent settlement terms applies only if—

(i) The items were partnership items (or a partnership-level determination of any related penalty, addition to tax, or additional amount) for the partner entering into the original settlement immediately before the original settlement; and

(ii) The items are partnership items (or a partnership-level determination of any related penalty, addition to tax, or additional amount) for the partner requesting the consistent settlement at the time the partner files the request.

(2) *Effect of consistent agreement.* Consistent settlement terms are reflected in a consistent agreement. A consistent agreement is not a settlement agreement that gives rise to further consistent settlement rights because it is required to be given without volitional agreement of the Secretary. Therefore, a consistent agreement required to be offered to a requesting taxpayer is not a settlement agreement under section 6224(c)(2) or paragraph (c)(3) of this section which starts a new period for requesting consistent settlement terms. For all other purposes of the Internal Revenue Code, however, (e.g., binding effect under section 6224(c)(1) and conversion to nonpartnership items under section 6231(b)(1)(C)), a consistent agreement is treated as a settlement agreement.

(c) *Time and manner of requesting consistent settlements*—(1) *In general.* A partner desiring settlement terms consistent with the terms of any settlement agreement entered into between any other partner and the Internal Revenue Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.

(2) *Contents of statement.* Except as otherwise provided in instructions to the taxpayer from the Internal Revenue Service, the written statement described in paragraph (c)(1) of this section shall—

(i) Identify the statement as a request for consistent settlement terms under section 6224(c)(2);

(ii) Contain the name, address, and taxpayer identification number of the part-

nership and of the partner requesting the settlement offer (and, in the case of an indirect partner, of the pass-thru partner through which the indirect partner holds an interest);

(iii) Identify the earlier agreement to which the request refers; and

(iv) Be signed by the partner making the request.

(3) *Time for filing request.* The statement shall be filed not later than the later of—

(i) The 150th day after the day on which the notice of final partnership administrative adjustment is mailed to the tax matters partner; or

(ii) The 60th day after the day on which the settlement agreement was entered into.

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. The Internal Revenue Service seeks to disallow a \$100,000 loss reported by Partnership P \$20,000 of which was allocated to partner X, and \$10,000 of which was allocated to partner Y. The Internal Revenue Service agrees to a settlement with X in which the Internal Revenue Service allows \$12,000 of the loss, accepts the treatment of all other partnership items on the partnership return, and imposes a penalty for negligence related to the \$8,000 loss disallowance. Partner Y requests settlement terms consistent with the settlement made between X and the Internal Revenue Service. The items are partnership items (or a related penalty) for X immediately before X enters into the settlement agreement and are partnership items (or a related penalty) for Y at the time of the request. The Internal Revenue Service must offer Y settlement terms allowing a \$6,000 loss, a negligence penalty on the \$4,000 disallowance, and otherwise reflecting the treatment of partnership items on the partnership return.

Example 2. F files inconsistently with Partnership P and reports the inconsistency. The Internal Revenue Service notifies F that it will treat all partnership items arising from P as nonpartnership items with respect to F. Later, the Internal Revenue Service enters into a settlement with F on these items. The Internal Revenue Service is not required to offer the other partners of P settlement terms consistent with the settlement reached between F and the Internal Revenue Service because the items arising from P are not partnership items with respect to F.

Example 3. G, a partner in Partnership P, filed suit under section 6228(b) after the Internal Revenue Service failed to allow an administrative adjustment request with respect to a partnership item arising from P for a taxable year. Under section 6231(b)(1)(B), the partnership items of G for the partnership taxable year became nonpartnership items as of the date G filed suit. After G filed suit, another partner and the Internal Revenue Service entered into a settlement agreement with respect to items arising from P in that year. G is not entitled to consistent settlement terms because, at the time of

the settlement, the items arising from P are no longer partnership items with respect to G.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6224(c)–3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6224(c)–3T [Removed]

Par. 21a. Section 301.6224(c)–3T is removed.

Par. 22. Section 301.6226(a)–1 is added to read as follows:

§ 301.6226(a)–1 Principal place of business of partnership.

(a) *In general.* The principal place of a partnership's business for purposes of determining the appropriate district court in which a petition for a readjustment of partnership items may be filed is its principal place of business as of the date the petition is filed.

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. The principal place of Partnership A's business on the day that the notice of the final partnership administrative adjustment was mailed to A's tax matters partner was Cincinnati, Ohio. However, by the day on which a petition seeking judicial review of that adjustment was filed, A had moved its principal place of business to Louisville, Kentucky. For purposes of section 6226(a)(2), A's principal place of business is Louisville.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(a)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(a)–1T [Removed]

Par. 22a. Section 301.6226(a)–1T is removed.

Par. 23. Section 301.6226(b)–1 is added to read as follows:

§ 301.6226(b)–1 5-percent group.

(a) *In general.* All members of a 5-percent group shall join in filing any petition for judicial review. The designation of a partner as a representative of a notice group does not authorize that partner to file a petition for a readjustment of partnership items on behalf of the notice group.

(b) *Effective date.* This section is applicable to partnership taxable years be-

ginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(b)–1T [Removed]

Par. 23a. Section 301.6226(b)–1T is removed.

Par. 24. Section 301.6226(e)–1 is added to read as follows:

§ 301.6226(e)–1 Jurisdictional requirement for bringing an action in District Court or United States Court of Federal Claims.

(a) *Amount to be deposited—(1) In general.* The jurisdictional amount that the filing partner (or, in the case of a petition filed by a 5-percent group, each member of the group, or, for civil actions beginning on or after March 30, 2002, in the case of a petition filed by a pass-thru partner, each indirect partner holding an interest through the pass-thru partner) shall deposit is the amount by which the tax liability of the partner would be increased if the treatment of the partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the notice of final partnership administrative adjustment. The partner is not required to pay other outstanding liabilities in order to deposit a jurisdictional amount.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. A files a petition for readjustment of partnership items in the United States Court of Federal Claims. A's tax liability would be increased by \$4,000 if partnership items on A's return were conformed to the partnership return, as adjusted by the notice of final partnership administrative adjustment. A has an unpaid liability of \$10,000 attributable to nonpartnership items. A is required to deposit \$4,000 in order to satisfy the jurisdictional requirement.

(b) *Deposit taken into account in computing interest.* The amount deposited is treated as a payment of tax for purposes of chapter 67 of the Internal Revenue Code (relating to interest).

(c) *Deposit generally not treated as payment of tax.* Except as provided in paragraph (b) of this section, an amount deposited under section 6226(e) shall not be treated as a payment of tax. Thus, the Internal Revenue Service may proceed

against the depositor for a deficiency based on nonpartnership items without regard to this deposit.

(d) *Amount deposited may be applied against assessment.* If the restriction on assessment provided under section 6225(a) lapses with respect to a deficiency attributable to partnership items for a partnership taxable year while an amount is on deposit under section 6226(e) in connection with a petition relating to those items, the Internal Revenue Service may apply the amount deposited against any such deficiency that is assessed.

(e) *Effective date.* Except as otherwise provided in paragraph (a)(1) of this section, this section is applicable to civil actions beginning on or after October 4, 2001. For civil actions beginning prior to October 4, 2001, see § 301.6226(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(e)-1T [Removed]

Par. 24a. Section 301.6226(e)-1T is removed.

Par. 25. Section 301.6226(f)-1 is added to read as follows:

§ 301.6226(f)-1 *Scope of judicial review.*

(a) *In general.* A court reviewing a notice of final partnership administrative adjustment has jurisdiction to determine all partnership items for the taxable year to which the notice relates and the proper allocation of such items among the partners. Thus, the review is not limited to the items adjusted in the notice. In addition, the court has jurisdiction in the partnership-level proceeding to determine any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, the court does not have jurisdiction in the partnership-level proceeding to consider any partner-level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. See section 6230(c)(4) and § 301.6221-1(c) and (d).

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. The Internal Revenue Service issues a notice of final partnership administrative adjustment with respect to Partnership ABC in which the only item adjusted is depreciation. A petition for judicial

review of that notice is filed. During the judicial proceeding, a partner of ABC, in accordance with the applicable court rules, raises an issue relating to the treatment of intangible drilling costs. The court reviewing the notice has jurisdiction to determine the intangible drilling cost issue in addition to the depreciation issue.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6226(f)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6226(f)-1T [Removed]

Par. 25a. Section 301.6226(f)-1T is removed.

§ 301.6227(b)-1T [Removed]

Par. 26. Section 301.6227(b)-1T is removed.

Par. 26a. Section 301.6227(c)-1 is added to read as follows:

§ 301.6227(c)-1 *Administrative adjustment request by the tax matters partner on behalf of the partnership.*

(a) *In general.* A request for an administrative adjustment filed by the tax matters partner on behalf of the partnership shall be filed on the form prescribed by the Internal Revenue Service for that purpose in accordance with that form's instructions. Except as otherwise provided in that form's instructions, the request shall be—

(1) Filed with the service center where the original partnership return was filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice);

(2) Signed by the tax matters partner; and

(3) Accompanied by revised schedules showing the effects of the proposed changes on each partner and an explanation of the changes.

(b) *Denied request for treatment as a substituted return remains administrative adjustment request.* An administrative adjustment request filed by the tax matters partner on behalf of the partnership for which substituted return treatment is requested but not granted remains an administrative adjustment request. Thus,

for example, the tax matters partner may file suit under section 6228(a) if the Internal Revenue Service fails to take timely action on the request.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6227(b)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6227(c)-1T [Removed]

Par. 27. Section 301.6227(c)-1T is removed.

Par. 27a. Section 301.6227(d)-1 is added to read as follows:

§ 301.6227(d)-1 *Administrative adjustment request filed on behalf of a partner.*

(a) *In general.* A request for an administrative adjustment on behalf of a partner shall be filed on the form prescribed by the Internal Revenue Service for that purpose in accordance with that form's instructions. Except as otherwise provided in that form's instructions, the request shall—

(1) Be filed in duplicate, the original copy filed with the partner's amended income tax return (on which the partner computes the amount by which the partner's tax liability should be adjusted if the request is granted) and the other copy filed with the service center where the partnership return is filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice);

(2) Identify the partner and the partnership by name, address, and taxpayer identification number;

(3) Specify the partnership taxable year to which the administrative adjustment request applies;

(4) Relate only to partnership items; and

(5) Relate only to one partnership and one partnership taxable year.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6227(c)-1T contained in 26 CFR part 1, revised April 1, 2001.

Par. 28. Section 301.6229(b)-1 is added to read as follows:

§ 301.6229(b)-1 Extension by agreement.

(a) *In general.* Any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement to that effect with the service center where the partnership return is filed (but, if the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed such notice). The statement shall—

(1) Provide that it is an authorization for a person other than the tax matters partner to extend the assessment period with respect to all partners;

(2) Identify the partnership and the person being authorized by name, address, and taxpayer identification number;

(3) Specify the partnership taxable year or years for which the authorization is effective; and

(4) Be signed by all persons who were general partners (or, in the case of an LLC, member-managers, as those terms are defined in § 301.6231(a)(7)-2(b)) at any time during the year or years for which the authorization is effective.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(b)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(b)-1T [Removed]

Par. 28a. Section 301.6229(b)-1T is removed.

Par. 29. Section 301.6229(b)-2 is added to read as follows:

§ 301.6229(b)-2 Special rule with respect to debtors in Title 11 cases.

(a) *In general.* Notwithstanding any other law or rule of law, if an agreement is entered into under section 6229(b)(1)(B), and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under Title 11 of the United

States Code, such agreement shall be binding on all partners in the partnership unless the Internal Revenue Service has been notified of the bankruptcy proceeding in accordance with paragraph (b) of this section.

(b) *Procedures for notifying the Internal Revenue Service of a partner's bankruptcy proceeding.* (1) The Internal Revenue Service shall be notified of the bankruptcy proceeding of the tax matters partner in accordance with the procedures set forth in § 301.6223(c)-1.

(2) In addition to the information specified in § 301.6223(c)-1, notification that a person is (or was) a debtor in a bankruptcy proceeding shall include the date the bankruptcy proceeding was filed, the name and address of the court in which the bankruptcy proceeding exists (or took place), the caption of the bankruptcy proceeding (including the docket number or other identification number used by the court), and the status of the proceeding as of the date of notification.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(b)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(b)-2T [Removed]

Par. 29a. Section 301.6229(b)-2T is removed.

Par. 30. Section 301.6229(e)-1 is added to read as follows:

§ 301.6229(e)-1 Information with respect to unidentified partner.

(a) *In general.* A partner who is not properly identified on the partnership return (including an indirect partner) remains an unidentified partner for purposes of section 6229(e) until identifying information is furnished as provided in § 301.6223(c)-1.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(e)-1T [Removed]

Par. 30a. Section 301.6229(e)-1T is removed.

Par. 31. Section 301.6229(f)-1 is added to read as follows:

§ 301.6229(f)-1 Special rule for partial settlement agreements.

(a) *In general.* If a partner enters into a settlement agreement with the Internal Revenue Service with respect to the treatment of some of the partnership items or partnership-level determinations of any penalty, addition to tax, or additional amount in dispute for a partnership taxable year, but one or more other partnership items or determinations remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(b) *Other items remaining in dispute.* Pursuant to section 6226(c), a partner is a party to a partnership-level judicial proceeding with respect to partnership items and partnership-level determinations of penalties, additions to tax or additional amounts. When a partner settles partnership items, the settled partnership items convert to nonpartnership items under section 6231(b)(1)(C) and will not be subject to any future or pending partnership-level proceeding pursuant to section 6226(d)(1). The remaining unsettled partnership items, as well as any unsettled penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item (regardless of whether the partnership item to which it relates has been settled), however, will remain subject to determination under partnership-level administrative and judicial procedures. Consequently, any remaining unsettled items, including any unsettled penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, will be deemed to remain in dispute. Thus, the period for assessing any tax attributable to the settled items will be governed by the period for assessing any tax attributable to the remaining unsettled items.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6229(f)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6229(f)-1T [Removed]

Par. 31a. Section 301.6229(f)–1T is removed.

Par. 32. Section 301.6230(b)–1 is added to read as follows:

§ 301.6230(b)–1 Request that correction not be made.

(a) *In general.* The request that a correction not be made under section 6230(b)(2) shall be in writing and shall—

(1) State that it is a request that a correction not be made under section 6230(b);

(2) Identify the partnership and the partner filing the request by name, address, and taxpayer identification number;

(3) Be signed by the partner filing the request; and

(4) Be filed with the Internal Revenue Service office that provided the notice of the correction of the error.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(b)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(b)–1T [Removed]

Par. 32a. Section 301.6230(b)–1T is removed.

Par. 33. Section 301.6230(c)–1 is added to read as follows:

§ 301.6230(c)–1 Claim arising out of erroneous computation, etc.

(a) *In general.* A claim for refund under section 6230(c) shall state the grounds for the claim and shall be filed with the service center where the partner's return is filed.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(c)–1T [Removed]

Par. 33a. Section 301.6230(c)–1T is removed.

Par. 34. Section 301.6230(e)–1 is added to read as follows:

§ 301.6230(e)–1 Tax matters partner required to furnish names.

(a) *In general.* If a notice of the beginning of an administrative proceeding is mailed to the tax matters partner with respect to any partnership taxable year, the tax matters partner shall furnish to the Internal Revenue Service office that issued the notice the name, address, profits interest, and taxpayer identification number of each person who was a partner in the partnership at any time during that taxable year if that information was not provided on the partnership return filed for that year.

(b) *Revised or additional information.* If the tax matters partner discovers that any information furnished to the Internal Revenue Service on the partnership return or under paragraph (a) of this section was incorrect or incomplete, the tax matters partner shall furnish revised or additional information to the Internal Revenue Service within 15 days of discovering that the information furnished to the Internal Revenue Service was incorrect or incomplete.

(c) *Information required with respect to indirect partners.* The requirements of this section for identifying information apply with respect to indirect partners to the extent that the tax matters partner has such information.

(d) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6230(e)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6230(e)–1T [Removed]

Par. 34a. Section 301.6230(e)–1T is removed.

Par. 35. Section 301.6231(a)(1)–1 is added to read as follows:

§ 301.6231(a)(1)–1 Exception for small partnerships.

(a) *In general.* For purposes of the exception for small partnerships under section 6231(a)(1)(B), the rules contained in this section shall apply.

(1) *10 or fewer.* The 10 or fewer limitation described in section 6231(a)(1)(B)(i) is applied to the number of natural persons, C corporations, and estates of deceased partners that were partners at any one time during the partnership taxable year. Thus, for example, a partnership that at no time during the taxable

year had more than 10 partners may be treated as a small partnership even if, because of transfers of interests in the partnership, 11 or more natural persons, C corporations, or estates of deceased partners owned interests in the partnership for some portion of the taxable year. See section 1361(a)(2) for the definition of a *C corporation*. For purposes of section 6231(a)(1)(B) and this section, a husband and wife (and their estates) are treated as one person.

(2) *Pass-thru partner.* The exception provided in section 6231(a)(1)(B) does not apply to a partnership for a taxable year if any partner in the partnership during that taxable year is a pass-thru partner as defined in section 6231(a)(9). For purposes of this paragraph (a)(2), an estate shall not be treated as a pass-thru partner.

(3) *Determination made annually.* The determination of whether a partnership meets the requirements for the exception for small partnerships under section 6231(a)(1)(B) and this paragraph (a) shall be made with respect to each partnership taxable year. Thus, a partnership that does not qualify as a small partnership in one taxable year may qualify as a small partnership in another taxable year if the requirements for the exception under section 6231(a)(1)(B) and this paragraph (a) are met with respect to that other taxable year.

(b) *Election to have subchapter C of chapter 63 apply*—(1) *In general.* Any partnership that meets the requirements set forth in section 6231(a)(1)(B) and paragraph (a) of this section (relating to the exception for small partnerships) may elect under paragraph (b)(2) of this section to have the provisions of subchapter C of chapter 63 of the Internal Revenue Code apply with respect to that partnership.

(2) *Method of election.* A partnership shall make the election described in paragraph (b)(1) of this section by attaching a statement to the partnership return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under section 6231(a)(1)(B)(ii), shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for

filing) and place prescribed for filing the partnership return. However, for any partnership taxable year for which the due date of the return (determined without regard to extensions) is before January 2, 2002, the partnership may file the statement described in the preceding sentence on or before the date which is one year before the date specified in section 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

(3) *Years covered by election.* The election shall be effective for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with the consent of the Commissioner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(1)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(1)–1T [Removed]

Par. 35a. Section 301.6231(a)(1)–1T is removed.

Par. 36. Section 301.6231(a)(2)–1 is added to read as follows:

§ 301.6231(a)(2)–1 *Persons whose tax liability is determined indirectly by partnership items.*

(a) *Spouse filing joint return with individual holding a separate interest—(1) In general.* Except as otherwise provided in this paragraph (a), a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, the spouse who files a joint return with a partner will be permitted to participate in administrative and judicial proceedings.

(2) *Counting rules.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall not be counted as a partner for purposes of applying section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(1)(B) (relating to the exception for small partnerships).

(3) *Notice rules—(i) In general.* Except as provided in paragraph (a)(3)(ii) of

this section, for purposes of subchapter C of chapter 63 of the Internal Revenue Code, a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as receiving any notice received by the individual holding the separate interest.

(ii) *Spouse identified on partnership return or by statement.* Paragraph (a)(3)(i) of this section shall not apply to a spouse who files a joint return with an individual holding a separate interest in the partnership if that spouse—

(A) Is identified on the partnership return; or

(B) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1(b).

(4) *Conversion of partnership items—(i) Individual holding a separate interest.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the conversion of the partnership items of the individual holding the separate interest in the partnership to nonpartnership items pursuant to section 6231(b). If each spouse holds a separate interest in the partnership, the previous sentence shall be applied separately with respect to each partnership interest.

(ii) *Spouse who files a joint return with an individual holding a separate interest in the partnership.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the occurrence of an event that would convert the partnership items of the spouse to nonpartnership items if the spouse were the owner of a separate interest.

(iii) *Examples.* The following examples illustrate the application of paragraph (a)(4) of this section:

Example 1. Husband owns a separate interest in ABC partnership and files a joint return with Wife. Husband files for bankruptcy. Pursuant to § 301.6231(c)–7, upon filing for bankruptcy, the partnership items of the debtor convert to nonpartnership items. Thus, Husband's partnership items converted to nonpartnership items upon the filing of Husband's bankruptcy petition. Pursuant to paragraph (a)(4)(i) of this section, Wife is no longer treated as a partner of ABC partnership as of the date the partnership items of Husband converted to nonpartnership items.

Example 2. Wife owns a separate interest in XYZ partnership and files a joint return with Husband.

Husband files for bankruptcy. Because the filing of the bankruptcy petition by Husband is an event that would convert Husband's partnership items to nonpartnership items if Husband were the owner of a separate interest, Husband shall no longer be treated as a partner as of the filing of the bankruptcy petition. Pursuant to paragraph (a)(4)(ii) of this section, the partnership items of Wife are not affected by Husband's bankruptcy.

(5) *Cross-reference.* See § 301.6231(a)(12)–1 for special rules relating to spouses holding a joint interest in a partnership.

(b) *Shareholder of C corporation.* A shareholder of a C corporation (as defined in section 1361(a)(2)) is not a partner in a partnership merely because the C corporation is a partner in that partnership.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(2)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(2)–1T [Removed]

Par. 36a. Section 301.6231(a)(2)–1T is removed.

Par. 37. Section 301.6231(a)(5)–1 is added to read as follows:

§ 301.6231(a)(5)–1 *Definition of affected item.*

(a) *In general.* The term *affected item* means any item to the extent such item is affected by a partnership item. It includes items unrelated to the items reflected on the partnership return (for example, an item, such as the threshold for the medical expense deduction under section 213, that varies if there is a change in an individual partner's adjusted gross income).

(b) *Basis in a partner's partnership interest.* The basis of a partner's partnership interest is an affected item to the extent it is not a partnership item.

(c) *At-risk limitation.* The application of the at-risk limitation under section 465 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(d) *Passive losses.* The application of the passive loss rules under section 469 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(e) *Penalty, addition to tax, or additional amount—(1) In general.* The term *affected item* includes any penalty, addition to tax, or additional amount provided

by subchapter A of chapter 68 of the Internal Revenue Code of 1986 to the extent provided in this paragraph (e).

(2) *Penalty, addition to tax, or additional amount without floor.* If a penalty, addition to tax, or additional amount that does not contain a floor (that is, a threshold amount of underpayment or understatement necessary before the imposition of the penalty, addition to tax, or additional amount) is imposed on a partner as the result of an adjustment to a partnership item, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the portion of the underpayment that is attributable to the partnership item adjustment(s) to which the penalty, addition to tax, or additional amount applies.

(3) *Penalty, addition to tax, or additional amount containing floor—(i) Floor exceeded prior to adjustment.* If a partner would have been subject to a penalty, addition to tax, or additional amount that contains a floor in the absence of an adjustment to a partnership item (that is, the partner's understatement or underpayment exceeded the floor even without an adjustment to a partnership item) the term *affected item* shall include only the portion of the penalty, addition to tax, or additional amount computed with reference to the partnership item (or affected item) adjustments.

(ii) *Floor not exceeded prior to adjustment.* In the case of a penalty, addition to tax, or additional amount that contains a floor, if the taxpayer's understatement or underpayment does not exceed the floor prior to an adjustment to a partnership item but does so after such adjustment, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the entire underpayment or understatement to which the penalty, addition to tax, or additional amount applies.

(4) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. A, a partner of P, had an aggregate underpayment of \$1,000 of which \$100 is attributable to an adjustment to partnership items. A is negligent in reporting the partnership items. The accuracy-related penalty under section 6662 for negligence computed with reference to the \$100 underpayment attributable to the partnership item adjustments is an affected item.

Example 2. B, a partner of P, understated B's income tax liability attributable to nonpartnership

items by \$6,000. An adjustment to a partnership item resulting from a partnership proceeding increased B's income tax by an additional \$2,000. Prior to the adjustment, B would have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax with respect to the \$6,000 understatement attributable to nonpartnership items. The portion of the accuracy-related penalty under section 6662 computed with reference to the \$2,000 understatement attributable to partnership items to which the accuracy-related penalty applies is an affected item. The portion of the accuracy-related penalty under section 6662 computed with reference to the \$6,000 pre-existing understatement is not an affected item.

Example 3. C, a partner in partnership P, understated C's income tax liability attributable to nonpartnership items by \$4,000. As a result of an adjustment to partnership items, that understatement is increased to \$10,000. Prior to the adjustment, C would not have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax. The accuracy-related penalty under section 6662 computed with reference to the entire \$10,000 understatement to which the accuracy-related penalty applies is an affected item.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(5)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(5)–1T [Removed]

Par. 37a. Section 301.6231(a)(5)–1T is removed.

Par. 38. Section 301.6231(a)(6)–1 is added to read as follows:

§ 301.6231(a)(6)–1 Computational adjustments.

(a) *Changes in a partner's tax liability—(1) In general.* A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Internal Revenue Code is made through a computational adjustment. A computational adjustment includes a change in tax liability that reflects a change in an affected item where that change is necessary to properly reflect the treatment of a partnership item, or any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner-level determinations, that portion of the change in tax liability attributable to the partner-level determinations shall be made under the deficiency procedures (as described in subchapter B of chapter

63 of the Internal Revenue Code), except for any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item.

(2) *Affected items that do not require partner-level determinations.* Changes in a partner's tax liability with respect to affected items that do not require partner-level determinations (such as the threshold amount of medical deductions under section 213 that changes as the result of determinations made at the partnership level) are computational adjustments that are directly assessed. When making computational adjustments, the Internal Revenue Service may assume that amounts the partner reported on the partner's individual return include all amounts reported to the partner by the partnership (on the Schedule K-1s attached to the partnership's original return), absent contrary notice to the Internal Revenue Service (for example, a "Notice of Inconsistent Treatment" pursuant to § 301.6222(a)–2(c)). Such an assumption by the Internal Revenue Service does not constitute a partner-level determination. Moreover, substituting redetermined partnership items for the partner's previously reported partnership items (including partnership items included in carryover amounts) does not constitute a partner-level determination where the Internal Revenue Service otherwise accepts, for the sole purpose of determining the computational adjustment, all nonpartnership items (including, for example, nonpartnership item components of carryover amounts) as reported.

(3) *Affected items that require partner-level determinations.* Changes in a partner's tax liability with respect to affected items that require partner-level determinations (such as a partner's at-risk amount to the extent it depends upon the source from which the partner obtained the funds that the partner contributed to the partnership) are computational adjustments that are subject to the deficiency procedures. Notwithstanding the preceding sentence, any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item is not subject to the deficiency procedures, but rather may be directly assessed as part of the computational adjustment that is made following the partnership proceeding, based on de-

terminations in that proceeding, regardless of whether any partner-level determinations may be required.

(b) *Interest.* A computational adjustment includes any interest due with respect to any underpayment or overpayment of tax attributable to adjustments to reflect properly the treatment of partnership items.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(6)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(6)–1T [Removed]

Par. 38a. Section 301.6231(a)(6)–1T is removed.

Par. 39. Section 301.6231(a)(7)–1 is amended by revising paragraphs (p)(2), (r)(1), and (s) to read as follows:

§ 301.6231(a)(7)–1 *Designation or selection of tax matters partner.*

* * * * *

(p) * * *

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a) of the selection of the tax matters partner, effective as of the date specified in the notice.

* * * * *

(r) * * * (1) *In general.* If the Commissioner selects a tax matters partner under the provisions of paragraph (p)(1) or (p)(3)(i) of this section, the Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a) of the selection of the tax matters partner, effective as of the date specified in the notice.

* * * * *

(s) *Effective date.* This section applies to all designations, selections, and termi-

nations of a tax matters partner occurring on or after December 23, 1996, except for paragraphs (p)(2) and (r)(1), that are applicable on or after October 4, 2001.

§ 301.6231(a)(7)–1T [Removed]

Par. 39a. Section 301.6231(a)(7)–1T is removed.

Par. 40. Section 301.6231(a)(12)–1 is added to read as follows:

§ 301.6231(a)(12)–1 *Special rules relating to spouses.*

(a) *Spouses holding a joint interest—*
(1) *In general.* Except as otherwise provided in this section, spouses holding a joint interest in a partnership shall be treated as separate partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, both spouses may participate in administrative and judicial proceedings. The term *joint interest* includes tenancies in common, joint tenancies, tenancies by the entirety, and community property.

(2) *Identification of joint interest.* For purposes of this section, an interest shall be treated as a joint interest in a partnership only if both spouses are identified on the partnership return or are identified as partners entitled to notice as provided in § 301.6223(c)–1(b).

(3) *Failure to identify both spouses as partners.* If both spouses are not identified as set forth in paragraph (a)(2) of this section, then the partnership interest shall be treated as separately owned by the identified spouse.

(4) *Example.* The following example illustrates the application of paragraph (a)(3) of this section:

Example. Wife owns an interest in ABC Partnership and is identified on the Schedule K-1 of the partnership return. Wife and Husband live in a community property state. The partnership return of ABC partnership does not identify Husband, and Husband is not identified as a partner entitled to notice as provided in § 301.6223(c)–1(b). Pursuant to paragraph (a)(3) of this section, the partnership interest of Wife shall be treated as separately owned by Wife.

(b) *Notice and counting rules—*(1) *In general.* Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partnership shall be treated as one partner. Except as provided

in paragraph (b)(2) of this section, the Internal Revenue Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice.* For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with a spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual—

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1(b).

(c) *Conversion of partnership items—*
(1) *In general.* If spouses holding a joint interest in a partnership are treated as separate partners under this section, then section 6231(b) (relating to the conversion of partnership items) shall be applied separately to each spouse.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section:

Example. Husband and Wife own a joint interest in XYZ Partnership. The partnership return identifies both spouses on the Schedule K-1. Under this section, each spouse is treated as a separate partner. If Wife enters into a settlement agreement, Wife's partnership items convert to nonpartnership items pursuant to section 6231(b)(1)(C). Accordingly, Wife no longer has the right to participate in the partnership proceeding subsequent to entering into the settlement agreement. Pursuant to paragraph (c) of this section, however, the partnership items of Husband are not affected by the conversion of the partnership items of Wife, and Husband continues to have the right to participate in the partnership proceeding. This result is the same regardless of whether the partnership items are reported on a joint return or on separate returns.

(d) *Cross-reference.* See § 301.6231(a)(2)–1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(12)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(a)(12)–1T [Removed]

Par. 40a. Section 301.6231(a)(12)–1T is removed.

Par. 41. Section 301.6231(c)–1 is added to read as follows:

§ 301.6231(c)–1 Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits.

(a) *Application subject to this section.* This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

- (1) A gross valuation overstatement; or
- (2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

(b) *Determination of special enforcement area.* In the case of an application under section 6411 described in paragraph (a) of this section, precluding an assessment under section 6225 that would be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carryback or refund adjustments) with respect to any amount applied, credited, or refunded as a result of the application may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Secretary hereby determines that such applications present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Assessment permitted under section 6213(b)(3).* Notwithstanding section 6225 (relating to restrictions on assessment with respect to partnership items), an assessment that would be permitted under section 6213(b)(3) with respect to

any amount applied, credited, or refunded as a result of an application described in paragraph (a) of this section may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based. As provided in section 6213(b)(1), the Internal Revenue Service shall mail notice of any such assessment to the partner filing the application. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items—(1) In general.* A partner to whom the Internal Revenue Service mails a notice of suspension of action on a refund claim under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of an assessment under section 6213(b)(3);

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)–1T [Removed]

Par. 41a. Section 301.6231(c)–1T is removed.

Par. 42. Section 301.6231(c)–2 is added to read as follows:

§ 301.6231(c)–2 Special rules for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships.

(a) *Claims subject to this section.* This section applies in the case of a claim for credit or refund based on losses, deductions or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

- (1) A gross valuation overstatement; or
- (2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to a claim that is based upon the partner's original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment). For purposes of this section, any income tax return requesting a credit or refund shall be treated as a claim for a credit or refund.

(b) *Determination of special enforcement area.* Granting a claim for credit or refund described in paragraph (a) of this section may encourage the proliferation of abusive tax shelter partnerships and

make the eventual collection of taxes more difficult. Consequently, the Secretary hereby determines that such claims present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Action on refund claims suspended.* In the case of a claim described in paragraph (a) of this section, the Internal Revenue Service may mail to the partner filing the claim a notice stating that no action will be taken on the partner's claim until the completion of the partnership-level proceedings. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items—(1) In general.* A partner to whom the Internal Revenue Service mails a notice of suspension under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of suspension of action on a refund claim;

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section applies with respect to any claim described in paragraph (a) of this section that is filed on or after October 4, 2001. For claims filed prior to October 4, 2001, see § 301.6231(c)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-2T [Removed]

Par. 42a. Section 301.6231(c)-2T is removed.

Par. 43. Section 301.6231(c)-3 is added to read as follows:

§ 301.6231(c)-3 Limitation on applicability of §§ 301.6231(c)-4 through 301.6231(c)-8.

(a) *In general.* A provision of §§ 301.6231(c)-4 through 301.6231(c)-8 shall not apply with respect to partnership items arising in a partnership taxable year if, as of the date on which those items would otherwise begin to be treated as nonpartnership items under that provision—

(1) A notice of final partnership administrative adjustment with respect to those items has been mailed to the tax matters partner; and

(2) Either—

(i) The period during which an action with respect to that final partnership administrative adjustment may be brought under section 6226 has expired and no such action has been brought; or

(ii) The decision of the court in an action brought under section 6226 with respect to that final partnership administrative adjustment has become final.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-3T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-3T [Removed]

Par. 43a. Section 301.6231(c)-3T is removed.

Par. 44. Section 301.6231(c)-4 is added to read as follows:

§ 301.6231(c)-4 Termination and jeopardy assessment.

(a) *In general.* The treatment of items as partnership items with respect to a partner against whom an assessment of income tax under section 6851 (termination assessment) or section 6861 (jeopardy assessment) is made will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending with or within the partner's taxable year for which an assessment of income tax under section 6851 or 6861 is made shall be treated as nonpartnership items as of the moment before such assessment is made.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-4T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-4T [Removed]

Par. 44a. Section 301.6231(c)-4T is removed.

Par. 45. Section 301.6231(c)-5 is added to read as follows:

§ 301.6231(c)-5 Criminal investigations.

(a) *In general.* The treatment of items as partnership items with respect to a partner under criminal investigation for violation of the internal revenue laws relating to income tax will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner to which the criminal investigation relates shall be treated as nonpartnership items as of the date on which the partner is notified that the partner is the subject of a criminal investigation and written notification is sent by the Internal Revenue Service that the partner's partnership items shall be treated as nonpartnership items. The partnership items of a partner who is notified that the partner is the subject of a criminal investigation shall not be treated as nonpartnership items under this section unless and until such partner is sent written notification from the Internal Revenue Service of such treatment.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-5T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-5T [Removed]

Par. 45a. Section 301.6231(c)-5T is removed.

Par. 46. Section 301.6231(c)-6 is added to read as follows:

§ 301.6231(c)-6 *Indirect method of proof of income.*

(a) *In general.* The treatment of items as partnership items with respect to a partner whose taxable income is determined by use of an indirect method of proof of income will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the taxable year of the partner for which a deficiency notice based upon an indirect method of proof of income is mailed to the partner shall be treated as nonpartnership items as of the date on which that deficiency notice is mailed to the partner.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-6T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-6T [Removed]

Par. 46a. Section 301.6231(c)-6T is removed.

Par. 47. Section 301.6231(c)-7 is added to read as follows:

§ 301.6231(c)-7 *Bankruptcy and receivership*

(a) *Bankruptcy.* The treatment of items as partnership items with respect to a partner named as a debtor in a bankruptcy proceeding will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax

due in the bankruptcy proceeding shall be treated as nonpartnership items as of the date the petition naming the partner as debtor is filed in bankruptcy.

(b) *Receivership.* The treatment of items as partnership items with respect to a partner for whom a receiver has been appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the receivership proceeding shall be treated as nonpartnership items as of the date a receiver is appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-7T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-7T [Removed]

Par. 47a. Section 301.6231(c)-7T is removed.

Par. 48. Section 301.6231(c)-8 is added to read as follows:

§ 301.6231(c)-8 *Prompt assessment.*

(a) *In general.* The treatment of items as partnership items with respect to a partner on whose behalf a request for a prompt assessment of tax under section 6501(d) is filed will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending with or within any taxable year of the partner with respect to which a request for a prompt assessment of tax is filed shall be treated as nonpartnership items as of the date that the request is filed.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-8T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(c)-8T [Removed]

Par. 48a. Section 301.6231(c)-8T is removed.

Par. 49. Section 301.6231(d)-1 is added to read as follows:

§ 301.6231(d)-1 *Time for determining profits interest of partners for purposes of sections 6223(b) and 6231(a)(11).*

(a) *Partner owns interest at close of year.* For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(11) (relating to 5-percent groups), except as otherwise provided in this section, the profits interest held by a partner, directly or indirectly through one or more pass-thru partners, in a partnership (the source partnership) to which subchapter C of chapter 63 of the Internal Revenue Code applies shall be determined at the close of the source partnership's taxable year.

(b) *Partner does not own interest at close of year.* If the entire direct and indirect interest of a partner in a source partnership is terminated by virtue of a disposition by such partner of such interest (or by virtue of the disposition of an interest held by one or more pass-thru partners through which the partner holds an interest), then the profits interest of such partner in the source partnership shall be measured as of the moment before the disposition causing such termination. The preceding sentence shall not apply with respect to a termination if subsequent to such termination and before the close of the source partnership's taxable year the partner acquires a direct or indirect interest in the source partnership.

(c) *Disposition of last remaining portion of interest is disposition of entire interest.* If a partner (or a pass-thru partner through which a partner holds an interest) makes several partial dispositions of an interest in a source partnership during a taxable year of the source partnership, paragraph (b) of this section will apply with respect to the disposition which causes a termination of the partner's entire direct and indirect interest in the source partnership.

(d) *No profits interest in certain cases.* If—

(1) The interest of a partner in a partnership is entirely disposed of before the

close of the taxable year of the partnership; and

(2) No items of the partnership for that taxable year are required to be taken into account by the partner, then that partner has no profits interest in the partnership for that taxable year.

(e) *Examples.* The provisions of this section may be illustrated by the following examples. Assume in all examples that there have been no reacquisitions prior to the close of the source partnership's taxable year. The examples are as follows:

Example 1. B holds an interest in partnership P through T, a pass-thru partner. P uses a fiscal year ending June 30 as P's taxable year; B and T use the calendar year as the taxable year. As of the close of P's taxable year ending June 30, 2002, T holds an interest in P and B holds an interest in P through T. The profits interest held by B in P through T for that year is determined as of June 30, 2002.

Example 2. Assume the same facts as in *Example 1*, except that B sold the entire interest that B held in P through T on November 5, 2001. The profits interest held by B in P through T for P's taxable year ending June 30, 2002, is determined as of the moment before the sale on November 5, 2001.

Example 3. C holds an interest in partnership P through T, a pass-thru partner. C, P, and T all use the calendar year as the taxable year. T disposes of T's interest in P on June 5, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the disposition on June 5, 2002.

Example 4. Assume the same facts as in *Example 3*, except that C sold C's entire interest in T (and, therefore, C's entire interest that C held in P through T) on March 15, 2002. The profits interest held by C in P through T for 2002 is determined as of the moment before the sale on March 15, 2002.

Example 5. On January 1, 2002, D held a 2 percent profits interest in partnership P. Both D and P use the calendar year as the taxable year. On August 1, 2002, D transfers three-fourths of D's profits interest in P to E. On September 1, 2002, D sells D's remaining .5 percent profits interest in P to F. For purposes of sections 6223(b) and 6231(a)(11), D had a .5 percent profits interest in P for 2002.

Example 6. Assume the same facts as in *Example 5*, except that on January 1, 2002, D also held a 1 percent profits interest in partnership P through T, a pass-thru partner which also uses the calendar year as the taxable year. In addition to the sale to E on August 1, 2002, D sold a portion of D's interest in T on December 1, 2002, such that after the sale, D held a .2 percent profits interest in P through T. D made no other transfers of interests in either P or T. For purposes of sections 6223(b) and 6231(a)(11), D had a .7 percent profits interest in P for 2002.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(d)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(d)-1T [Removed]

Par. 49a. Section 301.6231(d)-1T is removed.

Par. 50. Section 301.6231(e)-1 is added to read as follows:

§ 301.6231(e)-1 Effect of a determination with respect to a nonpartnership item on the determination of a partnership item.

(a) *In general.* The determination of an item after it has become a nonpartnership item with respect to a partner is not controlling in the determination of that item with respect to other partners. Thus, for example, the determination by a court in a separate proceeding relating to a partner that a certain partnership expenditure was deductible does not bind either the Internal Revenue Service or the other partners in a later partnership or other proceeding.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(e)-1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(e)-1T [Removed]

Par. 50a. Section 301.6231(e)-1T is removed.

Par. 51. Section 301.6231(e)-2 is added to read as follows:

§ 301.6231(e)-2 Judicial decision not a bar to certain adjustments.

(a) *In general.* A court decision with respect to a partner's income tax liability attributable to nonpartnership items shall not be a bar to further proceedings with respect to that partner's income tax liability if that partner's partnership items become nonpartnership items after the appropriate time to include such nonpartnership items in the earlier court proceeding has passed. Thus, the Internal Revenue Service could issue a later deficiency notice for the same taxable year with respect to that partner or that partner could bring a refund suit with respect to those items that have become nonpartnership items.

(b) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001,

see § 301.6231(e)-2T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(e)-2T [Removed]

Par. 51a. Section 301.6231(e)-2T is removed.

Par. 52. Section 301.6231(f)-1 is added to read as follows:

§ 301.6231(f)-1 Disallowance of losses and credits in certain cases.

(a) *Application of section.* This section applies if—

(1) A partnership, whether domestic or foreign, that is required to file a return under section 6031 for a taxable year fails to file the return within the time prescribed; and

(2) At any time after the close of that taxable year, either—

(i) The tax matters partner of that partnership resides outside the United States; or

(ii) The books and records of that partnership are maintained outside the United States.

(b) *Computational adjustment permitted if return is not filed after mailing of notice.* Except as otherwise provided in paragraph (c) of this section, if—

(1) This section applies with respect to a partnership for a partnership taxable year;

(2) The Internal Revenue Service mails notice to a partner that the losses and credits arising from that partnership for that year will be disallowed to that partner unless the partnership files a return for that year within 60 days after the date on which the notice is mailed; and

(3) The partnership fails to file a return for that year within that 60-day period, the Internal Revenue Service may, without conducting a partnership-level proceeding, mail a notice of computational adjustment to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year.

(c) *Restriction on notices under paragraph (b) of this section.* Neither the notice referred to in paragraph (b)(2) of this section nor the notice of computational adjustment referred to in paragraph (b) of this section may be mailed on a day on which—

(1) The tax matters partner of the partnership resides within the United States; and

(2) The books and records of the partnership are maintained within the United States. Thus, if this section applies with respect to a partnership for a taxable year solely because the tax matters partner of that partnership resided outside the United States for a period after the close of that taxable year and the tax matters partner later takes up residence within the United States, no notice may be mailed under paragraph (b) of this section while the tax matters partner resides within the United States.

(d) *No disallowance in certain circumstances.* If the person to whom the notice referred to in paragraph (b)(2) of this section is mailed establishes to the satisfaction of the Internal Revenue Service—

(1) That the losses and credits arising from the partnership for the year are proper; and

(2) That the partner has made a good faith effort to have the partnership file the required return; the Internal Revenue Service may allow the losses and credits in whole or in part.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(f)–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6231(f)–1T [Removed]

Par. 52a. Section 301.6231(f)–1T is removed.

Par. 53. Section 301.6233–1 is added to read as follows:

§ 301.6233–1 Extension to entities filing partnership returns.

(a) *Entities filing a partnership return.* Except as provided in paragraph (c)(1) of this section, the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C) and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a partnership return as well as to such entity’s items for that taxable year and to any person holding an interest in such entity at any time during that taxable year. Any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may include a determination that the entity is not a partnership for such taxable year as well as determinations with re-

spect to all items of the entity that would be partnership items, as defined in section 6231(a)(3) and the regulations thereunder, if such entity had been a partnership in such taxable year (including, for example, any amounts taxable to an entity determined to be an association taxable as a corporation). For example, a final determination under subchapter C that an entity that filed a partnership return is an association taxable as a corporation will serve as a basis for a computational adjustment reflecting the disallowance of any loss or credit claimed by a purported partner with respect to that entity.

(b) *Partnership return filed but no entity found to exist—* Paragraph (a) of this section shall apply where a partnership return is filed for a taxable year but it is determined that there is no entity for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return shall be treated as if it were filed by an entity. However, any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(c) *Exceptions.* Paragraph (a) of this section shall not apply to—

(1) Entities for any taxable year in which such entity would be excepted from the provisions of subchapter C of the Internal Revenue Code under section 6231(a)(1)(B) and the regulations thereunder (relating to the exception for small partnerships) if such entity were a partnership for such taxable year; and

(2) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

(d) *Effective dates.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6233–1T contained in 26 CFR part 1, revised April 1, 2001.

§ 301.6233–1T [Removed]

Par. 53a. Section 301.6233–1T is removed.

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 54. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C.7805.

Par. 55. Section 602.101, paragraph (b) is amended by removing the entries for “301.6222(a)–2T”, “301.6222(b)–1T”, “301.6222(b)–2T”, “301.6222(b)–3T”, “301.6227(b)–1T”, and adding the following entries to the table in numerical order:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6222(a)–2	1545–0790
301.6222(b)–1	1545–0790
301.6222(b)–2	1545–0790
301.6222(b)–3	1545–0790
301.6223(b)–1	1545–0790
301.6223(c)–1	1545–0790
301.6223(e)–2	1545–0790
301.6223(g)–1	1545–0790
301.6223(h)–1	1545–0790
301.6224(b)–1	1545–0790
301.6224(c)–1	1545–0790
301.6224(c)–3	1545–0790
301.6227(c)–1	1545–0790
301.6227(d)–1	1545–0790
301.6229(b)–2	1545–0790
301.6230(b)–1	1545–0790
301.6230(e)–1	1545–0790
301.6231(a)(1)–1	1545–0790
* * * * *	
301.6231(c)–1	1545–0790
301.6231(c)–2	1545–0790
* * * * *	

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

Approved September 20, 2001.

Mark Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on October 3, 2001, 8:45 a.m., and published in the issue of the Federal Register for October 4, 2001, 66 F.R. 50541)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2001-65

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

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

The average yield on the 30-year Treasury Constant Maturities for September 2001 is 5.48 percent.

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

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
October	2001	5.76	5.18 to 6.05	5.18 to 6.34

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call Mr. Newman at (202) 283-9702 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2001-51

SECTION 1. PURPOSE AND NATURE OF CHANGE

.01 The purpose of this revenue procedure is to modify Rev. Proc. 2001-3 (2001-1 I.R.B. 111) by removing section 5.06 from the No-Rule list. Section 5.06 concerns the application of § 1374 of the Internal Revenue Code to timber, coal and domestic iron ore transactions.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2001-3 sets forth those provisions of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (Passthroughs &

Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

.02 Section 5 of Rev. Proc. 2001-3 sets forth those areas under extensive study in which letter rulings or determination letters will not be issued until the Service resolves the issue through publication of a revenue ruling, revenue procedure, or otherwise.

Section 5.06 of Rev. Proc. 2001-3 provides as follows:

Section 1374.—Tax Imposed on Certain Built-in Gains — The tax consequences under § 1374 in the following situations: (1) an S corporation holds timber property on the date it converts from a C corporation to an S corporation (or acquires timber property from a C corporation in a transaction to which § 1374(d)(8) applies) and during the recognition period (a) cuts the timber and sells resulting wood products (including any unfinished or finished products derived, manufactured, or produced from such wood products) in a transaction to which § 631 does not apply, (b) recognizes gain or loss on cutting the timber pursuant to a § 631(a) election, or (c) recognizes gain or loss on the disposal of timber under a contract to which

§ 631(b) applies, and (2) an S corporation holds coal or domestic iron ore property on the date it converts from a C corporation to an S corporation (or acquires coal or domestic iron ore property from a C corporation in a transaction to which § 1374(d)(8) applies) and during the recognition period recognizes gain or loss on the disposal of the coal or iron ore under a contract to which § 631(c) applies.

SECTION 3. PROCEDURE

Rev. Proc. 2001-3 is modified by deleting section 5.06.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001-3 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective October 9, 2001, the date of its release to the public.

DRAFTING INFORMATION

The principal author of this revenue procedure is Cristian P. Silva of the Office of Associate Chief Counsel (Corporate). For further information about this revenue procedure, please contact Mr. Silva at (202) 622-7750 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Constructive Transfers and Transfers of Property to a Third Party on Behalf of a Spouse

REG-107151-00

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under section 1041 of the Internal Revenue Code relating to the tax treatment of certain redemptions, during marriage or incident to divorce, of stock owned by a spouse or former spouse. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by November 1, 2001. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Friday, December 14, 2001, must be received by November 23, 2001.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-107151-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG-107151-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Edward C. Schwartz (202) 622-4960; concerning submissions and the hearing, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by October 2, 2001. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.1041-2(c) of these regulations. Section 1.1041-2(c) permits spouses or former spouses to treat a redemption of stock of one spouse (the first spouse) as a transfer of that stock to the other spouse (the second spouse) in exchange for the redemption proceeds and a redemption of the stock from the second spouse in exchange for the redemption proceeds if they reflect their intent to do

so in a written agreement or if a divorce or separation agreement requires such treatment. This information must be retained and is required for the spouses or former spouses to report properly the tax consequences of the redemption. The likely respondents are individuals.

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 minutes.

Estimated number of respondents and/or recordkeepers: 1,000

Estimated annual frequency of responses: On occasion

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

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

Background

Section 1041 was added to the Internal Revenue Code by section 421 of the Tax Reform Act of 1984 (1984 Act), Public Law 98-369. Section 1041(a) provides that no gain or loss will be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse or former spouse if the transfer is incident to a divorce. Under section 1041(b), for purposes of subtitle A, the transferee is treated as having acquired the property by gift from the transferor with a carryover basis from the transferor.

The House Report accompanying the 1984 Act states:

The current rules governing transfers of property between spouses or former spouses incident to divorce have not worked well and have led to much controversy and litigation. Often the rules have proved a trap for the unwary

Furthermore, in divorce cases, the government often gets whipsawed. The transferor will not report any gain

on the transfer, while the recipient spouse, when he or she sells, is entitled under [*United States v. Davis*, 370 U.S. 65 (1962)] to compute his or her gain or loss by reference to a basis equal to the fair market value of the property at the time received.

The committee believes that to correct these problems and make the tax laws as unintrusive as possible with respect to relations between spouses, the tax laws governing transfers between spouses and between former spouses should be changed. . . .

The bill provides that the transfer of property to a spouse incident to a divorce will be treated, for income tax purposes, in the same manner as a gift. Gain (including recapture income) or loss will not be recognized to the transferor, and the transferee will receive the property at the transferor's basis Thus, uniform Federal income tax consequences will apply to these transfers notwithstanding that the property may be subject to differing state property laws.

H. R. Rep. No. 432, 98th Cong., 2d Sess., Part 2, at 1491-92 (1984) (House Report).

By enacting the carryover basis rules in section 1041(b), Congress has, in essence, provided spouses with a mechanism for determining between themselves which one will pay tax upon the disposition of property outside the marital unit. For example, assume Spouse A owns appreciated property that he or she wishes to sell to a third party. The spouses may agree that Spouse A will sell the property to the third party and recognize the gain. Any subsequent transfer from Spouse A to Spouse B of the sales proceeds will be nontaxable under section 1041. In the alternative, the spouses may agree that Spouse A will first transfer the property to Spouse B. This transfer is nontaxable under section 1041, with Spouse B taking a carryover basis in the transferred property. Spouse B will then recognize the gain or loss on the sale of the property to the third party because a sale to a third party is not covered by section 1041. In this latter scenario, the tax consequences of the sale are shifted to Spouse B.

Under § 1.1041-1T(c), Q&A-9, of the Temporary Income Tax Regulations (Q&A-9), section 1041 will apply to a transfer of property by the transferor

spouse to a third party that is on behalf of the other spouse or former spouse (non-transferor spouse) if: (i) the transfer to the third party is required by the divorce or separation instrument; (ii) the transfer to the third party is pursuant to the written request of the nontransferor spouse; or (iii) the transferor spouse receives from the nontransferor spouse a written consent or ratification of the transfer to the third party. If Q&A-9 applies, a direct transfer of property to a third party is treated first as a transfer to the nontransferor spouse in a transaction governed by section 1041 and then as an immediate transfer by the nontransferor spouse to the third party in a transaction not governed by section 1041.

Q&A-9 has provided spouses and former spouses with the ability to shift between themselves the tax consequences of a sale of property outside the marital unit. However, the questions of what standard should be applied for purposes of determining whether a transfer of property is, or is not, "on behalf of" the non-transferor spouse for purposes of section 1041, and whether the same standard should be applied for purposes of determining the tax treatment of the transferor spouse and the nontransferor spouse under provisions of the Internal Revenue Code other than section 1041, have become the source of much confusion and litigation in the context of certain stock redemptions. For instance, the United States Court of Appeals for the Ninth Circuit in *Arnes v. United States*, 981 F.2d 456 (9th Cir. 1992) (regarding the tax treatment of the transferor spouse), and the Tax Court in *Arnes v. Commissioner*, 102 T.C. 522 (1994) (regarding the tax treatment of the nontransferor spouse), applied different standards to determine the tax treatment of the transferor spouse and the nontransferor spouse, respectively, in the context of a redemption of stock owned by the transferor spouse. Consequently, neither spouse was taxed on the redemption proceeds, a result that Congress clearly sought to avoid in enacting section 1041. See House Report at 1491.

In the *Arnes* cases, a husband and wife owned all the stock of a corporation. The divorce instrument required the wife to tender her stock to the corporation for redemption. The Ninth Circuit held that

the redemption was on behalf of the husband and, therefore, was not taxable to the wife, because it found that the husband had an obligation under the property settlement to purchase the wife's stock and the husband was benefitted by the redemption. The Ninth Circuit did not address the tax treatment of the husband, although it implied that the husband might be taxable on the redemption.

The Tax Court in *Arnes* addressed whether the husband was taxable on the redemption. The Tax Court stated that the question was whether the husband had a constructive dividend; that is, whether he had a "primary and unconditional obligation" to purchase the stock. The court concluded that the husband did not have a primary and unconditional obligation to purchase the wife's stock and, therefore, the redemption of the wife's stock did not result in a constructive dividend to the husband. This conclusion, the court stated, was supported by the IRS's position in Rev. Rul. 69-608 (1969-2 C.B. 43). Rev. Rul. 69-608 holds that a corporation's redemption of its stock from a shareholder (the first shareholder) results in a constructive distribution to another shareholder (the second shareholder) if the redemption is in satisfaction of the second shareholder's primary and unconditional obligation to purchase the first shareholder's stock. The majority opinion of the Tax Court in *Arnes* expressly declined to opine as to whether the "on behalf of" standard of Q&A-9 is the same as the "primary and unconditional obligation" standard applicable to constructive distributions.

The uncertainty has persisted in subsequent cases. In *Read v. Commissioner*, 114 T.C. 14 (2000), the Tax Court rejected equating the "primary and unconditional obligation" standard with the "on behalf of" standard in Q&A-9 for purposes of determining the tax consequences of a stock redemption to the transferor spouse. The Tax Court concluded that the appropriate standard for determining whether a transfer of property to a third party by a transferor spouse was on behalf of the nontransferor spouse under Q&A-9 was whether the transferor spouse was acting "as the representative of" or "in the interest of" the nontransferor spouse or whether the transfer satisfied a liability or an obligation of the nontransferor spouse.

See also *Blatt v. Commissioner*, 102 T.C. 77 (1994).

Because of these inconsistent standards, the regulations must be amended to provide greater certainty in determining which spouse will be taxed on certain stock redemptions occurring during marriage or incident to divorce.

Explanation of Provisions

The proposed regulations apply where, under current law, the “primary and unconditional obligation” standard applicable to constructive distributions governs the tax consequences to one spouse or former spouse of a redemption of stock owned by the other spouse or former spouse. Accordingly, the proposed regulations provide that they apply only where the nontransferor spouse owns stock of the redeeming corporation either immediately before or immediately after the stock redemption.

The proposed regulations provide that, if a corporation redeems stock owned by a transferor spouse, and the transferor spouse’s receipt of property in respect of such stock is treated, under applicable tax law, as resulting in a constructive distribution to the nontransferor spouse, then the stock redeemed is deemed first to be transferred by the transferor spouse to the nontransferor spouse and then to be transferred by the nontransferor spouse to the redeeming corporation. Section 1041 applies to the deemed transfer of the stock by the transferor spouse to the nontransferor spouse, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. Section 1041 does not apply to the deemed transfer of stock from the nontransferor spouse to the redeeming corporation. Any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock is deemed first to be transferred by the redeeming corporation to the nontransferor spouse in exchange for the stock in a transaction to which section 1041 does not apply, and then to be transferred by the nontransferor spouse to the transferor spouse in a transaction to which section 1041 applies, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. The tax consequences of the deemed transfer of stock from the nontransferor spouse to the

redeeming corporation in exchange for the redemption proceeds from the redeeming corporation are determined under applicable provisions of the Internal Revenue Code (other than section 1041) as if such transfers had actually occurred.

Where applicable law does not treat a transferor spouse’s receipt of property in respect of stock redeemed as resulting in a constructive distribution to the nontransferor spouse, the form of the stock redemption is respected. In other words, the transferor spouse and the redeeming corporation are respected as parties to the redemption transaction, and thus the transferor spouse, not the nontransferor spouse, is treated as a party to the redemption.

The approach of the proposed regulations recognizes that applicable tax law currently imposes the primary and unconditional obligation standard, which has its origins in well-established case law including *Wall v. United States*, 164 F.2d 462 (4th Cir. 1947), and *Sullivan v. United States*, 363 F.2d 724 (8th Cir. 1966), for determining whether a shareholder has received a constructive distribution. The proposed regulations are designed to remove inconsistencies caused by the simultaneous potential application of the on behalf of standard of Q&A-9 for one spouse and the primary and unconditional obligation standard of the case law for the other spouse. Thus, for example, if the rules of the proposed regulations had applied in the *Arnes* case, because the husband did not have a primary and unconditional obligation to purchase the wife’s stock, the redemption would have been taxed in accordance with its form with the result that the wife would have incurred the tax consequences of the redemption.

The proposed regulations provide a special rule that permits spouses and former spouses to treat a redemption of the transferor spouse’s stock as a deemed transfer of the redeemed stock by the transferor spouse to the nontransferor spouse and then a deemed transfer of the redeemed stock by the nontransferor spouse to the redeeming corporation, and to treat any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock as first transferred by the redeeming corporation to the nontransferor spouse in

exchange for the stock and then to be transferred by the nontransferor spouse to the transferor spouse. The special rule will apply if a divorce or separation instrument, or a written agreement between the transferor spouse and the nontransferor spouse, requires the transferor spouse and the nontransferor spouse to file their Federal income tax returns in a manner that reflects that the transferor spouse transferred the redeemed stock to the nontransferor spouse in exchange for the redemption proceeds and the corporation redeemed the stock from the nontransferor spouse in exchange for the redemption proceeds. Such divorce or separation instrument must be effective, or the written agreement must be executed by both spouses or former spouses, prior to the date on which the nontransferor spouse files such spouse’s first timely filed Federal income tax return for the year that includes the date of the redemption, but no later than the date such return is due (including extensions). The special rule is provided to give spouses and former spouses a means of ensuring the application of those Federal income tax consequences that would have resulted had applicable tax law treated the transferor spouse’s stock redemption as resulting in a constructive distribution to the nontransferor spouse.

Proposed Effective Date

The proposed regulations are applicable to redemptions of stock on or after the date the regulations in this section are published as final regulations, except for redemptions of stock that are pursuant to instruments in effect before the date the regulations in this section are published as final regulations. For redemptions of stock before the date the regulations in this section are published as final regulations and redemptions of stock that are pursuant to instruments in effect before the date the regulations in this section are published as final regulations, see § 1.1041-1T(c), A-9. However, these regulations will be applicable to redemptions described in the preceding sentence if the spouses or former spouses execute a written agreement on or after August 3, 2001, that satisfies the requirements of paragraph (c) of these regulations with respect to such redemption.

Special Analysis

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS is also interested in receiving comments regarding the proper treatment of transfers of property to third parties by a spouse or former spouse other than transfers under these proposed regulations that solely govern certain redemptions of stock owned by a spouse or former spouse. Further, comments are specifically requested concerning the effective date provisions in the proposed regulations. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 14, 2001, at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

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

Persons that wish to present oral comments at the hearing must submit timely written or electronic comments and must submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by November 23, 2001.

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

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

Drafting Information

The principal author of these regulations is Edward C. Schwartz of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1041-1T, paragraph (c) is amended by adding a sentence at the end of A-9 to read as follows:

§ 1.1041-1T Treatment of transfers of property between spouses or incident to divorce (temporary).

* * * * *

(c) * * *

A-9: * * * This A-9 shall not apply to transfers to which § 1.1041-2 applies.

* * * * *

Par. 3. Section 1.1041-2 is added to read as follows:

§ 1.1041-2 Certain redemptions of stock.

(a) *In general* — (1) *Redemptions of stock resulting in constructive distributions.* Notwithstanding Q&A-9 of § 1.1041-1T(c), if a corporation redeems stock owned by a spouse or former spouse

(transferor spouse), and the transferor spouse's receipt of property in respect of such redeemed stock is treated, under applicable tax law, as resulting in a constructive distribution to the other spouse or former spouse (nontransferor spouse), then the stock redeemed shall be deemed first to be transferred by the transferor spouse to the nontransferor spouse and then to be transferred by the nontransferor spouse to the redeeming corporation. Any property actually received by the transferor spouse from the redeeming corporation in respect of the redeemed stock shall be deemed first to be transferred by the redeeming corporation to the nontransferor spouse in exchange for the redeemed stock and then to be transferred by the nontransferor spouse to the transferor spouse.

(2) *Redemptions of stock not resulting in constructive distributions.* Notwithstanding Q&A-9 of § 1.1041-1T(c), if a corporation redeems stock owned by the transferor spouse, and the transferor spouse's receipt of property in respect of such redeemed stock is not treated, under applicable tax law, as resulting in a constructive distribution to the nontransferor spouse, then the form of the stock redemption shall be respected for Federal income tax purposes. Therefore, the transferor spouse and the redeeming corporation will be respected as engaging in a redemption transaction to which the nontransferor spouse is not a party.

(b) *Tax consequences* — (1) *Transfers described in paragraph (a)(1).* The tax consequences of each deemed transfer described in paragraph (a)(1) of this section are determined under applicable provisions of the Internal Revenue Code as if the parties had actually made such transfers. Accordingly, section 1041 applies to any deemed transfer of the stock and redemption proceeds between the transferor spouse and the nontransferor spouse, provided the requirements of section 1041 are otherwise satisfied with respect to such deemed transfer. Section 1041, however, will not apply to any deemed transfer of stock by the nontransferor spouse to the redeeming corporation in exchange for the redemption proceeds. See section 302 for rules relating to the tax consequences of certain corporate redemptions.

(2) *Transfers described in paragraph (a)(2).* Section 1041 will not apply to any

of the transfers described in paragraph (a)(2) of this section. See section 302 for rules relating to the tax consequences of certain stock redemptions.

(c) *Special rule.* Notwithstanding applicable tax law, a transferor spouse's receipt of property in respect of redeemed stock will be treated as resulting in a constructive distribution to the nontransferor spouse for purposes of paragraph (a)(1) of this section if a divorce or separation instrument, or a written agreement between the transferor spouse and the nontransferor spouse, requires the transferor spouse and the nontransferor spouse to file their Federal income tax returns in a manner that reflects that the transferor spouse transferred the redeemed stock to the nontransferor spouse in exchange for the redemption proceeds and the corporation redeemed the stock from the nontransferor spouse in exchange for the redemption proceeds. Such divorce or separation instrument must be effective, or written agreement must be executed by both spouses or former spouses, prior to the date on which the nontransferor spouse files such spouse's first timely filed Federal income tax return for the year that includes the date of the stock redemption, but no later than the date such return is due (including extensions).

(d) *Limited scope.* Paragraphs (a) and (c) of this section shall apply only to stock redemptions where, either immediately before or immediately after the stock redemption, the nontransferor spouse owns directly stock of the redeeming corporation.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Corporation X has 100 shares outstanding. A and B each own 50 shares. A and B divorce. The divorce instrument requires B to purchase A's shares, and A to sell A's shares to B, in exchange for \$100x. Corporation X redeems A's shares for \$100x. Assume that, under applicable tax law, the stock redemption results in a constructive distribution to B. Paragraph (a)(1) of this section applies to the transfers of stock and redemption proceeds in connection with the redemption transaction. Accordingly, A will be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied). B will be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for \$100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B will be treated as transferring the \$100x to A in a transfer to which section 1041 applies.

Example 2. Assume the same facts as *Example 1*, except that the divorce instrument requires A to sell A's shares to Corporation X in exchange for a note. B guarantees Corporation X's payment of the note. Assume that, under applicable tax law, B does not have a primary and unconditional obligation to purchase A's stock. Also assume that the special rule of paragraph (c) of this section does not apply to the transfer of stock and redemption proceeds in connection with the redemption transaction. Under applicable tax law, the stock redemption does not result in a constructive distribution to B, because B does not have a primary and unconditional obligation to purchase A's stock. Paragraph (a)(1) of this section does not apply to the transfers of stock and redemption proceeds in connection with the redemption transaction. Accordingly, under paragraphs (a)(2) and (b)(2) of this section, the tax consequences of the redemption will be determined in accordance with its form as a redemption of A's shares by Corporation X. See section 302.

Example 3. Assume the same facts as *Example 2*, except that the divorce instrument provides as follows: "A and B agree that A's Federal income tax return for the year that includes the date of the redemption will reflect that A transferred A's shares of Corporation X to B in exchange for the redemption proceeds of \$100x and B's Federal income tax return for such year will reflect that Corporation X redeemed such shares from B in exchange for such proceeds." By virtue of the special rule of paragraph (c) of this section, the redemption is treated as resulting in a constructive distribution to B. Accordingly, A will be treated as transferring A's stock of Corporation X to B in a transfer to which section 1041 applies (assuming the requirements of section 1041 are otherwise satisfied). B will be treated as transferring the Corporation X stock B is deemed to have received from A to Corporation X in exchange for \$100x in an exchange to which section 1041 does not apply and sections 302(d) and 301 apply, and B will be treated as transferring the \$100x to A in a transfer to which section 1041 applies.

(f) *Effective date.* Except as otherwise provided in this paragraph, this section is applicable to redemptions of stock on or after the date these regulations are published as final regulations in the **Federal Register**, except for redemptions of stock that are pursuant to instruments in effect before the date these regulations are published as final regulations in the **Federal Register**. For redemptions of stock before the date these regulations are published as final regulations in the **Federal Register** and redemptions of stock that are pursuant to instruments in effect before the date these regulations are published as final regulations in the **Federal Register**, see § 1.1041-1T(c), A-9. However, these regulations will be applicable to redemptions described in the preceding sentence of this paragraph (f) if the spouses or former spouses execute a written agreement on or after August 3, 2001,

that satisfies the requirements of paragraph (c) of this section with respect to such redemption.

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on August 2, 2001, 8:45 a.m., and published in the issue of the Federal Register for August 3, 2001, 66 F.R. 40659)

Disaster Relief for Issuers of Tax-Exempt Bonds Affected by the September 11, 2001, Terrorist Attack

Announcement 2001-101

PURPOSE

The purpose of this announcement is to inform issuers of tax-exempt bonds that, effective immediately, the Internal Revenue Service will put into effect procedures to provide relief to issuers affected by the September 11, 2001, Terrorist Attack.

BACKGROUND

In connection with the September 11, 2001, Terrorist Attack, the President issued federal disaster declarations with respect to certain counties and may issue additional declarations with respect to other counties (such counties are collectively referred to herein as, the "covered counties").

As a consequence of the September 11, 2001, Terrorist Attack, an affected issuer (as defined below), may not be able to comply with certain requirements of section 103 and related provisions of the Internal Revenue Code, including, but not limited to, the requirements set forth in sections 148(f) and 149(e) of the Code, with respect to certain of its bond issues.

PROCEDURES FOR REQUESTING RELIEF

(a) An affected issuer is an issuer that meets one or more of the following:

- (i) It is located in one of the covered counties;
- (ii) It is not located in any of the covered counties, but its records necessary to meet a fil-

- ing or paying deadline for the issue are maintained in one of the covered counties;
- (iii) The facilities financed with the proceeds of the issue are located in one of the covered counties;
 - (iv) The conduit borrower for the issue is located in one of the covered counties;
 - (v) The counsel to the issuer or the conduit borrower, or bond counsel for the issue, is located in one of the covered counties;
 - (vi) The professional on whom the issuer relies for compliance with the relevant provision of the Code is located in one of the covered counties. For example, the issuer may need to rely on one or more of the following persons in order to comply with the rebate requirement of section 148(f): the bond trustee, a financial advisor or a rebate consultant.

(b) With respect to the requirements under sections 149(e) and 148(f), an affected issuer has an additional 6 months plus 120 days to file Form 8038, Form 8038-G, Form 8038-GC, or Form 8038-T for an issue for which such form is otherwise required to be filed in accordance with an original due date that occurs on or after September 11, 2001, and on or before November 30, 2001. In the case of a Form 8038-T, the Service will not impose a penalty, including any interest portion thereof, under section 148 of the Code, on rebate payments, yield reduction payments and penalties in lieu of rebate that are originally due on or after September 11, 2001, and on or before November 30, 2001, provided such payments are made within 6 months and 120 days of the original due date of the payment. For computation purposes, such payments will be treated as paid on the last day of the computation or spending period to which they relate.

(c) When filing a form described in subsection (b) above, the affected issuer should add the following designation in red ink at the top of the form, "September 11, 2001 – Terrorist Attack, See Announcement 2001–101."

(d) In addition to the relief granted in subsection (b) above, other relief may

also be granted under appropriate circumstances for affected issuers (for example, affected issuers unable to redeem their current refunded issue within 90 days of issuance of the current refunding issue). An affected issuer may request relief by contacting the Tax Exempt Bonds, Outreach, Planning and Review ("TEB OPR") function of Tax Exempt/Government Entities at (202) 283-9798, contact person: Cliff Gannett.

DRAFTING INFORMATION

The principal author of this announcement is Sunita Lough of Tax Exempt Bonds Outreach, Planning and Review of the Office of the Director, Tax Exempt Bonds, Tax Exempt/Government Entities. For further information regarding this announcement or comments as to how additional relief may be provided to affected issuers, contact Sunita Lough at (202) 283-9774 (not a toll-free call).

Filing of Certain Forms 5500

Announcement 2001–103

The Internal Revenue Service (IRS), the Department of Labor's Pension and Welfare Benefits Administration (PWBA), and the Pension Benefit Guaranty Corporation (PBGC) provide relief from certain penalties relating to Forms 5500 for defined benefit and money purchase pension plans that are required to be filed on or before October 15, 2001. This announcement also includes PBGC's statement of relief from penalties relating to premiums, reporting and disclosure, and certifications.

Background

Section 412(a) of the Internal Revenue Code (Code) and § 302(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provide that a plan meets the minimum funding standards of the Code and ERISA for a plan year if the plan does not have an accumulated funding deficiency as of the end of the plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any con-

tributions for a plan year made by an employer by the end of the 8 1/2 month period following the end of such plan year are deemed to have been made on the last day of the plan year.

Section 6058 of the Code and § 104 of ERISA require plan administrators to file an annual return/report of employee benefit plan within a specified period of time after the end of the plan year. The annual return/report of employee benefit plan is Form 5500 and Form 5500-EZ (hereinafter Form 5500). For defined benefit pension plans subject to the minimum funding standard, § 6059 of the Code requires that a periodic report of the actuary be filed with the annual return. Under § 301.6059-1 of the Procedure and Administration Regulations, the periodic report is the Schedule B, which must be signed by an enrolled actuary. In order to properly complete the Schedule B, the enrolled actuary must know whether a contribution for a plan year was made within the period specified by § 412(c)(10) of the Code and § 302(c)(10) of ERISA.

Under section 502(c)(2) of ERISA, a penalty of up to \$1,100 a day may be assessed for each day a plan administrator fails or refuses to file a complete and accurate annual report and accompanying schedules. Similarly, § 6652(e) of the Code imposes a penalty of \$25 a day (up to \$15,000) for not filing returns for certain deferred compensation plans. Section 6692 of the Code imposes a penalty of \$1,000 for not filing an actuarial report described in § 6059. Under § 301.6692-1(a) of the regulations, a failure to provide a material item of information is considered as a failure to file an actuarial report.

Because of the disruption of the financial markets caused by the events of September 11, 2001, many employers have stated they were not able to make required contributions to their pension plans on or before September 15, 2001, to satisfy the minimum funding standards.

Grant of Relief

The IRS, the PWBA, and the PBGC provide the following relief. In the case of a defined benefit or money purchase pension plan with a plan year ending on or after December 27, 2000, and on or

before January 8, 2001, for which a Form 5500 is required to be filed on or before October 15, 2001, plan administrators and plan sponsors will not be treated as failing to file a complete and accurate return/report under § 6058 of the Code or § 104 of ERISA, nor will enrolled actuaries be treated as failing to file an actuarial report that satisfies the requirements of § 6059(b) of the Code, solely because contributions made on or before September 24, 2001, are included on line 3 of Schedule B of Form 5500 (showing the actual date of payment of the contribution) and line 6(b) of Schedule R of Form 5500.

In addition, the PBGC provides the following relief with respect to any plan with a plan year ending on or after December 27, 2000, and on or before January 8, 2001. The PBGC will not assess any penalties for a failure to pay PBGC premiums in a timely manner or a failure to meet a PBGC reporting or disclosure requirement, nor will it treat a certification as failing to be a valid and correct certification, solely because contributions made on or before September 24, 2001, are included in the plan's assets for purposes of PBGC premiums or are counted for purposes of determining whether any PBGC reporting or disclosure requirement applies.

Drafting Information

The principal author of this announcement is James E. Holland, Jr. of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday (toll-free number). Mr. Holland may be reached at (202) 283-9699 (not a toll-free number).

Issuance of GUST Opinion Letters for Master and Prototype Plans

Announcement 2001-104

The Service has begun to issue opinion letters to sponsors of master and prototype (M&P) plans who applied for

GUST¹ opinion letters by December 31, 2000. Recently, the Service completed revisions to pertinent sections of the Listing of Required Modifications and Information Package (LRM) for both defined contribution and defined benefit plans. The revisions to the LRMs are posted to the Employee Plans Internet address at www.irs.gov/ep.

Generally, an employer who, by the end of the 2001 plan year (December 31, 2001, for calendar-year plans), either adopts or certifies its intent to adopt a timely submitted M&P plan or volume submitter specimen plan will have until the later of December 31, 2002, or 12 months after the date of the last opinion or advisory letter issued to the M&P plan sponsor or volume submitter practitioner to adopt the GUST-approved plan. An M&P plan or volume submitter specimen plan is timely submitted if an application for a GUST opinion or advisory letter for the plan was filed by December 31, 2000. An employer who does not so adopt or certify its intent to adopt a timely submitted M&P plan or volume submitter specimen plan must amend its plan for GUST by the end of the 2001 plan year.

As provided in Announcement 2001-77 (2001-30 I.R.B. 83), the Service will soon publish on the IRS Web-page a list of the M&P plans and volume submitter specimen plans that were timely submitted for GUST opinion and advisory letters. This list will be updated periodically to indicate the dates on which letters were issued or the applications were withdrawn. The Service expects to complete the issuance of GUST opinion and advisory letters in the first quarter of calendar year 2002.

More information about GUST deadlines and filing procedures can be found in the following IRS procedures: Rev. Proc. 2000-20 (2000-6 I.R.B. 553), Rev. Proc. 2000-27 (2000-26 I.R.B. 1272), Rev. Proc. 2001-6 (2001-1 I.R.B. 194), and Notice 2001-42 (2001-30 I.R.B. 70).

¹ The term "GUST" refers to:

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

Foundations Status of Certain Organizations

Announcement 2001-105

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

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

4T Ministry, Inc., San Jose, CA
75 Lyerly Residents Council,
Incorporated, Houston, TX
Abundant Rain, Inc., Amarillo, TX
African Business Group ABG,
Dallas, TX
A.H.S. Enterprises, Inc., Houston, TX
Akido of Santa Barbara, Santa Barbara, CA
All Star Kids Day Care, Houston, TX
Alumni Association of Brooks Institute,
Santa Barbara, CA
American Indian Cultural & Business
Council-AICBC, Dallas, TX
Ancient Eyes Foundation, Oxnard, CA
Antelope Valley Youth Football
Association, Bakersfield, CA
Apostolate for Catholic Truth and
Service, Fresno, CA
Applied Geography Conferences, Inc.,
Denton, TX
Asian-American Association Clothing the
Needy, Stockton, CA
Asthma Watch Advocates Reinforcing
and Educating Aware, Lancaster, TX
Athens-Henderson County
Crimestoppers, Malakoff, TX
Beaumont Federation of Neighborhood
Associations, Beaumont, TX
Believers Bible Fellowship, Inc.,
Missoula, MT
Bellerive Residents Council,
Incorporated, Houston, TX

Benbrook Firefighters Association, Inc.,
Benbrook, TX

Bi Stone Economic Strategy Team, Inc.,
Teague, TX

Big Horn River Guide Company, Inc.,
Billings, MT

Big Sky Gymnastic Booster Club,
Great Falls, MT

Brain Games USA, Duncanville, TX

Brothers of West Liberty Foundation,
Inc., Liberty, TX

Brownwood Area Habitat for Humanity,
Inc., Brownwood, TX

Buenaventura Theatre Group,
Ventura, CA

California Broadcasters Foundation,
Sacramento, CA

California Industrial Safety Council, Inc.,
Bakersfield, CA

Canyon Community Center, Inc.,
Hungry Horse, MT

Carmel Literacy Arts Society,
Carmel, CA

Carmel Valley Trail & Saddle Club
Community Foundation, Inc.,
Salinas, CA

Carpinteria Creek Foundation,
Carpinteria, CA

Cedar Gardens Tenant Association,
Fresno, CA

Center for Attitudinal Healing Dallas,
Inc., Dallas, TX

Center for Hope, Inc., Tacoma, WA

Center for Internet Mail Education and
Research, Santa Cruz, CA

Chances, Inc., Terrell, TX

Charles Tolbert Ministries, Inc.,
Midland, TX

Chestnut Corporation, Bellaire, TX

Child Support Investigations, Inc.,
Santa Ana, CA

Childrens Advocacy Network,
Mammoth Lakes, CA

Childrens Special Moments, Inc.,
Conroe, TX

Chinese Physical Culture Plus, Inc.,
Houston, TX

Coastline Organization of People with
Aids-HIV, La Marque, TX

Connie M. Pate Memorial Scholarship
Fund, Beaumont, TX

Core Performance Manufactory,
Dallas, TX

Corner Boxing Club, Inc., Arlington, TX

Corpus Christi Club Estates Swim Team
Parents Club, Corpus Christi, TX

Corvallis Quick Response Unit,
Corvallis, MT

Court Appointed Special Advocates of
Angelina County, Inc., Lufkin, TX

Cup of Water International Ministries,
Inc., Bay City, TX

Dallas Hispanic Criminal Justice
Association, Dallas, TX

Dan McPherson Memorial Foundation,
Lubbock, TX

DARE Montana, Helena, MT

Deaf Educational Access Foundation,
Palo Alto, CA

Down Syndrome Partnership of Tarrant
County, Inc., Fort Worth, TX

Dr. Thomas S. Mackey Educational Trust,
Galveston, TX

Drum Not Guns, Inc., Dallas, TX

Eagle Fest, Emory, TX

Elks Park Scholarship and Charity Fund,
Merced, CA

Emmaus House, Hollister, CA

Encouragement Ministries, Inc.,
Morgan Hills, CA

Envirohome, Santa Cruz, CA

Equadorables, San Jose, CA

Extended Hope Youth Program,
Lancaster, TX

Fillmore FFA Booster Club,
Fillmore, CA

Firstplus Employees Foundation,
Dallas, TX

Fish Camp Fire Volunteers Auxiliary,
Fish Camp, CA

Fort Worth Beat the Heat Racing,
Fort Worth, TX

Foundation for the Development of
Critical Thought, Inc., Arlington, TX

Foundation for the Missions of
Coromoto, Salinas, CA

Four Corners Community Outreach, Inc.,
Richmond, TX

Friends of the Rink, Inc., Butte, MT

Friends of the Shelter Tobacco Valley
Animal Shelter, Inc., Eureka, MT

Geriatric Assessment Plans, Inc.,
Irving, TX

Glacier Affordable Housing Foundation,
Kalispell, MT

Golden State Human Service Continuum,
Inc., New Haven, CT

Golden State Track Club, San Jose, CA

Great Race Automotive Hall of Fame,
Inc., Granbury, TX

Greater Fairfield Restoration Association,
Inc., Fairfield, TX

Hagerman Quick Response Unit, Inc.,
Hagerman, ID

Hall of Fame of Golf, Inc.,
The Woodlands, TX

Hazel-Lisa-McMurrin Foundation,
Lake Arrowhead, CA

Health and Environment International,
Los Altos, CA

Health Education Alliance Foundation,
Great Falls, MT

Henderson County Arts Council,
Athens, TX

Hispanic Festival, Inc., Florissant, MO

Hope Restoration, Inc., Dallas, TX

Houston Council on Sexual Dependency
Recovery, Houston, TX

Humble Beginnings Emergency
Assistance Center, Humble, TX

Idaho Trauma System Development
Coalition, Boise, ID

In Depth Ministries, Inc., Houston, TX

Indian Culture Center-Spring, Spring, TX

Indico Foundation, Fort Worth, TX

Institute for Comprehensive
Understanding, Sunnyvale, CA

Irving Together, Inc., Irving, TX

Jerusalem Ministries, Inc., Houston, TX

Jim Caruthers Ministries, Inc., Justin, TX

J.R. Richard Foundation for the
Homeless, Dallas, TX

Jungle Gym Daycare, Inc., Culbertson, MT

Kalispell Dramatic Arts Company, Inc.,
Kalispell, MT

Kerman Bible Studies, Fresno, CA

Kerman Unified Education Foundation,
Kerman, CA

Kern County Royals Baseball Club,
Bakersfield, CA

Kern Musicians Association,
Bakersfield, CA

Kindness Foundation, Dallas, TX

Kingdom Stewardship Ministries, Inc.,
Lewisville, TX

Kings Highway Ministries, Incorporated,
Fresno, CA

Knights of Care, Dallas, TX

Lancelot Bell Foundation, Los Gatos, CA

Laurell Akers Ministries, Inc.,
Tomball, TX

Lighthouse Redemption Center,
Camarillo, CA

Lisa L. Netsch Foundation,
Highland Vill, TX

Livingston Area Cultural Arts and
Activities Center, Inc., Livingston, MT

Love Foundation, Houston, TX

McCampbell Institute, Monterey, CA

Midlothian Amateur Baseball
Association, Inc., Midlothian, TX

Ministerio Vida Y Luz, Odessa, TX

Miracle Healing Ministry,
Stevensville, MT

Montana County Fire Wardens Association, Stanford, MT
 Montana Mens Foundation, Bozeman, MT
 Montana River Action Network Fund, Inc., Bozeman, MT
 Montana Tribal Business Information Network, Incorporated, Billings, MT
 Monterey County Appointed Special Advocate Association, Monterey, CA
 Monterey Peninsula-Nanao Friendship Association, Marina, CA
 Montessori Phoenix Projects, Inc., Gaviota, CA
 Nash Country School, Inc., Toluca Lake, CA
 National Association of Presidential Assistants in Higher, Washington, DC
 National Disaster Search Dog Foundation, Inc., Ojai, CA
 Network Ministries Fellowship, Inc., Arlington, TX
 New Creation Ministry, Inc., Nacogdoches, TX
 New Creations Recovery, Inc., Porterville, CA
 North Grassland Wildlife Foundation, Newman, CA
 North Richland Hill Citizens Police Academy Alumni Association, N. Richland Hills, TX
 North Texas Housing & Management Corp., Plano, TX
 North Texas Select Softball, Southlake, TX
 Northern Santa Barbara County Athletic Roundtable, Inc., Santa Maria, CA
 Northwest Pharmacist Recovery Network, Fircrest, WA
 Oleander & Sunset Park Association, Bakersfield, CA
 One Church One Child of North-North Central Texas and Surrounding, Arlington, TX
 One Foundation Ministries, Inc., Dallas, TX
 Opera San Joaquin, Fresno, CA
 Others, Inc., Waxahachie, TX
 Out of the Madness Charity, Inc., Dallas, TX
 Pacific Grove Feast of Lanterns, Inc., Pacific Grove, CA
 Palo Pinto County A&M Club, Mineral Wells, TX
 Paso Robles Police Activities League, Paso Robles, CA
 Pearl Longbines Cottage for Children, Inc., Amarillo, TX
 Philippians 413 Ministries, Missoula, MT
 Phoenix Data Center of Santa Clara County, Inc., Los Gatos, CA
 Proclaim Ministries, Plano, TX
 Professional Football Referees Association Charities, Plano, TX
 Progressive Economic Opportunity Programs for Local Efforts, Inc., Wichita Falls, TX
 Prop Foundation, Inc., Missoula, MT
 PTA California Congress of Parents Teachers and Students, Inc., Morgan Hill, CA
 Red River Emmaus Community, Incorporated, Wichita Falls, TX
 Rotarun Ski Club, Inc., Hailey, ID
 Rural Community Health Centers, Lemoore, CA
 San Angelo Business-Education Coalition, Inc., San Angelo, TX
 San Benito County Athletic Foundation, Hollister, CA
 Sandon Bailey Foundation, Coppell, TX
 Santa Barbara Air Fair, Inc., Goleta, CA
 Santa Barbara Sister Cities Association-Yalta, Santa Barbara, CA
 Say No To Drugs, Dallas, TX
 Seawind, Inc., Seaside, CA
 Segeh Gospel Mission, Inc., San Jose, CA
 Sensible Solutions the Institute, Inc., Missoula, MT
 Services for the Medically Disadvantaged, Fort Worth, TX
 Sexual Abuse Intervention Network of Dallas, Inc., Dallas, TX
 Shields Valley Foundation, Inc., Clyde Park, MT
 Sierra Scholarship Foundation, Inc., Bishop, CA
 Somers Volunteer Firefighters Association, Inc., Somers, NY
 South Texas Prison Outreach, Inc., Bay City, TX
 Special Family Ministries, Irving, TX
 Special Pets Incorporated, Dallas, TX
 Spruce Island Foundation, Sunnyvale, CA
 Storm Shelter Counseling for the Fissures of Men of Ventura County, Ventura, CA
 Structural Engineers World Congress, Los Altos, CA
 Stump Enrichment Ministry for Church & Family, Dallas, TX
 Summitt Place, Inc., Butte, MT
 Sun & Star 1996, Dallas, TX
 S.Y. Larrick Memorial Library Foundation, Whitefish, MT
 TCC Alumni Association, Conroe, TX
 Team Aztecas Sports, Dallas, TX
 Teen Court of Hopkins County, Sulphur Springs, TX
 Tegloma Texas Chapter, Incorporated, Houston, TX
 Total Care Living Center, Houston, TX
 Transplants Are Us, Missoula, MT
 Ulysses-Cora Cephas House of San Marcos Texas, Dallas, TX
 Unified Charities of Texas, Inc., Austin, TX
 United Kids Charity Group, Inc., Incline Village, NV
 Vessels for Jesus Prison Missions, Inc., Midlothian, TX
 Vietnam Helicopter Pilots Association, Mineral Wells, TX
 Vineyard Press, Kalispell, MT
 West Houston Community Center, Inc., Houston, TX
 Westside Food Pantry, Patterson, CA
 Wildwood Center for Walking, Inc., Saint Paul, MN
 Wishing on the Lone Star, Inc., Mesquite, TX
 Wit Foundation for Artists, Dallas, TX
 Women Against Sexual Harassment, Irving, TX
 Womens Resource Video Library, Somers, MT
 Youth Education Systems, Inc., Sand City, CA
 Youth Net Ministries, Inc., Lake Jackson, TX

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

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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