

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2004-75, page 109.

Annuity payments. This ruling addresses the taxation of income received by residents of Puerto Rico and nonresident aliens under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company. The ruling holds that income received by nonresident aliens under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company is U.S.-source FDAP income. The ruling also holds that income received by *bona fide* residents of Puerto Rico under life insurance or annuity contracts issued by a Puerto Rican branch of a U.S. life insurance company is U.S.-source income.

Rev. Rul. 2004-76, page 111.

Dual resident company. This ruling concludes that a dual resident company, resident in both Country Y and Country X under the domestic laws of those countries, is not entitled to claim benefits under the U.S. income tax convention with Country X if it is treated as a resident of Country Y and not of Country X for purposes of the income tax convention between Country X and Country Y and, as a result, is not liable to tax in Country X by reason of its residence. Rev. Rul. 73-354 obsolete.

Rev. Rul. 2004-78, page 108.

Corporate reorganizations; exchange of debt instruments. This ruling discusses the exchange of a debt security for a debt instrument in a reorganization.

Rev. Rul. 2004-79, page 106.

Corporate distributions of property. This ruling addresses the tax consequences of the distribution by a subsidiary to its parent of parent indebtedness that the subsidiary previously purchased from a party unrelated to the parent.

Rev. Proc. 2004-45, page 140.

This procedure provides alternative disclosure procedures that are deemed to satisfy a taxpayer's disclosure obligations under section 1.6011-4 of the regulations for transactions with a significant book-tax difference under section 1.6011-4(b)(6). Taxpayers also may continue to follow the disclosure procedures provided in section 1.6011-4 for disclosing transactions described in section 1.6011-4(b)(6).

EMPLOYEE PLANS

Rev. Proc. 2004-44, page 134.

Minimum funding standards; amortization; extensions. This procedure sets forth guidelines for requesting extensions of the amortization period of the minimum funding standards with respect to defined benefit plans under section 412(e) of the Code. Rev. Proc. 79-61 superseded. Rev. Proc. 2004-4 modified.

ESTATE TAX

REG-153841-02, page 145.

Proposed regulations provide guidance for making the election under section 2632(c) of the Code to not have the deemed allocation of unused generation-skipping transfer (GST) tax exemption apply with regard to certain transfers to a GST trust. The regulations also provide guidance for making the election to treat a trust as a GST trust.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 149.
Finding Lists begin on page ii.



Rev. Proc. 2004-46, page 142.

This procedure provides a simplified alternate method for certain taxpayers to obtain an extension of time under section 301.9100-3 of the regulations to make an allocation of the generation-skipping transfer exemption in accordance with section 2642(b)(1) of the Code. Notice 2001-50 modified.

GIFT TAX**REG-153841-02, page 145.**

Proposed regulations provide guidance for making the election under section 2632(c) of the Code to not have the deemed allocation of unused generation-skipping transfer (GST) tax exemption apply with regard to certain transfers to a GST trust. The regulations also provide guidance for making the election to treat a trust as a GST trust.

Rev. Proc. 2004-46, page 142.

This procedure provides a simplified alternate method for certain taxpayers to obtain an extension of time under section 301.9100-3 of the regulations to make an allocation of the generation-skipping transfer exemption in accordance with section 2642(b)(1) of the Code. Notice 2001-50 modified.

EMPLOYMENT TAX**T.D. 9136, page 112.**

Final regulations under section 3406 of the Code provide guidance on the information reporting and backup withholding requirements for payment card transactions made through a Qualified Payment Card Agent (QPCA). These regulations provide a limited exception to backup withholding for reportable payments made through a QPCA.

Rev. Proc. 2004-42, page 121.

This procedure provides the requirements for a payment card organization to request and obtain an IRS determination that it is a Qualified Payment Card Agent (QPCA) for purposes of the related final regulations under sections 3406 and 6724 of the Code that address the information reporting and backup withholding requirements for payment card transactions.

Rev. Proc. 2004-43, page 124.

This document establishes an optional procedure for payors who make payments in the course of their trade or business through payment cards to determine whether the payments are reportable under sections 6041 and 6041A of the Code and the regulations thereunder. This procedure classifies businesses by Merchant Category Codes (MCCs), or other similar codes, according to whether they predominantly furnish services or predominantly provide goods.

ADMINISTRATIVE**Rev. Rul. 2004-68, page 118.**

Disclosure of returns and return information. Rev. Rul. 54-379 concludes that heirs at law, next of kin, or beneficiaries who are distributees of a person who dies intestate under state law have a "material interest" to receive the decedent's return information. The statute does not clearly address the application of the "material interest" standard in the context of a taxpayer who dies intestate. Rev. Rul. 54-379 superseded.

Rev. Rul. 2004-77, page 119.

Disregarded entities. This ruling concludes that, if an eligible entity has two owners under local law, but one of the owners is, for federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

T.D. 9136, page 112.

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61-12: *Income from the discharge of indebtedness.*

Whether gross income includes income from the discharge of indebtedness if a subsidiary corporation makes a distribution of parent indebtedness to the parent corporation in a taxable year in which the subsidiary corporation's earnings and profits are greater than or equal to the fair market value of the distributed indebtedness? See Rev. Rul. 2004-79, page 106.

Section 108.—Income From Discharge of Indebtedness

26 CFR 1.108-2(a): *Acquisition indebtedness by a person related to the debtor.*

Whether when a subsidiary corporation makes a distribution of parent indebtedness to the parent corporation in a taxable year in which the subsidiary corporation's earnings and profits are greater than or equal to the fair market value of the distributed indebtedness, there is realization by the debtor of income from discharge of indebtedness? See Rev. Rul. 2004-79, page 106.

Section 301.—Distributions of Property

26 CFR 1.301-1: *Rules applicable with respect to distributions of money and other property.* (Also §§ 61, 108; 1.61-12, 1.108-2(a).)

Corporate distributions of property.

This ruling addresses the tax consequences of the distribution by a subsidiary to its parent of parent indebtedness that the subsidiary previously purchased from a party unrelated to the parent.

Rev. Rul. 2004-79

ISSUE

If a subsidiary corporation makes a distribution of parent indebtedness to the parent corporation in a taxable year in which the subsidiary corporation's earnings and profits are greater than or equal to the fair market value of the distributed indebtedness, what are the tax consequences of the distribution?

FACTS

Situation 1

On January 1, Year 1, P, a domestic corporation, issued indebtedness that provides for monthly interest payments of \$80,000 payable at the end of each month and a principal payment of \$10,000,000 on its stated maturity date of December 31, Year 4. The \$80,000 monthly interest payments are qualified stated interest payments within the meaning of § 1.1273-1(c) of the Income Tax Regulations. S, a domestic corporation, has only one class of stock outstanding, all of which is owned by P. On January 1, Year 2, S purchases all of the P indebtedness from A, an individual not related to S under § 1.108-2(d)(2), for cash in the amount of \$9,500,000. On that date, the adjusted issue price of the P indebtedness is \$10,000,000. On January 1, Year 3, S distributes all of the P indebtedness it holds to P. At the time of this distribution, the fair market value of the P indebtedness is \$9,250,000. During Year 3, S makes no other distributions to P. P and S do not join in filing a consolidated return for Years 1 through 3. At all times, the fair market value of P's assets exceeds the amount of its liabilities. At the end of Year 3, S has earnings and profits in the amount of \$20,000,000.

Situation 2

The facts are the same as in *Situation 1*, except that at the time S distributes the P indebtedness to P, the fair market value of the P indebtedness is \$10,050,000.

LAW

Section 301(a) of the Internal Revenue Code provides that a distribution of property (as defined in § 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in § 301(c).

Section 301(b)(1) provides, in part, that the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.

Section 301(c) provides that the portion of a distribution which is a dividend (as defined in § 316) is included in gross income,

and that the remaining portion of the distribution is applied first against the adjusted basis of the stock and then is treated as gain from the sale or exchange of property.

Section 316(a) provides that a dividend is any distribution of property made by a corporation to its shareholders out of the corporation's earnings and profits accumulated after February 28, 1913, or out of the corporation's earnings and profits of the taxable year, without regard to the amount of the earnings and profits at the time the distribution was made. Generally, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits.

Section 317(a) defines "property" for the purposes of the corporate distribution provisions as money, securities, and any other property, except for stock, or rights to acquire stock, in the corporation making the distribution. Section 1.317-1 provides that the term "property" also includes indebtedness to the corporation.

Section 311(a) provides that, except as provided in § 311(b), no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of (1) its stock (or rights to acquire its stock), or (2) property.

Section 311(b) provides that, if a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation), then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

Section 312(a) provides that, except as otherwise provided, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of the amount of money, the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and the adjusted basis of the other property, so distributed.

Section 312(b) provides that on the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof, the earnings and profits of the corporation shall be increased by the amount of such excess, and reduced by the fair market value of the property.

Section 61(a)(12) provides that gross income includes income from the discharge of indebtedness. Section 1.61-12(a) provides that the discharge of indebtedness, in whole or in part, may result in the realization of income.

Section 1.61-12(c)(2)(ii) provides that an issuer realizes income from the discharge of indebtedness upon the repurchase of a debt instrument for an amount less than its adjusted issue price (within the meaning of § 1.1275-1(b)). The amount of discharge of indebtedness income is equal to the excess of the adjusted issue price over the repurchase price. Section 1.61-12(c)(2)(iii) provides that an issuer may be entitled to a repurchase premium deduction upon the repurchase of a debt instrument for an amount greater than its adjusted issue price.

Under § 1.163-7(c), if a debt instrument is repurchased by the issuer for a price in excess of its adjusted issue price, the excess (repurchase premium) is generally deductible as interest for the taxable year in which the repurchase occurs.

Section 1.1275-1(b)(1) provides that the adjusted issue price of a debt instrument at the beginning of the first accrual period is the issue price. Thereafter, the adjusted issue price of the debt instrument is the issue price of the debt instrument increased by the amount of original issue discount (OID) previously includible in the gross income of any holder (determined without regard to §§ 1272(a)(7) and 1272(c)(1)) and decreased by the amount of any payment previously made on the debt instrument other than a payment of qualified stated interest.

Section 1.1272-1(g) provides that the basis of a debt instrument in the hands of the holder is increased by the amount of OID included in the holder's gross income and decreased by the amount of any payment from the issuer to the holder under the debt instrument other than a payment of qualified stated interest.

Section 108(e)(4) provides that for purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in § 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor.

Section 1.108-2(a) provides that the direct or indirect acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness (to the extent required by §§ 61(a)(12) and 108 in an amount determined under § 1.108-2(f)).

Section 1.108-2(f)(1) provides that the amount of discharge of indebtedness income realized under § 1.108-2(a) is measured by reference to the adjusted basis of the related holder (or of the holder that becomes related to the debtor) in the indebtedness on the acquisition date if the holder acquired the indebtedness by purchase on or less than six months before the acquisition date.

Section 1.108-2(g) provides that for income tax purposes, if a debtor realizes income from discharge of indebtedness in a direct or an indirect acquisition under this section (whether or not the income is excludable under § 108(a)), the debtor's indebtedness is treated as new indebtedness issued by the debtor to the related holder on the acquisition date (the deemed issuance). The new indebtedness is deemed issued with an issue price equal to the amount used under § 1.108-2(f) to compute the amount realized by the debtor under § 1.108-2(a) (*i.e.*, either the holder's adjusted basis or the fair market value of the indebtedness, as the case may be). Under § 1273(a)(1), the excess of the stated redemption price at maturity (as defined in § 1273(a)(2)) of the indebtedness over its issue price is OID and, to the extent provided in §§ 163(e) and 1272, is deductible by the debtor and includible in the gross income of the related holder.

ANALYSIS

In *Situation 1*, because P and S have a relationship specified in § 267(b)(3), un-

der § 108(e)(4), S's purchase of the P indebtedness is treated as P's acquisition of that indebtedness. Under § 1.108-2(a), S's acquisition of the P indebtedness results in the realization by P of income from the discharge of indebtedness to the extent required by §§ 61(a)(12) and 108. Because S purchased the P indebtedness for an amount less than its adjusted issue price, P is treated as realizing income from the discharge of indebtedness in an amount determined under § 1.108-2(f). Because the adjusted issue price of the indebtedness (\$10,000,000) exceeds S's basis in the indebtedness on the acquisition date (\$9,500,000), P realizes \$500,000 of income from the discharge of indebtedness.

Under § 1.108-2(g), because P realizes income from the discharge of indebtedness in connection with S's acquisition of the P indebtedness, the P indebtedness is treated as new indebtedness issued by P to S on the acquisition date. The new indebtedness is deemed issued with an issue price equal to S's adjusted basis in the indebtedness, \$9,500,000. Under § 1273(a)(1), the \$500,000 excess of the stated redemption price at maturity of the indebtedness (\$10,000,000) over its deemed issue price (\$9,500,000) is OID. In Year 2, P deducts from gross income and S includes in gross income OID of \$147,868, calculated pursuant to § 1272. Accordingly, as of January 1 of Year 3, under §§ 1.1275-1(b)(1) and 1.1272-1(g), respectively, the adjusted issue price of the new indebtedness and S's adjusted basis in the indebtedness is \$9,647,868.

Under §§ 317 and 1.317-1, the P indebtedness is property for purposes of the corporate distribution provisions. Therefore, S's distribution of the P indebtedness to P is a distribution of property described in § 301. Under § 301(b), the amount of such distribution is the fair market value of the property distributed, \$9,250,000. Under § 301(c), because as of the end of Year 3 S has earnings and profits in excess of that amount, the distribution in its entirety is treated as a dividend to P.

Additionally, because the distribution of the P indebtedness to P extinguishes the indebtedness, it is repurchased within the meaning of § 1.61-12(c)(2), and P is treated as having repurchased its indebtedness for an amount equal to the fair market value of the indebtedness, \$9,250,000. *Cf. Cora-Texas Manufacturing Co., Inc.*

v. *U.S.*, 222 F. Supp. 527 (E.D. La. 1963), *aff'd per curiam*, 341 F.2d 579 (5th Cir. 1965) (treating a partnership's liquidating distribution to a partner of the partner's preferred stock as if the partner retired the preferred stock for its fair market value); *Rev. Rul.* 93-7, 1993-1 C.B. 125 (ruling that where a partnership distributes indebtedness of a partner to the issuing partner the partner is treated as having satisfied its indebtedness for an amount equal to the fair market value of such indebtedness). Accordingly, under § 1.61-12(c)(2)(ii), P realizes income from the discharge of indebtedness in an amount equal to \$397,868, the excess of the adjusted issue price of the P indebtedness (\$9,647,868) over the amount of the distribution (\$9,250,000).

Under § 311(a), S does not recognize the loss inherent in the P indebtedness on the distribution of the P indebtedness. As a result of the distribution, pursuant to § 312(a), S's earnings and profits are reduced by its adjusted basis in the P indebtedness distributed, \$9,647,868.

In *Situation 2*, the tax consequences of S's purchase of the P indebtedness are the same as in *Situation 1*. In Year 3, the amount of the distribution of the P indebtedness determined pursuant to § 301(b) and treated as a dividend under § 301(c) is \$10,050,000. Additionally, P is treated as having repurchased its indebtedness for the same amount. Under § 1.163-7(c), P is generally entitled to an interest deduction in an amount equal to the \$402,132 excess of the amount of the distribution (\$10,050,000) over the adjusted issue price of the P indebtedness (\$9,647,868). Under § 311(b), S recognizes gain as if it sold the indebtedness to P for an amount equal to its \$10,050,000 fair market value. Thus, S recognizes gain in an amount equal to \$402,132, the excess of the fair market value of the indebtedness distributed (\$10,050,000) over S's adjusted basis in the indebtedness distributed (\$9,647,868). Under § 312(a) and (b), S's earnings and profits must be increased by \$402,132, the excess of the fair market value of the indebtedness distributed (\$10,050,000) over S's adjusted basis in the indebtedness distributed (\$9,647,868), and reduced by the fair market value of the indebtedness distributed, \$10,050,000.

HOLDING

If a subsidiary corporation makes a distribution of parent indebtedness to the parent corporation in a taxable year in which the subsidiary corporation's earnings and profits are greater than or equal to the fair market value of the distributed indebtedness, the parent corporation is treated as receiving a distribution treated as a dividend in the amount of the fair market value of the indebtedness on the date of the distribution and may realize discharge of indebtedness income or be entitled to an interest deduction depending on the fair market value of the indebtedness on the date of the distribution relative to its adjusted issue price.

DRAFTING INFORMATION

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

Section 354.—Exchanges of Stock and Securities in Certain Reorganizations

26 CFR 1.354-1: Exchange of stock and securities in certain reorganizations.

Corporate reorganizations; exchange of debt instruments. This ruling discusses the exchange of a debt security for a debt instrument in a reorganization.

Rev. Rul. 2004-78

ISSUE

Under the circumstances described below, whether a debt instrument issued by the acquiring corporation in a reorganization in exchange for a security of the target corporation is a security within the meaning of § 354 of the Internal Revenue Code.

FACTS

On January 1, 2004, Target Corporation issues debt instruments with a stated maturity date of January 1, 2016. On the issue date, the debt instruments provide for a market rate of interest and are securities

within the meaning of § 354. Target Corporation has outstanding one class of common stock. On January 1, 2014, pursuant to state law, Target Corporation merges into Acquiring Corporation in a transaction that qualifies as a reorganization under § 368(a)(1)(A). In the merger, the Target Corporation stockholders exchange their Target Corporation common stock for Acquiring Corporation common stock. Also in the merger, the Target Corporation security holders exchange their Target Corporation securities for Acquiring Corporation debt instruments with terms identical to those of the Target Corporation securities (including the maturity date), except that the interest rate is changed (for example, to reflect differences in creditworthiness between Target Corporation and Acquiring Corporation). The modification of the interest rate is a significant modification under § 1.1001-3 of the Income Tax Regulations.

LAW AND ANALYSIS

Section 368(a)(1)(A) provides, in part, that the term "reorganization" includes a statutory merger. Section 368(b) provides that the term "party to a reorganization" includes a corporation resulting from a reorganization and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another corporation.

Section 354(a)(1) provides, in part, that no gain or loss shall be recognized if securities in a corporation that is a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for securities in such corporation or in another corporation that is a party to the reorganization.

Section 1.368-1(b) sets forth the general rule that, upon an exchange, gain or loss must be recognized if the new property differs materially in kind or extent from the old property. The regulation then explains that the purpose of the reorganization provisions is to except from the general rule certain exchanges incident to readjustments of corporate structures that are required by business exigencies and that effect only a readjustment of continuing interests in property under modified corporate forms. Congress has recognized that when a taxpayer receives stock or securities in exchange for stock or securities

owned by the taxpayer incident to a readjustment of a corporate structure, the new stock or securities are treated as taking the place of the stock or securities exchanged therefor. See H.R. Rep. No. 704, at 13–14 (1933).

Neither § 354 nor the regulations under § 354 define the term “securities.” Under case law, an instrument with a term of less than five years generally is not a security. See, e.g., *Pinellas Ice & Cold Storage Co. v. Commissioner*, 287 U.S. 462 (1933) (holding that short-term notes payable within four months were not securities within the meaning of the reorganization provisions); *Lloyd-Smith v. Commissioner*, 116 F.2d 642 (2d Cir.), cert. denied, 313 U.S. 588 (1941) (holding that two-year notes were not securities); *Neville Coke & Chemical Co.*, 148 F.2d 599 (3d Cir.), cert. denied, 326 U.S. 726 (1945) (holding that three, four, and five-year notes were not securities).

Under the foregoing authorities, an instrument with a term of two years generally would not qualify as a security. However, because the debt instruments of the Acquiring Corporation are issued in the reorganization in exchange for securities of the Target Corporation and bear the same terms (other than interest rate) as the securities of the Target Corporation, the debt instruments of the Acquiring Corporation represent a continuation of the security holder’s investment in the Target Corporation in substantially the same form. Therefore, the debt instruments of the Acquiring Corporation exchanged for the securities of the Target Corporation are securities within the meaning of § 354.

HOLDING

Under the circumstances described above, a debt instrument issued by the acquiring corporation in a reorganization in exchange for a security of the target corporation is a security within the meaning of § 354.

DRAFTING INFORMATION

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

Section 412.—Minimum Funding Standards

Procedures with respect to applications for extensions of the amortization period under § 412(e) of the Code and section 304 of ERISA are set forth. See Rev. Proc. 2004-44, page 134.

Section 861.—Income From Sources Within the United States

(Also §§ 862, 933; 1.861, 1.862.)

Annuity payments. This ruling addresses the taxation of income received by residents of Puerto Rico and nonresident aliens under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company. The ruling holds that income received by nonresident aliens under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company is U.S.-source FDAP income. The ruling also holds that income received by *bona fide* residents of Puerto Rico under life insurance or annuity contracts issued by a Puerto Rican branch of a U.S. life insurance company is U.S.-source income.

Rev. Rul. 2004–75

ISSUES

1. Whether income received by nonresident alien individuals under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company is U.S.-source income that is subject to 30% tax and withholding under sections 871(a) and 1441.
2. Whether income received by *bona fide* residents of Puerto Rico under life insurance and annuity contracts issued by a Puerto Rican branch of a U.S. life insurance company is U.S.-source income that is subject to the tax imposed by section 1.

FACTS

A U.S. life insurance company conducts business in Country A and Puerto Rico through a separate branch in each jurisdiction. The branches sell a wide range of insurance products including, but not limited to, whole life, universal life, and variable life insurance and fixed and

variable annuities to individuals living in Country A and Puerto Rico. These products are life insurance and annuity contracts under the Internal Revenue Code. See sections 72(s), 101(f), 817(h), and 7702. There is no income tax treaty in force between Country A and the United States.

Individuals in Country A and Puerto Rico pay premiums to the U.S. life insurance company in exchange for the benefits set forth in the relevant contracts. For example, under a life insurance contract, the life insurance company generally agrees, in exchange for premiums, to pay a certain amount to a beneficiary upon the death of the insured. Under an annuity contract, the life insurance company typically agrees, in exchange for premiums, to pay a certain amount each year to the owner of the contract beginning upon the owner’s retirement and ending upon the owner’s death. The life insurance company invests the premiums received with respect to its life insurance and annuity contracts in domestic and foreign income-producing assets, such as stocks and bonds.

The life insurance and annuity contracts issued by the U.S. life insurance company to individuals in Country A and Puerto Rico have cash values. The individuals in Country A and Puerto Rico withdraw amounts from the cash values of their life insurance and annuity contracts, and the amounts withdrawn are gross income under section 61 to the extent provided under section 72. The individuals in Country A and Puerto Rico also receive annuity payments under their annuity contracts that are gross income under section 61 to the extent provided under section 72.

This revenue ruling applies only to annuity payments and withdrawals of cash value that are gross income to the extent provided under section 72, and does not apply to amounts received under life insurance contracts by reason of the death of the insured that are excludible from gross income under section 101.

LAW

Section 861(a) specifies that certain items of income are U.S.-source income. Section 861(a)(1) generally provides that interest is U.S.-source income when paid by a U.S. obligor. Section 861(a)(2) generally provides that dividends are

U.S.-source income when paid by a domestic corporation. Section 861(a) does not specify the source of income paid by a U.S. life insurance company under a life insurance or annuity contract.

When the source of an item of income is not specified by statute or by regulation, courts have determined the source of the item by comparison and analogy to classes of income specified within the statute. *Bank of America v. United States*, 680 F.2d 142, 147 (Ct. Cl. 1982); *Howkins v. Commissioner*, 49 T.C. 689 (1968). In *Clayton v. United States*, 33 Fed. Cl. 628 (1995), *aff'd. without published opinion*, 91 F.3d 170 (Fed. Cir. 1996), *cert. denied*, 519 U.S. 1040 (1996), the Court of Federal Claims held that the earnings and accretions component of distributions made by an employee stock ownership plan ("ESOP") to foreign participants was U.S.-source income because the trust underlying the ESOP was a domestic trust. *See also*, Rev. Rul. 79-388, 1979-2 C.B. 270.

Section 871(a) generally provides that a tax of 30 percent is imposed on an amount received from U.S. sources by a nonresident alien individual as interest, dividends, rents, annuities, and other fixed or determinable annual or periodical gains, profits, and income ("FDAP income"), provided that the amount is not income that is effectively connected with the conduct of a U.S. trade or business ("ECI"). The 30-percent tax is imposed by section 871(a) only upon the amount that constitutes gross income. Treas. Reg. 1.871-7(a)(2). Section 61(a) generally provides that annuities and income from life insurance and endowment contracts are included in gross income. Section 72 generally provides rules for determining the portion of certain amounts received under an annuity, endowment, or life insurance contract that is included in gross income.

FDAP income generally includes all U.S.-source income included in gross income under section 61, except for gain derived from the sale of property, or any other income that the Internal Revenue Service determines, in published guidance, is not FDAP income. Treas. Reg. § 1.871-7(b)(1), 1.1441-2(b)(1)(i), and 1.1441-2(b)(2). Moreover, section 871(a)(1) specifically includes amounts received as annuities as a type of FDAP income. In *Barba v. United States*, 2 Cl.

Ct. 674 (1983), the court, in determining whether gambling winnings of nonresident alien individuals from U.S. sources were FDAP income, concluded that the words "fixed and determinable annual or periodical gains" should be interpreted broadly to include all classes of income, except income arising from the sale of property. *See also*, *Commissioner v. Wodehouse*, 337 U.S. 369 (1949).

Section 933(1) provides that in the case of an individual who is a *bona fide* resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof) is not included in gross income.

Treas. Reg. 1.863-6 provides that the principles applied for determining income from sources within and without the United States shall generally be applied for purposes of determining income from sources within and without a possession of the United States.

Section 876 provides that in the case of an alien individual who is a *bona fide* resident of Puerto Rico, sections 871 through 879 do not apply and such individual is subject to the tax imposed by section 1.

ANALYSIS

Because section 861(a) does not include rules specifying the source of income received under a life insurance or annuity contract under section 72, the source of such income is determined by comparison and analogy to classes of income that are specified within the statute. *Bank of America*, 680 F.2d at 147; *Howkins*, 49 T.C. at 689. Income received under a life insurance or annuity contract under section 72 is an investment return on the cash value of the contract and is analogous to (1) interest on a debt obligation, (2) dividends on a stock, and (3) earnings and accretions on pension fund assets. Thus, the source of that income is determined in the same manner as the source of interest, dividends, and earnings and accretions on pension fund assets. Under sections 861(a)(1) and (2), interest or dividends are U.S. source when the obligor or corporation, respectively, is domestic. Earnings and accretions on pension fund assets are also U.S. source when the pension trust is domestic. *Clayton*, 33 Fed. Cl. 628. Accordingly,

income received under a life insurance or annuity contract is U.S. source when the issuer of the contract is a domestic corporation.

Income received from a life insurance or annuity contract under section 72 is not gain derived from the sale of property or income that is excluded from FDAP income by the IRS in published guidance. Payments from annuity contracts are specifically listed as a type of FDAP income in section 871(a)(1)(A). Thus, income received from a life insurance or annuity contract under section 72, both annuity payments and withdrawals made from the cash value of the contract, is FDAP income. Accordingly, when such income is received by nonresident alien individuals, it generally is subject to 30% tax and withholding under sections 871(a) and 1441.

Payments made to *bona fide* residents of Puerto Rico with respect to life insurance and annuity contracts issued by a Puerto Rican branch of a U.S. life insurance company are derived from sources within the United States under the principles described above. Because the payments are not derived from Puerto Rican sources, the payments are not excludible from gross income of the recipient under section 933.

Although the U.S.-source income of *bona fide* residents of Puerto Rico is subject to U.S. income tax, payments to such residents are not generally subject to tax and withholding under sections 871 and 1441. *Bona fide* residents of Puerto Rico who are citizens of the United States, as well as *bona fide* residents of Puerto Rico who are lawful permanent residents of the United States, are generally subject to the tax imposed by section 1. Moreover, under section 876, *bona fide* residents of Puerto Rico who are not citizens of the United States also are generally subject to the tax imposed by section 1.

HOLDINGS

1. Income received by nonresident alien individuals under life insurance or annuity contracts issued by a foreign branch of a U.S. life insurance company is U.S.-source FDAP income that is subject to 30% tax and withholding under sections 871(a) and 1441.

2. Income received by *bona fide* residents of Puerto Rico under life insurance or annuity contracts issued by a Puerto Rican branch of a U.S. life insurance company is U.S.-source income that is subject to the tax imposed by section 1.

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory A. Spring of the Office of the Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Spring at (202) 622-3870 (not a toll-free call).

Section 862.—Income From Sources Without the United States

A revenue ruling describes income from sources within the United States for certain income received by nonresident aliens and *bona fide* residents of Puerto Rico under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company. See Rev. Rul. 2004-75, page 109.

Section 894.—Income Affected by Treaty

26 CFR 1.894-1: *Income affected by treaty.*

Dual resident company. This ruling concludes that a dual resident company, resident in both Country Y and Country X under the domestic laws of those countries, is not entitled to claim benefits under the U.S. income tax convention with Country X if it is treated as a resident of Country Y and not of Country X for purposes of the income tax convention between Country X and Country Y and, as a result, is not liable to tax in Country X by reason of its residence. Rev. Rul. 73-354 obsolete.

Rev. Rul. 2004-76

ISSUE

If Corporation A, a resident of both Country X and Country Y under the laws of each country, is treated as a resident of Country Y and not of Country X for purposes of the X-Y Convention and, as a result, is not liable to tax in Country X by reason of its residence, is it entitled to

claim the benefits of the U.S.-X Convention as a resident of Country X or of the U.S.-Y Convention as a resident of Country Y?

FACTS

Situation 1

Corporation A is incorporated under the laws of Country X. Its place of effective management is situated in Country Y. Corporation A does not have a fixed place of business in Country X. Under the laws of Country X, prior to application of any income tax convention, Corporation A is liable to tax as a resident. Under the laws of Country Y, prior to application of any income tax convention, Corporation A is liable to tax as a resident. Corporation A receives U.S.-source income during the taxable year, with respect to which it seeks benefits under either the U.S. income tax convention with Country X (U.S.-X Convention) or the U.S. income tax convention with Country Y (U.S.-Y Convention).

The relevant articles of the U.S.-X Convention and the U.S.-Y Convention each provide:

Except as provided in this paragraph, for the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature.

* * *

The term “resident of a Contracting State” does not include any person who is liable to tax in that State in respect only of income from sources in that State.

There is in force an income tax convention between Country X and Country Y (the X-Y Convention) that contains the following article with respect to residence:

For purposes of the Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or

local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

* * *

Where by reason of the above paragraph, a person other than an individual is a resident of both Contracting States, the person shall be deemed to be a resident only of the State in which its place of effective management is situated.

Situation 2

The facts are the same as in *Situation 1* except that Corporation A has a fixed place of business in Country X, to which the income is attributable.

LAW AND ANALYSIS

In *Situation 1*, before application of the X-Y Convention, Corporation A would be a resident of both Country X and Country Y under the domestic laws of each of Country X and Country Y. After the application of the relevant article of the X-Y Convention, Corporation A is treated as a resident of Country Y and not a resident of Country X because its place of effective management is situated in Country Y.

Accordingly, Corporation A continues to be liable to tax in Country Y by reason of residence. Therefore, under the relevant article of the U.S.-Y Convention, Corporation A is a resident of Country Y. Corporation A will be entitled to claim benefits under the U.S.-Y Convention as a resident of Country Y with respect to the U.S.-source income if it satisfies the requirements of the applicable limitation on benefits article, if any, and other applicable requirements in order to receive benefits under the U.S.-Y Convention.

Because Corporation A is treated as a resident of Country Y for purposes of the X-Y Convention, Corporation A is not subject to comprehensive taxation in Country X as it would be if it were liable to tax by reason of residence. Therefore, Corporation A is not a resident of Country X under the relevant article of the U.S.-X Convention and is not entitled to claim benefits under the U.S.-X Convention as a resident of Country X.

In *Situation 2*, after the application of the X-Y Convention, Corporation A continues to be liable to tax in Country Y by

reason of residence. Therefore, under the relevant article of the U.S.-Y Convention, Corporation A is a resident of Country Y. Corporation A will be entitled to claim benefits under the U.S.-Y Convention as a resident of Country Y with respect to the U.S.-source income if it satisfies the requirements of the applicable limitation on benefits article, if any, and other applicable requirements in order to receive benefits under the U.S.-Y Convention.

Because Corporation A is treated as a resident of Country Y for purposes of the X-Y Convention, Corporation A's fixed place of business in Country X is treated as a permanent establishment within the meaning of the X-Y Convention. Thus, Corporation A is liable to tax in Country X in respect of profits attributable to its permanent establishment, but is not subject to comprehensive taxation in Country X as it would be if it were liable to tax by reason of residence. Therefore, Corporation A is not a resident of Country X under the relevant article of the U.S.-X Convention and is not entitled to claim benefits under the U.S.-X Convention as a resident of Country X.

Rev. Rul. 73-354, 1973-2 C.B. 435, provided that a bank incorporated in Switzerland, managed and controlled in the United Kingdom, and engaged in the conduct of a business in both Switzerland and the United Kingdom, could choose to apply the provisions of either the United States-Swiss Confederation Income Tax Convention then in force or the United States-United Kingdom Income Tax Convention then in force to interest arising in the United States. Under those conventions, which are no longer in force, the determination of whether a corporation was a resident did not depend on whether the corporation was liable to tax in that country.

HOLDING

If Corporation A is treated as a resident of Country Y and not of Country X for purposes of the X-Y Convention and, as a result, is not liable to tax in Country X by reason of its residence, it is not entitled to claim benefits under the U.S.-X Convention, because it is not a resident of Country X under the relevant article of the U.S.-X Convention. However, Corporation A is entitled to claim benefits under the U.S.-Y

Convention as a resident of Country Y, if it satisfies the requirements of the applicable limitation on benefits article, if any, and other applicable requirements in order to receive benefits under the U.S.-Y Convention.

This holding is applicable in interpreting income tax treaties that contain provisions that are the same as or similar to the relevant articles of the U.S.-X Convention, the U.S.-Y Convention, and the X-Y Convention.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 73-354, 1973-2 C.B. 435, is obsolete.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michelle S. Lyon of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Ms. Lyon at (202) 622-3880 (not a toll-free call).

Section 933.—Income From Sources Within Puerto Rico

A revenue ruling describes income from sources within the United States for certain income received by nonresident aliens and *bona fide* residents of Puerto Rico under life insurance and annuity contracts issued by a foreign branch of a U.S. life insurance company. See Rev. Rul. 2004-75, page 109.

Section 2631.—GST Exemption

If, prior to 2001, a transferor failed to affirmatively allocate GST exemption, may the transferor request an automatic extension of time under sections 2642(g) and 301.9100-3 to make a timely allocation? See Rev. Proc. 2004-46, page 142.

Section 2642.—Inclusion Ratio

If, prior to 2001, a transferor failed to affirmatively allocate GST exemption, may the transferor request an automatic extension of time under sections 2642(g) and 301.9100-3 to make a timely allocation? See Rev. Proc. 2004-46, page 142.

Section 3406.—Backup Withholding

A revenue procedure establishes a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of sections 3406 and 6724 and the regulations thereunder. See Rev. Proc. 2004-42, page 121.

A revenue procedure provides an optional procedure that payors may use to determine whether payment card transactions are reportable under section 6041 or section 6041A and the regulations thereunder. In addition, this procedure may be used to determine whether payment card transactions are reportable payments for purposes of the IRS TIN Matching Program under section 3406 and the regulations thereunder. See Rev. Proc. 2004-43, page 124.

26 CFR 31.3406(g)-1: Exceptions for payments to certain payees and certain other payments.

T.D. 9136

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 31, 301, and 602

Information Reporting and Backup Withholding for Payment Card Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. This document also contains final regulations relating to the IRS TIN Matching Program. The regulations in this document affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law.

DATES:

Effective Date: These regulations are effective July 13, 2004.

Applicability Dates: The amendments to §31.3406(g)–1 are applicable for payments made on or after January 1, 2005. The amendments to §301.6724–1 are applicable for information returns required to be filed, and information statements required to be furnished, after December 31, 2005. Section 31.3406(j)–1(a) and (f) are applicable January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations 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)) under control number 1545–1819.

The collection of information is in §31.3406(g)–1(f)(3). This information is necessary to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the regulations. This information will alert a cardholder/payor that backup withholding under section 3406 may apply for future reportable payments. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 11,750,000 hours.

Estimated average annual burden per respondent: 5,875 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: monthly.

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

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

This document contains amendments to 26 CFR part 31 relating to backup withholding and the IRS TIN Matching Program under section 3406 of the Internal Revenue Code (Code). It also contains amendments to 26 Part 301 relating to waivers under section 6724 of information reporting penalties under sections 6721 and 6722.

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement.

In general, section 6721(a)(1) imposes a \$50 penalty for each failure to file an information return on or before the required filing date, for any failure to include all of the information required to be shown on the return, or for the inclusion of incorrect information. Section 6724(a) provides that no penalty will be imposed under section 6721 if it is shown that the failure is due to reasonable cause and not to willful neglect.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) if (1) the payee fails to furnish the payee's TIN to the payor as required or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Section 3406(a)(1) also requires withholding in certain other situations that are not addressed in these regulations. Section 3406(i) provides that the Secretary shall prescribe the regula-

tions necessary or appropriate to carry out the purposes of section 3406.

A payment card transaction is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A payment card is a card (or an account) that (1) is issued by a payment card organization or one of its members, affiliates, or licensees to a cardholder/payor and (2) represents, upon presentation to a merchant/payee, an agreement of the cardholder to pay the merchant through the payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism, acting directly or indirectly through its members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction.

Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee representing the cardholder/payor in the transaction may not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement.

The Temporary and Proposed Regulations

On January 31, 2003, temporary regulations relating to the IRS TIN Matching Program were published in the **Federal Register** (T.D. 9041, 2003–1 C.B. 510 [68 FR 4922]). The temporary regulations permit a payor's authorized agent to participate in the IRS TIN Matching Program on behalf of the payor. Under the authority of these temporary regulations, the IRS issued Rev. Proc. 2003–9, 2003–1 C.B. 516, that allows payors' authorized agents, as well as all payors, to participate in the IRS TIN Matching Program.

A notice of proposed rulemaking (REG–116641–01, 2003–1 C.B. 518) cross-referencing the temporary regulations was also published in the **Federal**

Register (68 FR 4970) for January 31, 2003. The notice of proposed rulemaking contained additional proposed rules relating to the information reporting and backup withholding requirements for payment card transactions effectuated through a Qualified Payment Card Agent (QPCA).

The proposed regulations provide limited exceptions to the backup withholding requirements for payment card transactions. The principal exception applies if the payment is made through a QPCA and the payee is a qualified payee.

A payee is qualified for this purpose if, at the time of the payment, the QPCA has validated the payee's TIN through the IRS TIN Matching Program or if the payment is made during the six-month period following the date on which the QPCA first obtained the payee's TIN (six-month grace period). Under the proposed regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees. The notice must appear on the billing information for the payment.

The proposed regulations provide a second exception for payments to persons other than qualified payees. Under this exception, reportable payments made through a QPCA are exempt from backup withholding if the payment is made within 60 days after the date of the first payment with respect to which the QPCA is required to provide notification to the payor that the payee is not a qualified payee.

In addition, the proposed regulations provide that cardholder/payors may establish reasonable cause for a failure to include all of the information required to be shown on their information returns, or for the inclusion of incorrect information, based on reliance on merchant/payee TINs supplied through a QPCA.

The proposed regulations provide that the rules relating to backup withholding and information reporting for payment card transactions apply during 2004. The temporary rule permitting agents to participate in the TIN matching program was effective January 31, 2003.

A public hearing was held on the proposed regulations on May 2, 2003. The IRS also received written and electronic comments responding to the notice of proposed rulemaking.

Explanation of Provisions and Summary of Comments

After consideration of all the comments, the proposed regulations relating to the backup withholding requirements for payment card transactions effectuated through a QPCA and the reasonable cause exception to information reporting penalties are adopted as revised by this Treasury decision. The revisions are discussed below. The temporary amendments to the regulations relating to the IRS TIN Matching Program are also adopted as final regulations and the corresponding temporary regulations are removed.

1. Backup Withholding

Several commentators recommended that the final regulations eliminate the qualified payee requirement and provide a complete exemption from backup withholding for payment card transactions made through a QPCA. One commentator noted that §31.3406(g)-2(e) of the regulations provides that a real estate reporting person is not required to backup withhold on a real estate transaction subject to reporting under section 6045. As an alternative to backup withholding, this commentator suggested that the QPCA should provide a list to the IRS of the merchant/payees for whom the QPCA cannot obtain valid TINs. The commentator further suggested that the IRS should impose penalties on the merchant/payees who fail to furnish valid TINs, rather than require backup withholding.

The regulatory exception for real estate transactions is based on section 3406(h)(5)(D), which provides that, except as otherwise provided in regulations, a real estate broker (as defined in section 6045(e)(2)) is not a broker for purposes of section 3406. The Code also includes limited grants of regulatory authority to exempt otherwise reportable payments from backup withholding in section 3406(b)(5) (relating to payments that do not exceed \$10) and in section 3406(g) (relating to payments to specified payees). The IRS and the Treasury Department do not view these limited grants of regulatory authority as authorizing a regulatory exemption for a broad class of transactions, which according to the comments involve payments of over \$100 billion per year, regardless of

the payee's identity or compliance with its tax obligations. Therefore, the final regulations do not adopt the recommendation for a complete exemption from backup withholding for payment card transactions made through a QPCA.

Several comments criticized the specific rules for determining whether a payee is a qualified payee and when backup withholding is required with respect to a payee who is not qualified. In general, the commentators viewed these rules as incompatible with current business practice because they require QPCAs to evaluate the status of payees at the time of each transaction and to communicate to cardholders through the billing process. The commentators suggested various changes to conform the rules to current business practices.

The IRS and the Treasury Department agree that the rules should accommodate current business practices to the extent practicable but believe some of the suggestions in the comments go beyond what is necessary and provide excessive periods of exemption from backup withholding for noncompliant payees. Accordingly, the final regulations include a number of new rules to address the commentators' concerns but do not adopt all of the specific changes suggested in the comments.

As suggested in the comments, the final regulations eliminate the requirement that QPCAs include information regarding payee status with the billing statement furnished to the payor. Instead, the final regulations require that the information be furnished within four months of the date of the payment and permit the information to be furnished as part of a quarterly or other regular report of payee data to the cardholder. To eliminate the need to evaluate the status of payees at the time of each payment, the final regulations permit QPCAs to treat all payments made during a calendar quarter or any shorter reporting period as being made on the last day of the period. Thus, for a QPCA choosing this treatment, a payee will be treated as a qualified payee with respect to all payments during the period if the QPCA obtains and verifies the payee's TIN at any time before the end of the period. Similarly, payments will be treated as being made on the last day of the reporting period for purposes of determining whether they are made within the six-month grace period. In this case, how-

ever, the regulations also provide that the grace period with respect to a payee will be treated as beginning not on the date of the first payment to the payee but on the first day of the reporting period in which the QPCA makes the payment.

The 60-day exception from backup withholding for payments made to persons that are not qualified payees is also modified to reflect the new rules for determining payee status and notifying cardholders. The exception in the final regulations applies to purchases made no later than two months after the last date for providing the first notice informing the cardholder that the payee is not a qualified payee.

One commentator suggested that a QPCA should be allowed to furnish information regarding payee status electronically on a secure website. The IRS and the Treasury Department are continuing to consider this comment and may issue further guidance on this issue.

Several commentators requested that the final regulations clarify that the individual to whom the card is issued is not the cardholder/payor if another person is responsible for paying the charges on the card. The commentators were concerned that employees might be treated as cardholders in situations where payment cards are issued to employees of the person responsible for paying charges on the card. The final regulations provide the requested clarification.

Several commentators requested that the final regulations clarify that a QPCA may act directly or indirectly through its members, affiliates, or licensees. The final regulations also provide this clarification.

Several commentators requested clarification of the cardholder/payor's obligations if the payor receives notification that a payee is not a qualified payee. Under the final regulations, backup withholding may be required for purchases made more than two months after the last date for furnishing the first notification that the payee is not a qualified payee. For purchases after that date, the payor must backup withhold on any reportable payment unless it has obtained the payee's TIN in accordance with the generally applicable rules under section 3406 or the QPCA has remedied the failure that caused the disqualification by obtaining and verifying the payee's TIN. If the payor is required to backup withhold and ordinarily uses a pay-

ment method incompatible with backup withholding, the continued use of that payment method will not relieve the payor of its backup withholding obligation. (See section 3406(h)(10), which provides payments subject to backup withholding are treated as wages paid by an employer to an employee; and section 3403, which provides that an employer is liable for taxes required to be withheld and deducted.)

2. *Effective Dates*

Because the proposed rules relating to backup withholding and information reporting for payment card transactions were not finalized before the beginning of 2004, their effective dates have been delayed. The final rules relating to backup withholding will apply to payments made after 2004 and final rules relating to information reporting will apply to returns due after 2005. The temporary rule permitting agents to participate in the TIN matching program is adopted as a final regulation with no change to its effective date of January 31, 2003.

One payment card organization suggested that the IRS repropose the regulations or issue them with an effective date of not less than two years after publication. The comment noted that reproposing the regulations would provide an opportunity for further study and comment and would provide time to test the rules in a pilot program. This suggestion was not adopted. The IRS and the Treasury Department recognize that providing an opportunity for further comment may result in improved rules, but there is no assurance that this will be the case. The IRS and the Treasury Department believe that the indeterminate benefit suggested in the comment does not outweigh the certainty that the suggested delay would deny payors any benefit from the backup withholding exception and penalty relief contained in the final regulations during the period of the delay.

Other Guidance

The IRS is also issuing two revenue procedures to implement the rules contained in the final regulations. The first of these revenue procedures sets forth the requirements that a payment card organization must satisfy to obtain an IRS determination that it is a QPCA. The revenue procedure also provides that a QPCA may act

on behalf of a cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees and on behalf of a merchant/payee for purposes of furnishing the payee's name and TIN to the cardholder/payor.

The second revenue procedure provides an optional procedure for payors and their authorized agents to use in determining whether payment card transactions are reportable under section 6041 or section 6041A and are reportable payments for purposes of the IRS TIN Matching Program. In general, this revenue procedure classifies businesses by Merchant Category Codes (MCCs), or other equivalent Industry Codes, according to whether they predominantly furnish services (for which payments are reportable) or predominantly provide goods (for which payments are not reportable). Under the revenue procedure, payment card organizations would be permitted to assign MCCs, or other equivalent Industry Codes, to payees and payors would be permitted to rely on the assigned codes for information reporting and TIN matching purposes.

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 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.

It is hereby certified pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The reporting burden affects payment card organizations and financial institutions that issue payment cards. Most payment card organizations and payment card issuers are large businesses. To the extent that small financial institutions have a reporting burden, the burden is expected to be insignificant. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Ad-

ministration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31, 301, and 602 are amended as follows:

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

Paragraph 1. The authority citation for part 31 is amended by removing the entry for section 31.3406(j)–1T to read in part as follows:

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

Par. 2. Section 31.3406(g)–1 is amended by adding paragraph (f) to read as follows:

§31.3406(g)–1 Exceptions for payments to certain payees and certain other payments.

* * * * *

(f) *Special rule for certain payment card transactions*—(1) *In general.* No withholding under section 3406 is required for a reportable payment made through a payment card organization if the payment is made on or after January 1, 2005, the organization is a Qualified Payment Card Agent (QPCA), and—

(i) The payee is a qualified payee (as defined in paragraph (f)(2)(vi) of this section) with respect to the payment; or

(ii) The cardholder/payor made the purchase to which the payment relates no later than two months after the last date prescribed under paragraph (f)(3) of this section for furnishing the QPCA's first notification to the cardholder/payor that the payee is not a qualified payee.

(2) *Definitions*—(i) *Payment card defined.* For purposes of this section, a *pay-*

ment card is a card (or an account) issued by a payment card organization, or one of its members, affiliates, or licensees, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

(ii) *Payment card organization defined.* For purposes of this section, a *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization acting directly or indirectly through its members, affiliates, or licensees generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards for payment card transactions.

(iii) *Payment card transaction defined.* For purposes of this section, a *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment.

(iv) *Cardholder/payor defined.* For purposes of this section, a *cardholder/payor* is the person that agrees to make payments through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

(v) *Qualified Payment Card Agent (QPCA) defined.* For purposes of this section, a *Qualified Payment Card Agent (QPCA)* is a payment card organization that has a current QPCA determination from the Internal Revenue Service (IRS) under applicable procedures (see §601.601(d)(2) of this chapter).

(vi) *Qualified payee defined.* For purposes of this section, a payee is a *qualified payee* with respect to a reportable payment if—

(A) At the time the QPCA makes the payment, the QPCA has obtained the payee's TIN and the payee's TIN has been

validated through the IRS TIN Matching Program; or

(B) The QPCA makes the payment during the six-month period beginning on the date on which the QPCA first makes a payment to the payee.

(3) *Notification of payee status.* In the case of a payment to a payee other than a qualified payee as defined in paragraph (f)(2)(vi) of this section with respect to the payment, the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a qualified payee. The notification must be furnished during the four-month period beginning on the date on which the QPCA makes the payment. Notification may be provided in a quarterly or other regular report of payee data to the cardholder/payor and may consist of an asterisk, footnote, or other mark next to the payee's name, with the text of the notification at the bottom of the page or at the end of the list of payee data. Notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and §31.3406(d)–5.

(4) *Time of payment.* A QPCA that makes reports to cardholders on the basis of a calendar quarter or any shorter period (the reporting period) may choose to treat all payments made during the reporting period as being made on the last day of the period for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section. If the QPCA treats payments as being made on the last day of a reporting period, the six-month period in paragraph (f)(2)(vi) of this section and the four-month period in paragraph (f)(3) of this section are treated as beginning on the first day of the reporting period in which the QPCA makes the payment that would otherwise begin the six-month or four-month period.

(5) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples, assume that Q meets all requirements and fulfills all duties necessary to obtain a QPCA determination from the IRS. The examples are as follows:

Example 1. (i) Q, a QPCA, enrolls Merchant X on January 20, 2005, to accept the Q payment card as a means for obtaining payment. (The results in this example are the same whether the acts attributed to Q are performed by Q itself or by a member, affiliate, or licensee of Q.) At the time of enrollment, Q obtains

Merchant X's taxpayer identification number (TIN). Merchant X is a sole proprietor engaged in the trade or business of repairing automobiles and trucks. Q's first payment to Merchant X for purchases through the payment card is made on January 31, 2005.

(ii) On March 1, 2005, Q issues a Q payment card to Customer A to use for the purchase of goods or services in the course of its trade or business from merchants that accept the Q payment card. During 2005, Customer A uses Q payment card to purchase repairs to A's vehicles from Merchant X on April 29, 2005, July 29, 2005, and December 19, 2005. Q makes payments for the repairs on May 2, 2005, August 1, 2005, and December 20, 2005. Q provides reports of payee data to each of its cardholders, including Customer A, on the 15th of April, July, October, and January for the quarter ending on the last day of the preceding month, but does not choose to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(iii) On March 15, 2005, Q attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program. On March 20, 2005, the IRS notifies Q that the name/TIN furnished by Merchant X does not match IRS data. On June 15, 2005, and September 15, 2005, Q makes further unsuccessful attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program.

(iv) Under paragraph (f)(2)(vi)(B) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 31, 2005 (the date of Q's first payment to Merchant X), and ending on July 30, 2005. Accordingly, the payment on May 2, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(v) Q has not validated Merchant X's TIN at the time of the payments on August 1, 2005, and December 20, 2005. Accordingly, under paragraph (f)(3) of this section, Q must notify Customer A within four months of each of these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the August 1 payment, the notification must be furnished no later than November 30, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(vi) Although Merchant X is not a qualified payee with respect to the payments on August 1, 2005, and December 20, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is November 30, 2005, and the two-month period expires on January 30, 2006. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after January 30, 2006, unless Q has previously succeeded in validating Merchant X's TIN.

Example 2. (i) Assume the same facts as in example (1) except that Q chooses to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(ii) The payment Q makes on January 31, 2005, is treated under paragraph (f)(4) of this section as being made on March 31, 2005. Similarly, the payments made on May 2, 2005, August 1, 2005, and December 20, 2005, are treated as being made on June 30, 2005, September 30, 2005, and December 31, 2005.

(iii) Under paragraphs (f)(2)(vi)(B) and (f)(4) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 1, 2005 (the beginning of the reporting period during which Q makes the first payment to Merchant X), and ending on June 30, 2005. Accordingly, the payment treated as made on June 30, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(iv) Q has not validated Merchant X's TIN at the time of the payments that are treated as being made on September 30, 2005, and December 31, 2005. Accordingly, under paragraphs (f)(3) and (f)(4) of this section, Q must notify Customer A within four months of the beginning of each reporting period during which Q makes these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the September 30 payment, the notification must be furnished no later than October 31, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(v) Although Merchant X is not a qualified payee with respect to the payments that are treated as being made on September 30, 2005, and December 31, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is October 31, 2005, and the two-month period expires on December 31, 2005. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after December 31, 2005, unless Q has previously succeeded in validating Merchant X's TIN.

§31.3406(j)-1T [Removed]

Par. 3. Section 31.3406(j)-1T is removed.

Par. 4. Section 31.3406(j)-1 is amended by revising paragraphs (a) and (f) to read as follows:

§31.3406(j)-1 Taxpayer Identification Number (TIN) matching program.

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see §601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions

of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined in section 3406(b)(1), a payor of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the payor whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program. For purposes of this section, the term payor includes an agent designated by the payor to participate in TIN matching on the payor's behalf.

* * * * *

(f) *Effective date.* The last sentence in paragraph (a) of this section is applicable on January 31, 2003. All other provisions of this section are applicable on and after June 18, 1997.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6724-1 is amended by:

1. Revising the introductory language of paragraph (c)(6).
2. Adding paragraphs (e)(1)(vi)(H) and (f)(5)(vii).

The revision and additions read as follows:

§301.6724-1 Reasonable cause.

* * * * *

(c) * * *

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) or a Qualified Payment Card Agent (QPCA) as defined in §31.3406(g)-1(f)(2)(v) of this chapter, providing information with respect to the return or payee statement, the filer must show either—

* * * * *

(e) * * * (1) * * *

(vi) * * *

(H) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(I) Satisfies the solicitation requirements of paragraphs (e)(1)(i) and (ii) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(2) Satisfies the solicitation requirement of paragraph (e)(1)(iii) of this section with respect to such a payment if, on or before December 31 of the year immediately succeeding the calendar year in which the payment is made, the filer undertakes a solicitation of the payee's TIN or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

(f) * * *

(5) * * *

(vii) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(A) Satisfies the solicitation requirement of paragraph (f)(1)(i) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(B) Satisfies the solicitation requirement of paragraph (f)(1)(ii) or (iii) of this section, whichever is applicable, with respect to such a payment if, after the date the filer is notified that the account of the payee contains an incorrect TIN and on or before the date by which the applicable requirement must be satisfied, the filer solicits the payee's correct TIN in a manner

that satisfies the applicable requirement or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In §602.101, paragraph (b) is amended by revising the entry for 31.3406(g)-1 in the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
31.3406(g)-1	1545-0096
	1545-0112
	1545-1819
* * * * *	

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved July 1, 2004.

Gregory Jenner,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 12, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 13, 2004, 69 F.R. 41938)

Section 6041.—Information at Source

A revenue procedure provides an optional procedure that payors may use to determine whether payment card transactions are reportable under section 6041 or section 6041A and the regulations thereunder. In addition, this procedure may be used to determine whether payment card transactions are reportable payments for purposes of the IRS TIN Matching Program under section 3406 and the regulations thereunder. See Rev. Proc. 2004-43, page 124.

Section 6041A.—Returns Regarding Payments of Remuneration for Services and Direct Sales

A revenue procedure provides an optional procedure that payors may use to determine whether payment card transactions are reportable under section 6041 or section 6041A and the regulations thereunder. In addition, this procedure may be used to determine whether payment card transactions are reportable payments for purposes of the IRS TIN Matching Program under section 3406 and the regulations thereunder. See Rev. Proc. 2004-43, page 124.

Section 6103.—Confidentiality and Disclosure of Returns and Return Information

Disclosure of returns and return information. Rev. Rul. 54-379 concludes that heirs at law, next of kin, or beneficiaries who are distributees of a person who dies intestate under state law have a “ma-

terial interest” to receive the decedent’s return information. The statute does not clearly address the application of the “material interest” standard in the context of a taxpayer who dies intestate. Rev. Rul. 54-379 superseded.

Rev. Rul. 2004-68

ISSUE

Whether the heir at law or next of kin of a decedent who dies intestate may inspect the income tax return filed by or on behalf of the decedent for the year prior to death.

FACTS

The decedent, a resident of State X, died intestate (*i.e.*, without a valid will). The decedent had two brothers and two sisters, and no other pre-deceased siblings. Under applicable state law, these four siblings are the decedent’s sole heirs at law and next of kin, and each is entitled to one-fourth of decedent’s estate. The four

siblings want to inspect the decedent's income tax return for the year prior to the decedent's death in order to identify and locate assets owned by the decedent at the time of the decedent's death.

LAW AND ANALYSIS

Under I.R.C. § 6103(e)(3)(B), the return of a decedent shall, upon written request, be open to inspection by or disclosure to any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Service finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

Generally, the Service has interpreted the term "material interest" as an important interest that is financial in nature. In this case involving a taxpayer dying intestate, the income tax return filed by or on behalf of the decedent for the year prior to death may disclose assets or information materially affecting the distribution to each distributee of the estate. Where the heir at law or next of kin is a distributee, under applicable state law, of the estate of a decedent who dies intestate, such person shall be considered as having a "material interest" which will be affected by information contained in the income tax return filed by or on behalf of the decedent for the year prior to death, within the meaning of section 6103(e)(3)(B).

In addition to the written request for inspection or disclosure, the person requesting access under section 6103(e)(3)(B) must provide the Service with (i) proof of the date of death, place of death, and state of decedent's residence, to help determine which state law is applicable and (ii) proof of his or her relationship to the decedent, including, but not limited to, a copy of a birth certificate, baptismal certificate, school record, or insurance designation. The person requesting access also must provide the Service with a written statement, along with supporting documents, to demonstrate that he or she has a material interest that will be affected by information contained in each requested return. Evidence sufficient to establish the nature and extent of the requester's material interest may include, but is not limited to, a copy of the petition for probate or other comparable pleading required to institute

the proceeding for the administration of the decedent's estate. The Service may require additional information or documentation to determine the nature and extent of the requester's material interest in the decedent's return. In this case, upon receipt of satisfactory evidence of (i) the relationship to the decedent, (ii) the date of death, the place of death, and the state of decedent's residence, and (iii) the decedent's intestacy, the Service shall disclose to any of the decedent's siblings the income tax return filed by or on behalf of the decedent for the year prior to decedent's death.

HOLDING

The income tax return of an intestate decedent for the calendar year prior to decedent's death shall be open to inspection or disclosure to any heir at law or next of kin who is a distributee, under applicable state law, of the probate estate of the decedent, and the existence of a material interest of such a person that is affected by information contained in that return will be presumed. The Secretary may disclose any other income tax returns of the decedent, provided that such heir at law or next of kin establishes to the satisfaction of the Secretary that he or she has a material interest which will be affected by information contained in each requested return. If, over time, the Secretary deems it prudent to amend the material interest access procedures, individuals who request access to the returns of an intestate decedent may be required to meet additional requirements.

EFFECT ON OTHER REVENUE RULINGS

This ruling supersedes Revenue Ruling 54-379.

PROSPECTIVE APPLICATION

N/A

DRAFTING INFORMATION

The principal author of this revenue ruling is Charles B. Christopher of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue ruling, you may contact Charles B. Christopher at (202) 622-4580 (not a toll-free call).

Section 6724.—Waiver; Definitions and Special Rules

Final regulations relating to information reporting requirements, information penalties, and backup withholding for payment card transactions. See T.D. 9136, page 112.

A revenue procedure establishes a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of sections 3406 and 6724 and the regulations thereunder. See Rev. Proc. 2004-42, page 121.

Section 7701.—Definitions

26 CFR 301.7701-1: *Classification of organizations for federal tax purposes.*
(Also: § 301.7701-2, 301.7701-3.)

Disregarded entities. This ruling concludes that, if an eligible entity has two owners under local law, but one of the owners is, for federal tax purposes, disregarded as an entity separate from the other owner of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

Rev. Rul. 2004-77

ISSUE

How is an eligible entity (as defined in § 301.7701-3(a) of the Procedure and Administration Regulations) classified for federal tax purposes if the entity has two members under local law, but one of the members of the eligible entity is disregarded as an entity separate from the other member of the eligible entity for federal tax purposes?

FACTS

Situation 1. X, a domestic corporation, is the sole owner of L, a domestic limited liability company (LLC). Under § 301.7701-3(b)(1), L is disregarded as an entity separate from its owner, X. L and X are the only members under local law of P, a state law limited partnership or LLC. There are no other constructive or beneficial owners of P other than L and X. L and

P are eligible entities that do not elect under § 301.7701-3(c) to be treated as associations for federal tax purposes.

Situation 2. *X* is an entity that is classified as a corporation under § 301.7701-2(b). *X* is the sole owner of *L*, a foreign eligible entity. Under § 301.7701-3(c), *L* has elected to be disregarded as an entity separate from its owner. *L* and *X* are the only members under local law of *P*, a foreign eligible entity. There are no other constructive or beneficial owners of *P* other than *L* and *X*.

LAW AND ANALYSIS

Section 7701(a)(2) of the Internal Revenue Code provides that the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, or corporation.

Section 301.7701-1(a)(1) provides that whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(a) provides that a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701-3) that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with two or more owners is classified for federal tax purposes as either a corporation or a partnership. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as

a sole proprietorship, branch, or division of the owner.

Section 301.7701-2(c)(1) provides that, for federal tax purposes, the term “partnership” means a business entity that is not a corporation under § 301.7701-2(b) and that has at least two owners.

Section 301.7701-2(c)(2)(i) provides, in general, that a business entity that has a single owner and is not a corporation under § 301.7701-2(b) is disregarded as an entity separate from its owner.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. An eligible entity with at least two owners can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides generally that in the absence of an election otherwise, a domestic eligible entity is (a) a partnership if it has at least two members, or (b) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(b)(2) provides generally that, in the absence of an election otherwise, a foreign eligible entity is (a) a partnership if it has two or more owners and at least one owner does not have limited liability, (b) an association if all its owners have limited liability, or (c) disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Situation 1. Under § 301.7701-2(c)(2), *L* is disregarded as an entity separate from its owner, *X*, and its activities are treated in the same manner as a branch or division

of *X*. Because *L* is disregarded as an entity separate from *X*, *X* is treated as owning all of the interests in *P*. *P* is a domestic entity, with only one owner for federal tax purposes, that has not made an election to be classified as an association taxable as a corporation. Because *P* has only one owner for federal tax purposes, *P* cannot be classified as a partnership under § 7701(a)(2). For federal tax purposes, *P* is disregarded as an entity separate from its owner.

Situation 2. Under § 301.7701-3(c), *L* is disregarded as an entity separate from its owner, *X*, and its activities are treated in the same manner as a branch or division of *X*. Because *L* is disregarded as an entity separate from *X*, *X* is treated as owning all of the interests in *P*. Because *P* has only one owner for federal tax purposes, *P* cannot be classified as a partnership under § 7701(a)(2). For federal tax purposes, *P* is either disregarded as an entity separate from its owner or an association taxable as a corporation.

HOLDING

If an eligible entity has two members under local law, but one of the members of the eligible entity is, for federal tax purposes, disregarded as an entity separate from the other member of the eligible entity, then the eligible entity cannot be classified as a partnership and is either disregarded as an entity separate from its owner or an association taxable as a corporation.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jason T. Smyczek of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Smyczek at (202) 622-3050 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 31.3406(g)-1(f).
(Also: 26 CFR 301.6724-1.)

Qualified Payment Card Agent Determination

Rev. Proc. 2004-42

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of section 3406 and section 6724 of the Internal Revenue Code. A QPCA may act on behalf of cardholder/payors in soliciting, collecting, and validating merchants' names, taxpayer identification numbers (TINs) and corporate status (collectively referred to as merchant/payee data) and on behalf of merchant/payees in furnishing merchant/payee data to cardholder/payors. The Regulations on Procedure and Administration relieve cardholder/payors from certain TIN solicitation requirements for payments made through a QPCA. The Employment Tax Regulations provide a limited exception from the backup withholding requirements for payments made to certain merchant/payees through a QPCA.

SECTION 2. BACKGROUND

.01 *Payment card transactions.* A payment card transaction is a transaction in which a cardholder/payor uses a payment card (as defined in section 4.04 of this revenue procedure) to purchase goods or services and a merchant agrees to accept the payment card as a means of obtaining payment. A payment card organization (as defined in section 4.05 of this revenue procedure) sets the standards and provides the mechanism for effecting the payment.

.02 *Reporting requirements.* In general, section 6041 requires a person engaged in a trade or business and making a payment in the course of the trade or business of \$600 or more during a calendar year of fixed or determinable income to file an information return with the Internal Revenue Service (IRS) and to furnish an information statement to the payee. Section

1.6041-3(p) of the Income Tax Regulations provides exceptions to these requirements, including, for example, exceptions for payments made to a payee that is a corporation.

Section 6109(a)(2) provides that any payee, with respect to whom a return is required to be made by another person or whose identifying number is required to be shown on a return of another person, must furnish to the other person the identifying number prescribed for securing the proper identification of the payee. Section 6109(a)(3) provides that any person required to make a return with respect to a payee must ask the payee for the identifying number prescribed for securing the proper identification of the payee and must include that number in the return.

.03 *Backup withholding.* Section 3406(a)(1) requires a payor to withhold on reportable payments (as defined in section 3406(b)(1)) if the payee does not provide a TIN to the payor in the manner required or if the Secretary notifies the payor that the TIN furnished by the payee is incorrect or in certain other circumstances. Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of section 3406.

Section 31.3406(j)-1 of the Employment Tax Regulations provides that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. Under the regulations, a payor or a payor's authorized agent may participate in a TIN matching program that permits the payor or authorized agent to contact the IRS with respect to the TIN furnished by a payee before the payor files an information return for reportable payments to the payee. The regulations further provide that the IRS will inform the payor or the payor's authorized agent whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program. Revenue Procedure 2003-9, 2003-1 C.B. 516, describes the procedures for participation in the IRS TIN Matching Program.

Section 31.3406(g)-1(f) of the Employment Tax Regulations provides that the backup withholding requirements of

section 3406 do not apply to payments made through a QPCA if the payments are made to a qualified payee or during a grace period. Section 31.3406(g)-1(f)(3) requires a QPCA to notify the cardholder/payor when payments are made to a merchant/payee who is not a qualified payee.

.04 *Information reporting penalties and waivers for reasonable cause.* Section 6721 provides that a payor may be subject to a penalty for failure to file a complete and correct information return. Section 6722 provides that a payor may be subject to a penalty for failure to furnish a complete and correct information statement to a payee. A failure subject to the section 6721 and section 6722 penalties includes a failure to include correct payee TINs.

Section 6724 provides that the penalties under section 6721 and section 6722 may be waived if the filer shows that the failure was due to reasonable cause and was not due to willful neglect. Section 301.6724-1(e)(1)(vi)(H) and (f)(5)(vii) of the Regulations on Procedure and Administration provide that a cardholder/payor in a payment card transaction may establish reasonable cause based on its reliance on a QPCA.

SECTION 3. SCOPE

This revenue procedure applies to payment card organizations acting or seeking to act on behalf of cardholder/payors in soliciting, collecting, and validating merchant/payee data and on behalf of merchant/payees in furnishing merchant/payee data to cardholder/payors.

SECTION 4. DEFINITIONS AND RELATED RULES

The following definitions and related rules apply solely for purposes of this revenue procedure:

.01 *Cardholder.* A cardholder (or cardholder/payor) is the person that agrees to make the payment through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

.02 *Merchant.* A merchant (or merchant/payee) is a person that has agreed to accept the payment card issued by the payment card organization as payment for goods and services.

.03 *Merchant/payee data.* Merchant/payee data includes the merchant/payee's name, corporate status, and TIN, and whether the TIN has been validated through participation in the IRS TIN Matching Program.

.04 *Payment card.* A payment card is a card (or an account) issued by a payment card organization to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

.05 *Payment card organization.* A payment card organization is an entity that sets the standards and provides the mechanism for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization generally provides this payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards. In any case in which a payment card organization acts through a member, affiliate, or licensee, the action is treated for purposes of this revenue procedure (including this definition) as an action by a payment card organization.

.06 *Qualified Payment Card Agent (QPCA).* A QPCA is a payment card organization that has a current QPCA determination from the IRS. A person acting in its capacity as a QPCA does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

SECTION 5. APPLICATION AND REQUIREMENTS FOR QPCA DETERMINATION

.01 *Where to apply for QPCA determination.* A person authorized to act on behalf of a payment card organization may submit a written request for a QPCA determination to the following address:

Internal Revenue Service
1601 Market Street
20th Floor
ATTN: TIN Matching Coordinator
S:C:CP:F&CC:SCDM
Philadelphia, PA 19107

.02 *Content of QPCA application.* A payment card organization requesting a QPCA determination must include the following in its application:

(1) The name, address, and employer identification number of the payment card organization and a description of its business.

(2) The name of the department or office of the payment card organization that will serve as the information contact.

(3) The name of the department or the names and titles of the officers or employees that will be responsible for the performance of the TIN solicitation activities described in section 6.

(4) A list of the systems, business lines, or card product lines or levels that will be covered by the TIN solicitation activities described in section 6 and that will be covered by a QPCA determination.

(5) An explanation of the account opening procedures and documents the payment card organization uses, or requires its members, affiliates, or licensees to use, to establish merchant account relationships related to the payment card organization's activities as a QPCA.

(6) The approximate number and the type of merchants (individuals, corporations, etc.) enrolled by the payment card organization.

(7) An explanation of the payment card organization's systems and controls related to the payment card organization's activities as a QPCA for—

(a) Obtaining merchant/payee data (including merchant/payee data provided by reputable third-party sources);

(b) Validating the accuracy of the merchant/payee data;

(c) Ensuring the accuracy and reliability of the merchant/payee data;

(d) Maintaining the merchant/payee data; and

(e) Supplying the merchant/payee data to the cardholder/payor.

.03 *Requirements for QPCA determination.* A payment card organization must meet the following requirements to obtain a QPCA determination:

(1) *Authorization to act on behalf of cardholder/payors and on behalf of merchant/payees.*

(a) The payment card organization must establish that cardholder/payors have authorized it or its members, affiliates, or licensees to act on their behalf in soliciting, collecting, and validating merchants' names and TINs and to assist the cardholders in meeting their information reporting obligations under section 6041 and section 6041A. The payment card organization must also establish that merchant/payees have authorized it or its members, affiliates, or licensees to act on their behalf in furnishing their names and TINs to cardholders and to assist the merchants in meeting their obligations under section 6109(a)(2). To satisfy these requirements, the payment card organization must provide the written notice described in section 5.03(1)(b) to each cardholder/payor and must provide the written notice described in section 5.03(1)(c) to each merchant/payee.

(b) The text of the written notice provided to cardholder/payors must be in bold and conspicuous type, and the notice must include the legend: "Important Tax and Privacy Materials." The notice must state:

As a cardholder, you may engage in transactions with merchants for which you may be required to file an information return with the Internal Revenue Service. If you are required to file an information return with the Internal Revenue Service reporting a transaction, you must include the amount of the payment, the merchant's name, and the merchant's taxpayer identification number. To assist you in fulfilling these potential information reporting requirements, [insert name of payment card organization] has received [is seeking] approval from the Internal Revenue Service to act on your behalf, and on behalf of merchants, to solicit, furnish, and validate the merchants' taxpayer identification numbers. A merchant's taxpayer identification number and other merchant data may be provided to you through [insert name of issuer]. If you accept the merchant data service, please be advised that you must maintain the confidentiality of the merchant data provided to you and that you may use it only for purposes of backup with-

holding and filing information returns with the Internal Revenue Service.

You may decline this service. If you do not want [insert name of card organization] to provide this service to you, you must complete the enclosed form and return it to [insert name of issuer] in the enclosed envelope.

For more information, contact [insert contact name and phone number.]

The notice may be included in the annual (or periodic) agreement, or amendments thereto, between the payment card organization and the cardholder or in a separate document. The outside of the envelope in which the written notice is mailed must contain, in bold and conspicuous type, the legend: "Important Tax and Privacy Materials Enclosed."

(c) The text of the written notice provided to merchant/payees must be in bold and conspicuous type, and the notice must include the legend: "Important Tax and Privacy Materials." The notice must state:

As a merchant, you may engage in transactions with cardholders for which cardholders may be required to file an information return with the Internal Revenue Service. If a cardholder is required to file an information return reporting a transaction with you to the Internal Revenue Service, the cardholder must include the amount of the payment, your name, and your taxpayer identification number. To facilitate the exchange of information between you and cardholders, [insert name of payment card organization] has received [is seeking] approval from the Internal Revenue Service to act on your behalf, and on behalf of cardholders, to solicit, furnish, and validate your taxpayer identification number.

If you accept this service, your name and your taxpayer identification number will be submitted to the Internal Revenue Service for validation against the Internal Revenue Service taxpayer identification number database, and your name, taxpayer identification number, and corporate status may be provided to cardholders. Please be advised that if you accept this service, [insert name of payment card organization] may request that you provide your taxpayer identification number to it or may seek to obtain your taxpayer

identification number from a reputable third-party source.

Please be aware that [insert name of payment card organization] has advised cardholders who may receive your name and taxpayer identification number that they must maintain the confidentiality of your information and may use it only for purposes of backup withholding and filing information returns with the Internal Revenue Service.

You may decline this service. If you do not want [insert name of payment card organization] to validate your name and taxpayer information number or to provide your name, taxpayer information number, and corporate status to cardholders, you should discontinue accepting the [insert name of payment card] as a means of obtaining payment. If you continue to accept the [insert name of payment card] as a means for obtaining payment after [insert 60 days after date of notice] you will be deemed to have agreed to this sharing of information.

For more information, contact [insert contact name and phone number.]

The notice may be included in the annual (or periodic) agreement, or amendments thereto, between the payment card organization and the merchant or in a separate document. The outside of the envelope in which the written notice is mailed must contain, in bold and conspicuous type, the legend: "Important Tax and Privacy Materials Enclosed."

(2) *TIN solicitation activities.* The payment card organization must establish that it has undertaken, or demonstrate that it will undertake, the TIN solicitation activities described in section 6.

(3) *Reliability of merchant/payee data.* After obtaining the authorizations required by section 5.03(1), the payment card organization must participate in the IRS TIN Matching Program and must demonstrate, based on the TIN matching results, that its merchant/payee data is sufficiently reliable.

SECTION 6. TIN SOLICITATION ACTIVITIES

.01 *TIN solicitation methods.* A QPCA must solicit merchant/payee TINs in a manner described in sec-

tion 301.6724-1(e)(1)(i) of the Regulations on Procedure and Administration. Alternatively, a QPCA may obtain merchant/payee TINs from a reputable third-party source.

.02 *Notification and disclosure requirements.* A QPCA must give each merchant/payee for which it acts as agent the written notice described in section 5.03(1)(c) and must give each cardholder/payor for which it acts as agent the written notice described in 5.03(1)(b). In addition, a QPCA must give written notice of its status as a QPCA, and of any change in that status, to any member, affiliate, or licensee that issues payment cards, as well as to the merchant/payees and cardholder/payors for which it acts as agent.

.03 *TIN Matching participation.* A QPCA must participate in the IRS TIN Matching Program and must match its merchant/payee data relating to reportable payments with IRS within three months after obtaining the merchant/payee's TIN. A QPCA may seek to cure merchant/payee data that has not previously been validated through the IRS TIN Matching Program. The QPCA must transmit only merchant/payee data that has not previously been validated through IRS TIN Matching.

.04 *Providing merchant/payee data to cardholders.* The QPCA must provide cardholder/payors with a report containing merchant/payee data within four months of the date on which the QPCA makes the payment. The report may be provided in a quarterly or other regular report of merchant/payee data that includes the merchant/payee's name, corporate status, TIN, and whether the TIN has been validated through participation in the IRS TIN Matching Program. A QPCA must furnish the report containing merchant/payee data for transactions occurring on or before December 31 of the calendar year no later than January 15 of the following calendar year.

SECTION 7. OTHER REQUIREMENTS

.01 *Availability of records.* A payment card organization and its members, affiliates, and licensees must respond to any reasonable IRS request for inspection of any books and records that relate to the operation of TIN solicitation activ-

ity, including, but not limited to, reports, memoranda, budgets, and computer print-outs. The payment card organization and its members, affiliates, and licensees must allow the IRS reasonable access to the merchant/payee TIN data system, including instruction manuals describing the system.

.02 *Change in information.* The QPCA must promptly notify the IRS of any change in the information described in section 5.

.03 *Confidentiality of information.* For purposes of this revenue procedure, the payment card organization and its members, affiliates, and licensees must maintain the confidentiality of information obtained through the TIN solicitation activities in accordance with the requirements of section 31.3406(f)-1 of the Employment Tax Regulations. Except as permitted under section 31.3406(f)-1, the payment card organization and its members, affiliates, and licensees may not disclose any merchant/payee information to any person other than the cardholder/payor without prior written consent of the merchant/payee. The IRS will treat all information provided by a QPCA as return information that is confidential under section 6103.

SECTION 8. TERM, RENEWALS, AND TERMINATION

.01 *Term and renewal.* In general, a QPCA determination will be effective for five years from the date of the determination. A QPCA may request a renewal of the QPCA determination by submitting an application for renewal to the IRS no earlier than 12 months and no later than three months before the expiration of the five-year term. In the application for renewal, the QPCA must report any change in the information in the original application. Before renewal of the determination, the IRS may review the QPCA's systems. In addition, the QPCA must demonstrate that the merchant/payee data continues to be reliable. The application for renewal must include the results from participation in the IRS TIN Matching Program during the current five-year term. The IRS will make every effort to issue a decision on a renewal application at least 30 days before the expiration of the current five-year term. In the event that the IRS does not issue a

decision on a timely renewal application before the expiration of the existing QPCA determination, the determination will remain in effect until the IRS issues a decision on the renewal application.

.02 *Revocation of determination.* The IRS may revoke a QPCA determination before the expiration of its five-year term if the IRS determines, based on the results of the QPCA's participation in the IRS TIN Matching Program, that the merchant/payee data is not reliable or if the payment card organization fails to meet any of the requirements in section 5, 6, or 7. A QPCA may terminate its status as a QPCA upon 60 days written notice to the IRS.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective July 14, 2004.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Donna Welch of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Ms. Welch at (202) 622-4910 (not a toll-free call).

*26 CFR 1.6041-1: Return of information as to payments of \$600 or more.
(Also: 26 CFR 1.6041A.)*

Merchant Category Codes to Determine Reportable Payment Card Transactions

Rev. Proc. 2004-43

SECTION 1. PURPOSE

This revenue procedure provides an optional procedure that payors may use in determining whether payment card transactions are reportable under section 6041 or section 6041A of the Internal Revenue Code. In addition, payors, or their authorized agents, may use this optional procedure in determining whether payment card transactions are reportable payments for purposes of the Internal Revenue Ser-

vise TIN Matching Program under section 3406.

In general, this revenue procedure classifies businesses by Merchant Category Codes (MCCs) according to whether they predominantly furnish services (for which payments are reportable) or predominantly provide goods (for which payments are not reportable). A payment card organization may assign MCCs, or equivalent Industry Codes, to merchant/payees that accept its payment cards and notify cardholder/payors that use its payment card of the MCC or equivalent Industry Code assigned to a merchant/payee. A cardholder/payor may then rely on the MCC or equivalent Industry Code assigned to a merchant/payee in determining whether a payment card transaction with that merchant/payee is subject to reporting under section 6041 or section 6041A.

SECTION 2. BACKGROUND

.01 *Reporting requirements under sections 6041 and 6041A.* If a person is engaged in a trade or business and, in the course of that trade or business, pays any person \$600 or more of rent, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, or other fixed or determinable gains, profits, and income during a calendar year, section 6041 generally requires the payor to file an information return with the Internal Revenue Service (Service) and to furnish an information statement to the payee.

Section 1.6041-3(c) of the Income Tax Regulations provides an exception to reporting for payments for merchandise, telegrams, telephone, freight, storage and similar charges. Section 1.6041-3(p)(1) provides an exception to reporting for payments made to a corporation, unless the corporation is engaged in providing medical and health care services or is engaged in the billing and collecting of payments in respect to providing medical and health care services. The same provision also provides that reporting is not required for payments made to a hospital or extended care facility that is a tax-exempt organization described in section 501(c)(3) or to a hospital or extended care facility owned and operated by the United States, a State, the District of Columbia, a possession of the United States, or a political subdivision, agency or instrumentality of any of

the foregoing. Section 1.6041-3(p)(2) provides that reporting is not required for payments to an organization exempt from taxation under section 501(a) or an individual retirement plan. Section 1.6041-3(p)(3) provides that reporting is not required for payments made to the United States. Section 1.6041-3(p)(4) provides that reporting is not required for payments made to a State, the District of Columbia, a possession of the United States, or any political subdivision of the foregoing.

If a person is engaged in a trade or business and, in the course of that trade or business, pays any person \$600 or more for services during a calendar year, section 6041A(a) generally requires the payor to file an information return with the Service and to furnish an information statement to the service provider. In general, the exceptions to reporting under section 6041 apply to reporting under section 6041A. However, section 6041A(d)(3) provides that reporting is generally required for payments made by a Federal executive agency to a corporation.

Revenue Ruling 81-232, 1981-2 C.B. 231, involved an insurance company making payments to an automobile repair shop for the repair of an insured automobile. The repair contract required payment of \$300 for labor and \$700 for parts. The ruling held that the entire payment was reportable under section 6041 because the portion of the payment attributable to parts was merely incidental to the obligation to repair the automobile. The ruling further held that no part of the payment was excepted from the reporting requirements of section 6041 as a payment of a bill for merchandise.

.02 Payment card transactions. A payment card transaction is a transaction in which a cardholder/payor uses a payment card (as defined in section 4.05 of this revenue procedure) to purchase goods or services and a merchant agrees to accept the payment card as a means of obtaining payment. A payment card organization (as defined in section 4.06 of this revenue procedure) sets the standards and provides the mechanism for effecting the payment.

SECTION 3. SCOPE.

This revenue procedure applies to payment card organizations and their mem-

bers, affiliates, and licensees and to cardholder/payors that purchase goods or services in payment card transactions. In addition, cardholder/payors, or their authorized agents, will be allowed to rely on MCCs or equivalent Industry Codes for purposes of TIN matching with respect to reportable payments as defined in section 3406(b). Currently, the IRS TIN Matching Program is available only for certain reportable payments as defined in section 3406(b), including reportable payments under sections 6041 and 6041A.

SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the terms listed below are defined and applied as follows:

.01 Cardholder. A cardholder (or cardholder/payor) is the person that agrees to make the payment through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder.

.02 Merchant. A merchant (or merchant/payee) is a payee that has agreed to accept the payment card issued by the payment card organization as payment for goods and services.

.03 Merchant Category Code. A Merchant Category Code (MCC) is a classification code that is assigned by a payment card organization to a merchant/payee. The payment card organization assigns the merchant a particular code based on the predominant business activity of the merchant.

.04 Industry Code. An Industry Code is the number that corresponds to, and identifies, a merchant in the same business as a merchant assigned a particular MCC.

.05 Payment Card. A payment card is a card (or an account) issued by a payment card organization to a cardholder/payor, which upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

.06 Payment Card Organization. A payment card organization is an entity that sets the standards and provides the mechanism for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organ-

ization generally provides the payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards. In any case in which a payment card organization acts through a member, affiliate, or licensee, the action is treated for purposes of this revenue procedure (including this definition) as an action by the payment card organization.

.07 Payment Card Transaction. A payment card transaction is a transaction in which a cardholder/payor uses a payment card (as defined in section 4.05 of this revenue procedure) to purchase goods or services, and a merchant agrees to accept a payment card as a means of obtaining payment.

SECTION 5. APPLICATION

.01 Payment Card Organizations. A payment card organization may assign MCCs, or equivalent Industry Codes, to merchant/payees and notify cardholder/payors of the MCCs or equivalent Industry Codes assigned to merchant/payees. If the MCC or equivalent Industry Code assigned to a merchant/payee is not listed in section 5.03 (an unlisted code) and the payment card organization determines that merchants within the assigned code are similar to merchants within an MCC or equivalent Industry Code that is listed (a listed code), the payment card organization may notify cardholder/payors that they may treat payments to the merchant in the same manner as payments to merchants within the listed code. If the payment card organization determines that merchants within the assigned code are not similar to merchants within any listed code, it should notify cardholder/payors that the treatment of payments to the merchant depends on whether, under the facts and circumstances, information reporting is required with respect to the payments. The payment card organization and its members, affiliates, and licensees must exercise due diligence in verifying the type of business that a merchant conducts. In addition, the payment card organization and its members, affiliates, and licensees must exercise reasonable business judgment in assigning MCCs or equivalent Industry Codes and in determining whether

merchants within an unlisted code are similar to merchants within a listed code.

If the Service notifies the payment card organization that the MCC or equivalent Industry Code assigned to a merchant/payee is incorrect, this revenue procedure does not apply to payment card transactions with the merchant/payee occurring more than 60 days after the date of the notification unless the payment card organization has assigned the merchant/payee a new MCC or equivalent Industry Code that is satisfactory to the Service and notified cardholder/payors of the correction. If the payment card organization fails to assign the merchant/payee a new MCC or equivalent Industry Code that is satisfactory to the Service and notify cardholder/payors of the correction during the 60-day period following the date of the notification that a merchant/payee MCC or equivalent Industry Code is incorrect, the payment card organization must notify cardholder/payors before the end of the period that they may no longer rely on the MCC or equivalent Industry Code assigned to the merchant/payee. Similar procedures apply if the payment card organization determines that merchants within the unlisted code assigned to a merchant/payee are similar to merchants within a listed code and the Service notifies the payment card organization that this determination is incorrect.

The Service may assist payment card organizations and their members, affiliates, and licensees in determining whether the MCC or equivalent Industry Code assigned to a merchant/payee is correct or whether merchants within an unlisted code are similar to merchants within a listed code. The Service will periodically update the table in section 5.03 and requests that payment card organizations notify the Service of updates to the MCCs.

02. *Cardholder/payors.* A cardholder/payor may rely on the MCC or equivalent Industry Code assigned to a merchant/payee in determining whether a payment card transaction with that merchant/payee is subject to information reporting under section 6041 or section 6041A. Thus, if a merchant/payee is assigned an MCC and the table in section 5.03 indicates that payments to merchants in that category are not reportable under section 6041 or section 6041A, a cardholder/payor is not required to report payment card transactions with the merchant/payee. Similarly, an indication in the table that payments to a category of merchants are reportable under section 6041 or section 6041A reflects a determination by the Service that those merchants predominantly furnish services, and cardholder/payors may treat payment card transactions with those merchants as payments for services. Similar procedures apply if the merchant/payee is assigned

an unlisted code and the payment card organization notifies the cardholder/payor that it may treat payments to the merchant in the same manner as payments to merchants within a listed code. If the merchant/payee is assigned an unlisted code and the payment card organization notifies the cardholder/payor that the treatment of payments to the merchant depends on the facts and circumstances, the cardholder/payor must determine based on the actual nature of the transaction whether information reporting is required with respect to the payments.

If a cardholder/payor determines that the MCC or equivalent Industry Code assigned by the payment card organization does not reflect the actual nature of the transaction, the cardholder/payor may determine whether information reporting is required based on the actual nature of the transaction. For example, transactions not qualifying for the merchandise exception to information reporting under this revenue procedure may qualify for the exception under the generally applicable rules of sections 6041 and 6041A if, in fact, only merchandise is provided. In addition, other exceptions to information reporting (such as the exception for payments to corporations) may apply.

.03 *Table.* The following table is used in applying the optional procedure permitted under this revenue procedure.

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
0742	Veterinary Services	Yes
0763	Agricultural Cooperative	Yes
0780	Landscaping Services	Yes
1520	General Contractors	Yes
1711	Heating, Plumbing, A/C	Yes
1731	Electrical Contractors	Yes
1740	Masonry, Stonework, and Plaster	Yes
1750	Carpentry Contractors	Yes
1761	Roofing/Siding, Sheet Metal	Yes
1771	Concrete Work Contractors	Yes
1799	Special Trade Contractors	Yes
2741	Miscellaneous Publishing and Printing	Yes
2791	Typesetting, Plate Making, and Related Services	Yes
2842	Specialty Cleaning	Yes
3000-3299	Airlines	Yes
3351-3441	Car Rental	Yes
3501-3790	Hotels/Motels/Inns/Resorts	Yes
4011	Railroads	No

1.6041-3(c)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
4111	Commuter Transport, Ferries	Yes
4112	Passenger Railways	Yes
4119	Ambulance Services	Yes
4121	Taxicabs/Limousines	Yes
4131	Bus Lines	Yes
4214	Motor Freight Carriers and Trucking - Local and Long Distance, Moving and Storage Companies, and Local Delivery Services	No 1.6041-3(c)
4215	Courier Services	Yes
4225	Public Warehousing and Storage - Farm Products, Refrigerated Goods, Household Goods, and Storage	No 1.6041-3(c)
4411	Cruise Lines	Yes
4457	Boat Rentals and Leases	Yes
4468	Marinas, Service and Supplies	Yes
4511	Airlines, Air Carriers	Yes
4582	Airports, Flying Fields	Yes
4722	Travel Agencies, Tour Operators	Yes
4723	TUI Travel – Germany	Yes
4784	Tolls/Bridge Fees	No 1.6041-3(c)
4789	Transportation Services (Not Elsewhere Classified)	Yes
4812	Telecommunication Equipment and Telephone Sales	No 1.6041-3(c)
4814	Telecommunication Services	No 1.6041-3(c)
4816	Computer Network Services	No 1.6041-3(c)
4821	Telegraph Services	No 1.6041-3(c)
4829	Wires, Money Orders	No 1.6041-3(c)
4899	Cable, Satellite, and Other Pay Television and Radio	No 1.6041-3(c)
4900	Utilities	No 1.6041-3(c)
5013	Motor Vehicle Supplies and New Parts	No 1.6041-3(c)
5021	Office and Commercial Furniture	No 1.6041-3(c)
5039	Construction Materials (Not Elsewhere Classified)	No 1.6041-3(c)
5044	Photographic, Photocopy, Microfilm Equipment, and Supplies	No 1.6041-3(c)
5045	Computers, Peripherals, and Software	No 1.6041-3(c)
5046	Commercial Equipment (Not Elsewhere Classified)	No 1.6041-3(c)
5047	Medical, Dental, Ophthalmic, and Hospital Equipment and Supplies	No 1.6041-3(c)
5051	Metal Service Centers	No 1.6041-3(c)
5065	Electrical Parts and Equipment	No 1.6041-3(c)
5072	Hardware, Equipment, and Supplies	No 1.6041-3(c)
5074	Plumbing, Heating Equipment, and Supplies	No 1.6041-3(c)
5085	Industrial Supplies (Not Elsewhere Classified)	No 1.6041-3(c)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
5094	Precious Stones and Metals, Watches and Jewelry	No 1.6041-3(c)
5099	Durable Goods (Not Elsewhere Classified)	No 1.6041-3(c)
5111	Stationary, Office Supplies, Printing and Writing Paper	No 1.6041-3(c)
5122	Drugs, Drug Proprietaries, and Druggist Sundries	No 1.6041-3(c)
5131	Piece Goods, Notions, and Other Dry Goods	No 1.6041-3(c)
5137	Uniforms, Commercial Clothing	No 1.6041-3(c)
5139	Commercial Footwear	No 1.6041-3(c)
5169	Chemicals and Allied Products (Not Elsewhere Classified)	No 1.6041-3(c)
5172	Petroleum and Petroleum Products	No 1.6041-3(c)
5192	Books, Periodicals, and Newspapers	No 1.6041-3(c)
5193	Florists Supplies, Nursery Stock, and Flowers	No 1.6041-3(c)
5198	Paints, Varnishes, and Supplies	No 1.6041-3(c)
5199	Nondurable Goods (Not Elsewhere Classified)	No 1.6041-3(c)
5200	Home Supply Warehouse Stores	No 1.6041-3(c)
5211	Lumber, Building Materials Stores	No 1.6041-3(c)
5231	Glass, Paint, and Wallpaper Stores	No 1.6041-3(c)
5251	Hardware Stores	No 1.6041-3(c)
5261	Nurseries, Lawn and Garden Supply Stores	No 1.6041-3(c)
5271	Mobile Home Dealers	No 1.6041-3(c)
5300	Wholesale Clubs	No 1.6041-3(c)
5309	Duty Free Stores	No 1.6041-3(c)
5310	Discount Stores	No 1.6041-3(c)
5311	Department Stores	No 1.6041-3(c)
5331	Variety Stores	No 1.6041-3(c)
5399	Miscellaneous General Merchandise	No 1.6041-3(c)
5411	Grocery Stores, Supermarkets	No 1.6041-3(c)
5422	Freezer and Locker Meat Provisioners	No 1.6041-3(c)
5441	Candy, Nut, and Confectionery Stores	No 1.6041-3(c)
5451	Dairy Products Stores	No 1.6041-3(c)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
5462	Bakeries	No 1.6041-3(c)
5499	Miscellaneous Food Stores - Convenience Stores and Specialty Markets	No 1.6041-3(c)
5511	Car and Truck Dealers (New & Used) Sales, Service, Repairs Parts and Leasing	No 1.6041-3(c)
5521	Car and Truck Dealers (Used Only) Sales, Service, Repairs Parts and Leasing	No 1.6041-3(c)
5531	Auto and Home Supply Stores	No 1.6041-3(c)
5532	Automotive Tire Stores	No 1.6041-3(c)
5533	Automotive Parts and Accessories Stores	No 1.6041-3(c)
5541	Service Stations	No 1.6041-3(c)
5542	Automated Fuel Dispensers	No 1.6041-3(c)
5551	Boat Dealers	No 1.6041-3(c)
5561	Motorcycle Shops, Dealers	No 1.6041-3(c)
5571	Motorcycle Shops and Dealers	No 1.6041-3(c)
5592	Motor Homes Dealers	No 1.6041-3(c)
5598	Snowmobile Dealers	No 1.6041-3(c)
5599	Miscellaneous Auto Dealers	No 1.6041-3(c)
5611	Men's and Boy's Clothing and Accessories Stores	No 1.6041-3(c)
5621	Women's Ready-To-Wear Stores	No 1.6041-3(c)
5631	Women's Accessory and Specialty Shops	No 1.6041-3(c)
5641	Children's and Infant's Wear Stores	No 1.6041-3(c)
5651	Family Clothing Stores	No 1.6041-3(c)
5655	Sports and Riding Apparel Stores	No 1.6041-3(c)
5661	Shoe Stores	No 1.6041-3(c)
5681	Furriers and Fur Shops	No 1.6041-3(c)
5691	Men's, Women's Clothing Stores	No 1.6041-3(c)
5697	Tailors, Alterations	Yes
5698	Wig and Toupee Stores	No 1.6041-3(c)
5699	Miscellaneous Apparel and Accessory Shops	No 1.6041-3(c)
5712	Furniture, Home Furnishings, and Equipment Stores, Except Appliances	No 1.6041-3(c)
5713	Floor Covering Stores	No 1.6041-3(c)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
5714	Drapery, Window Covering, and Upholstery Stores	No 1.6041-3(c)
5718	Fireplace, Fireplace Screens, and Accessories Stores	No 1.6041-3(c)
5719	Miscellaneous Home Furnishing Specialty Stores	No 1.6041-3(c)
5722	Household Appliance Stores	No 1.6041-3(c)
5732	Electronics Stores	No 1.6041-3(c)
5733	Music Stores-Musical Instruments, Pianos, and Sheet Music	No 1.6041-3(c)
5734	Computer Software Stores	No 1.6041-3(c)
5735	Record Stores	No 1.6041-3(c)
5811	Caterers	Yes
5812	Eating Places, Restaurants	No 1.6041-3(c)
5813	Drinking Places	No 1.6041-3(c)
5814	Fast Food Restaurants	No 1.6041-3(c)
5912	Drug Stores and Pharmacies	No 1.6041-3(c)
5921	Package Stores-Beer, Wine, and Liquor	No 1.6041-3(c)
5931	Used Merchandise and Secondhand Stores	No 1.6041-3(c)
5932	Antique Shops	No 1.6041-3(c)
5933	Pawn Shops	No 1.6041-3(c)
5935	Wrecking and Salvage Yards	Yes
5937	Antique Reproductions	No 1.6041-3(c)
5940	Bicycle Shops	No 1.6041-3(c)
5941	Sporting Goods Stores	No 1.6041-3(c)
5942	Book Stores	No 1.6041-3(c)
5943	Stationery Stores, Office, and School Supply Stores	No 1.6041-3(c)
5944	Jewelry Stores, Watches, Clocks, and Silverware Stores	No 1.6041-3(c)
5945	Hobby, Toy, and Game Shops	No 1.6041-3(c)
5946	Camera and Photographic Supply Stores	No 1.6041-3(c)
5947	Gift, Card, Novelty, and Souvenir Shops	No 1.6041-3(c)
5948	Luggage and Leather Goods Stores	No 1.6041-3(c)
5949	Sewing, Needlework, Fabric, and Piece Goods Stores	No 1.6041-3(c)
5950	Glassware, Crystal Stores	No 1.6041-3(c)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
5960	Direct Marketing - Insurance Services	Yes
5962	Direct Marketing – Travel	Yes
5963	Door-To-Door Sales	No
		1.6041-3(c)
5964	Direct Marketing - Catalog Merchant	No
		1.6041-3(c)
5965	Direct Marketing - Combination Catalog and Retail Merchant	No
		1.6041-3(c)
5966	Direct Marketing - Outbound Tele	No
		1.6041-3(c)
5967	Direct Marketing - Inbound Tele	No
		1.6041-3(c)
5968	Direct Marketing – Subscription	No
		1.6041-3(c)
5969	Direct Marketing - Other	No
		1.6041-3(c)
5970	Artist’s Supply and Craft Shops	No
		1.6041-3(c)
5971	Art Dealers and Galleries	No
		1.6041-3(c)
5972	Stamp and Coin Stores	No
		1.6041-3(c)
5973	Religious Goods Stores	No
		1.6041-3(c)
5975	Hearing Aids Sales and Supplies	No
		1.6041-3(c)
5976	Orthopedic Goods - Prosthetic Devices	No
		1.6041-3(c)
5977	Cosmetic Stores	No
		1.6041-3(c)
5978	Typewriter Stores	No
		1.6041-3(c)
5983	Fuel Dealers (Non Automotive)	No
		1.6041-3(c)
5992	Florists	No
		1.6041-3(c)
5993	Cigar Stores and Stands	No
		1.6041-3(c)
5994	News Dealers and Newsstands	No
		1.6041-3(c)
5995	Pet Shops, Pet Food, and Supplies	No
		1.6041-3(c)
5996	Swimming Pools Sales	No
		1.6041-3(c)
5997	Electric Razor Stores	No
		1.6041-3(c)
5998	Tent and Awning Shops	No
		1.6041-3(c)
5999	Miscellaneous Specialty Retail	No
		1.6041-3(c)
6010	Manual Cash Disburse	No
		1.6041-3(c)
6011	Automated Cash Disburse	No
		1.6041-3(c)
6012	Financial Institutions	Yes
6051	Non-FI, Money Orders	No
		1.6041-3(c)
6211	Security Brokers/Dealers	Yes

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
6300	Insurance Underwriting, Premiums	No 1.6041-3(c)
6399	Insurance - Default	No 1.6041-3(c)
6513	Real Estate Agents and Managers – Rentals	Yes
7011	Hotels, Motels, and Resorts	Yes
7012	Timeshares	Yes
7032	Sporting/Recreation Camps	Yes
7033	Trailer Parks, Campgrounds	Yes
7210	Laundry, Cleaning Services	Yes
7211	Laundries	Yes
7216	Dry Cleaners	Yes
7217	Carpet/Upholstery Cleaning	Yes
7221	Photographic Studios	Yes
7230	Barber and Beauty Shops	Yes
7251	Shoe Repair/Hat Cleaning	Yes
7261	Funeral Services, Crematories	Yes
7273	Dating/Escort Services	Yes
7276	Tax Preparation Services	Yes
7277	Counseling Services	Yes
7278	Buying/Shopping Services	Yes
7296	Clothing Rental	Yes
7297	Massage Parlors	Yes
7298	Health and Beauty Spas	Yes
7299	Miscellaneous General Services	Yes
7311	Advertising Services	Yes
7321	Credit Reporting Agencies	Yes
7333	Commercial Photography, Art and Graphics	Yes
7338	Quick Copy, Repro, and Blueprint	Yes
7339	Secretarial Support Services	Yes
7342	Exterminating Services	Yes
7349	Cleaning and Maintenance	Yes
7361	Employment/Temp Agencies	Yes
7372	Computer Programming	Yes
7375	Information Retrieval Services	Yes
7379	Computer Repair	Yes
7392	Consulting, Public Relations	Yes
7393	Detective Agencies	Yes
7394	Equipment Rental	Yes
7395	Photo Developing	Yes
7399	Miscellaneous Business Services	Yes
7511	Truck Stop	Yes
7512	Car Rental Agencies	Yes
7513	Truck/Utility Trailer Rentals	Yes
7519	Recreational Vehicle Rentals	Yes
7523	Parking Lots, Garages	Yes
7531	Auto Body Repair Shops	Yes
7534	Tire Retreading and Repair	Yes
7535	Auto Paint Shops	Yes
7538	Auto Service Shops	Yes
7542	Car Washes	Yes
7549	Towing Services	Yes
7622	Electronics Repair Shops	Yes
7623	A/C, Refrigeration Repair	Yes
7629	Small Appliance Repair	Yes
7631	Watch/Jewelry Repair	Yes
7641	Furniture Repair, Refinishing	Yes
7692	Welding Repair	Yes
7699	Miscellaneous Repair Shops	Yes
7829	Picture/Video Production	Yes

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
7832	Motion Picture Theaters	Yes
7841	Video Tape Rental Stores	Yes
7911	Dance Hall, Studios, Schools	Yes
7922	Theatrical Ticket Agencies	Yes
7929	Bands, Orchestras	Yes
7932	Billiard/Pool Establishments	Yes
7933	Bowling Alleys	Yes
7941	Sports Clubs/Fields	Yes
7991	Tourist Attractions and Exhibits	Yes
7992	Golf Courses – Public	Yes
7993	Video Amusement Game Supplies	No
		1.6041-3(c)
7994	Video Game Arcades	Yes
7995	Betting/Casino Gambling	Yes
7996	Amusement Parks/Carnivals	Yes
7997	Country Clubs	Yes
7998	Aquariums	Yes
7999	Miscellaneous Recreation Services	Yes
8011	Doctors	Yes
8021	Dentists, Orthodontists	Yes
8031	Osteopaths	Yes
8041	Chiropractors	Yes
8042	Optometrists, Ophthalmologist	Yes
8043	Opticians, Eyeglasses	Yes
8049	Chiropodists, Podiatrists	Yes
8050	Nursing/Personal Care	Yes
8062	Hospitals	Yes
8071	Medical and Dental Labs	Yes
8099	Medical Services	Yes
8111	Legal Services, Attorneys	Yes
8211	Elementary, Secondary Schools	No
		1.6041-3(p)(2)
8220	Colleges, Universities	No
		1.6041-3(p)(2)
8241	Correspondence Schools	No
		1.6041-3(p)(2)
8244	Business/Secretarial Schools	No
		1.6041-3(p)(2)
8249	Vocational/Trade Schools	No
		1.6041-3(p)(2)
8299	Educational Services	Yes
8351	Child Care Services	Yes
8398	Charitable and Social Service Organizations - Fundraising	No
		1.6041-3(p)(2)
8641	Civic, Social, Fraternal Associations	No
		1.6041-3(p)(2)
8651	Political Organizations	Yes
8661	Religious Organizations	No
		1.6041-3(p)(2)
8675	Automobile Associations	Yes
8699	Membership Organizations	Yes
8734	Testing Laboratories	Yes
8911	Architectural/Surveying Services	Yes
8931	Accounting/Bookkeeping Services	Yes
8999	Professional Services	Yes
9211	Court Costs, Including Alimony and Child Support - Courts of Law	No
		1.6041-3(p)(4)
9222	Fines - Government Administrative Entities	No
		1.6041-3(p)(4)

MCC	Merchant Category	Reportable under 6041/6041A and Authority for Exception
9223	Bail and Bond Payments (payment to the surety for the bond, not the actual bond paid to the government agency)	Yes
9311	Tax Payments - Government Agencies	No
9399	Government Services (Not Elsewhere Classified)	1.6041-3(p)(4) No
9402	Postal Services - Government Only	1.6041-3(p)(4) No
9405	U.S. Federal Government Agencies or Departments	1.6041-3(p)(3) No
9950	Intra-Company Purchases	1.6041-3(p)(3) No 1.6041-3(c)

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective July 14, 2004.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Joseph P. Dewald of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Mr. Dewald at (202) 622-4910 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters. (Also: Part I, § 412.)

Rev. Proc. 2004-44

SECTION 1. PURPOSE

The purpose of this revenue procedure is to outline the procedure by which a plan administrator or a plan sponsor may request and obtain approval for an extension of an amortization period in accordance with § 412(e) of the Internal Revenue Code and section 304(a) of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, 42.

SECTION 2. BACKGROUND INFORMATION

.01 Statute—Section 412(e) of the Code and section 304(a) of ERISA provide that the period of years required to amortize

any unfunded liability of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years).

.02 Reorganization Plan—Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, which became effective December 31, 1978, transferred the function described in subsection .01 to the Secretary of the Treasury.

SECTION 3. REQUESTS FOR APPROVAL TO EXTEND AN AMORTIZATION PERIOD

.01 Who may submit—Only a plan administrator, plan sponsor, or an authorized representative of either may submit a request for approval to extend the period of years required to amortize any unfunded liability. The request must be signed by the taxpayer maintaining the plan (hereinafter referred to as “applicant”) or an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2004-4, 2004-1 I.R.B. 125, or must be an enrolled actuary within the meaning of § 7701(a)(35) of the Code. Where an authorized representative signs the request or will appear before the Service in connection with the request, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the request. For multiemployer plans, the request must be made by the Board of Trustees (which shall be deemed to be the applicant) or by an authorized representative of the Board of Trustees. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 Submission.—Requests for approval to extend an amortization period must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by Rev. Proc. 2004-8, 2004-1 I.R.B. 240, or its successors, must be sent with such requests.

.03 Necessary Procedural Documents.—A request will not be considered unless it complies with (1) through (3) below.

(1) The request also must contain a declaration in the following form: “Under the penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request are true, correct, and complete.” This declaration must be signed by the applicant (*e.g.*, an authorized officer of a corporation). The signature of an individual with a power of attorney will not suffice for the declaration. See section 9.02(13) of Rev. Proc. 2004-4, *supra*, at 142.

(2) Because a request for an extension constitutes a request for a ruling, compliance with section 6110 of the Code is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to section 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

(3) The applicant must provide a copy of a written notification to each employee organization representing employees covered by the plan, and each participant, beneficiary, and alternate payee of the plan, that an application for an extension of the amortization period under § 412(e) has been submitted to the Service. The original of the written notification must bear a signature by an appropriate officer of the applicant and must be in substantially the form set forth in the Model Notice found in the Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information in addition to that required by the Model Notice in the Appendix A to plan participants, beneficiaries, alternate payees, or employee organizations as part of the extension application process, but additional information may, of course, be provided by the applicant pursuant to the collective bargaining process or otherwise.

The application must state that such notice was hand delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) within 14 days prior to the date of the application. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement. However, merely posting the notice on a bulletin board is not sufficient to satisfy this requirement.

.04 Necessary Information.—The applicant must furnish appropriate evidence that the extension of the amortization period is needed to continue the plan or to prevent a substantial curtailment of pension benefit levels or employee compensation, and that a denial of the extension would be adverse to the interests of the plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of the paragraphs (1) through (6)

below. In certain cases, some of the material described in paragraphs (1) through (6) may be inapplicable, unavailable, inappropriate or burdensome to furnish. In such cases, the applicant should furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate or burdensome.

(1) General facts concerning the employer.

A brief statement should be submitted concerning: (a) the history of the employer and its primary business; (b) the ownership of the employer and any recent or contemplated changes (such as acquisitions, mergers, discontinuances of operations) which might have a bearing on the employer's organization or financial condition; (c) whether the employer is aggregated with any other entity for purposes of § 414(b), (c), (m) or (o); and (d) whether the plan is also maintained by employers described in (c) above or any other employers.

(2) The financial condition of the employer.

For plans other than multiemployer plans, the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, should also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports should be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted.

For multiemployer plans, the financial information described in the above paragraph must only be submitted for employers who either (1) are represented on the Board of Trustees or (2) made or were re-

quired to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. In addition, the applicant must submit a general description of the financial state of the industry in which employees covered by the plan are employed. Regardless of whether any employer makes more than five percent of the total contributions, a general description of the financial state of the industry in which employees covered by the plan are employed is required. For purposes of this paragraph, a multiple employer plan for which the plan administrator did not make an election under § 413(c)(4)(B) of the Code is required to submit the same information as a multiemployer plan. Financial information of employers contributing to a multiemployer plan (identified by name of plan and plan number) must be submitted directly from the contributing employers to the Service at the same time that the submission is made to the following address:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(3) Information concerning the extension of the amortization period. Information concerning the extension of the amortization period should include the following.

(a) The unfunded liability for which an extension of the amortization period is requested.

(b) The reasons why an extension of the amortization period is needed.

(c) The length of the extension of the amortization period desired (up to a maximum of 10 years).

(d) Information concerning the actions taken by the applicant to reduce the plan's unfunded liability before the request for an extension has been made. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.

(e) Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios, for the length of the extension of the amortization period requested and for the period ten (10) years afterwards. For example, if the applicant requests an extension of ten (10) years, the projections should be for a 20-year period. These projections must be prepared by an enrolled actuary.

(f) The plan year for which the extension is requested, *i.e.*, the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (*e.g.*, 1/1/2004—12/31/2004).

The Service may request additional information as needed.

(4) Facts concerning the pension plan. For each pension plan for which an extension is requested, the following information should be supplied.

(a) The name of the plan, the plan's identification number, and file folder number (if any).

(b) The date the plan was adopted.

(c) The effective date of the plan.

(d) The classes of employees covered.

(e) The number of employees covered.

(f) A copy of the current plan document and the most recent summary plan description.

(g) A copy of the most recent determination letter issued to the plan.

(h) A brief description of all plan amendments adopted during the year for which the extension is requested and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.

(i) The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in that report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).

(j) A description of how the plan is funded (*i.e.*, trust fund, individual insurance policies, etc.).

(k) A list of the contributions actually paid in each month, from the twenty-fourth month prior to the beginning of the

plan year for which the extension is requested through the date of the request and the plan year to which the contributions were applied, with the employee contributions and the employer contributions listed separately.

(l) The approximate contribution required to meet the minimum funding standard. For defined benefit plans, this amount should be determined by the plan's enrolled actuary.

(m) A copy of the most recently completed *Annual Return/Report of Employee Benefit Plan* (Form 5500 series, as applicable) and in the case of a defined benefit plan, a copy of the corresponding *Actuarial Information* schedule (Schedule B of Form 5500).

(n) A copy of each ruling letter that waived the minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The outstanding balance of the amortization base for each waiver is to be calculated as of the first day of the plan year for which an extension is being requested.

(o) A copy of each ruling letter that granted, under § 412(e) of the Code and section 304(a) of ERISA, an extension of time to amortize any unfunded liability which became applicable at any time during the last 15 plan years.

(5) Other pension, profit-sharing, or stock bonus plans. If the employer maintains more than one plan, an outline of the essential facts for each such plan should be submitted. This should include:

(a) A brief description of the plan, including the name of the plan and its plan year.

(b) The number of employees covered.

(c) The classes of employees covered.

(d) The approximate annual contribution required.

(e) The amount of contributions that have been made, or are intended to be made, for any plan year of such other plan commencing in, or ending in, the plan year for which the extension is requested.

(f) A statement as to whether a request for a waiver of the minimum funding

standard or an extension of an amortization period is contemplated for the plan.

(6) Other information.

(a) Describe the nature of any matters pertaining to the plan which are currently pending or are intended to be submitted to the Service, the Department of Labor or the Pension Benefit Guaranty Corporation.

(b) Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

.05 Checklist.—A checklist has been provided in Appendix B for the convenience of the taxpayer submitting the request. This checklist should be signed, by the taxpayer or authorized representative, and dated and placed on top of the request.

SECTION 4. DEADLINE FOR REQUESTING AN EXTENSION OF THE AMORTIZATION PERIOD

All extension requests should be submitted by the last day of the plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an extension of an amortization period with respect to a plan year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason, it is generally advised that a request not be submitted earlier than 180 days prior to the end of the plan year for which the extension is requested.

SECTION 5. GENERAL

Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA:T:A
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2004-4.

SECTION 6. BANKRUPTCY PETITIONS

If the applicant or a significant number of controlled group members file a bankruptcy petition after the request for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in section 3 of this revenue procedure, especially the financial information in section 3.04(2).

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received after August 2, 2004, the date of its publication in the Internal Revenue Bulletin.

SECTION 8. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2004-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for an extension of an amortization period.

Rev. Proc. 79-61, 1979-2 C.B. 575, is superseded

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. section 3507) under control number 1545-1890.

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

The collection of information in this revenue procedure is in section 3 and Appendix B. This collection of information is required to evaluate, process and obtain approval of the request for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under § 412(e) of the Code. The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual cir-

cumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

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. section 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is John C. Heil of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, contact the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free call). Mr. Heil's telephone number is (202) 283-9694 (not a toll-free call).

APPENDIX A

**MODEL NOTICE OF APPLICATION FOR AN
EXTENSION OF AN AMORTIZATION PERIOD
TO EMPLOYEE ORGANIZATIONS (UNIONS),
PARTICIPANTS, BENEFICIARIES, AND ALTERNATE PAYEES**

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 412(e) of the Internal Revenue Code (Code) and section 304 of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by [INSERT APPLICANT'S NAME] to the Internal Revenue Service (Service) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

Under § 412(f)(4)(B) of the Code and section 304(a) of ERISA, the Service will consider any relevant information submitted concerning this application for an extension of the amortization period for unfunded liability. You may send this information to the following address:

Director, Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA:T:A
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Any such information should be submitted as soon as possible after you have received this notice. Due to the disclosure restrictions of § 6103 of the Code, the Service can not provide any information with respect to the extension request itself.

In accordance with section 104 of ERISA and section 2520.104b-10 of the Department of Labor Regulations (29 C.F.R. Part 2520), annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room
Room N-5507
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

As required by section 104(b)(2) of ERISA, copies of the latest annual plan report are available for inspection at the principal office of the plan administrator, who is located at [INSERT ADDRESS]. Copies of the annual report may be obtained upon request and upon payment of a copying charge of [INSERT CHARGE] by writing to the plan administrator at the above address.

The following information is provided pursuant to § 412(f)(4)(A) of the Code and section 303(e)(1) of ERISA:

Present Value of Vested Benefits \$_____

Present Value of Benefits, calculated as though the plan terminated \$_____

Fair Market Value of Plan Assets \$_____

The above present values were calculated using an interest rate or rates of [INSERT INTEREST RATE(S)].

[SIGNATURE OF APPROPRIATE OFFICER OF THE PLAN SPONSOR]
[INSERT NAME]
[INSERT TITLE]

APPENDIX B

REQUEST FOR EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your request for an extension of an amortization period if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

- _____ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
- _____ 2. Have you satisfied all the requirements of Rev. Proc. 2004-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See section 3.03(1))
- _____ 3. Have you included statement of proposed deletions? (See section 3.03(2))
- _____ 4. Have you included the user fee required under Rev. Proc. 2004-8 or its successors? (See section 3.02)
- _____ 5. Have you included a copy of the written notification that an application for an extension of an amortization period has been submitted and a statement that such notice was hand delivered or mailed to each employee organization, participant, beneficiary and alternate payee? (See section 3.03(3) and Appendix A)
- _____ 6. Have you included the general facts concerning the employer? (See section 3.04(1))
- _____ 7. Have you included a description of the employer's financial condition? (See section 3.04(2))
- _____ 8. Have you included information concerning the extension of the amortization period? (See section 3.04(3))
- _____ 9. Have you included information concerning the pension plan? (See section 3.04(4))
- _____ 10. Have you included information concerning other pension, profit-sharing, or stock bonus plans of the employer? (See section 3.04(5))
- _____ 11. Have you included information concerning other matters pertaining to the plan? (See section 3.04(6))

Title or Authority

Typed or printed name of person signing checklist

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also, Part I, § 6011; 1.6011-4.)

Rev. Proc. 2004-45

SECTION 1. PURPOSE

This revenue procedure provides alternative disclosure procedures that are deemed to satisfy a taxpayer's disclosure obligations under § 1.6011-4 of the Income Tax Regulations for transactions with a significant book-tax difference under § 1.6011-4(b)(6). Taxpayers also may continue to follow the disclosure procedures provided in § 1.6011-4 for disclosing transactions described in § 1.6011-4(b)(6).

SECTION 2. BACKGROUND

.01 Section 1.6011-4 requires a taxpayer who participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011-4. Under § 1.6011-4(b), there are six categories of reportable transactions. One category of reportable transactions is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011-4(b)(6) as a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than \$10 million on a gross basis from the amount of the item or items for book purposes in any taxable year. For purposes of § 1.6011-4(b)(6), the amount of an item for book purposes is determined by applying U.S. generally accepted accounting principles for worldwide income.

.02 Section 1.6011-4(b)(6)(ii) provides that the following taxpayers must disclose transactions with a significant book-tax difference: (1) reporting companies under the Securities Exchange Act of 1934 (15 U.S.C. 78a) and related business entities; and (2) business entities that have \$250 million or more in gross assets for book purposes at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs.

.03 On July 7, 2004, the Treasury Department and Internal Revenue Service released a draft of the final version of Schedule M-3, *Net Income (Loss) Reconciliation For Corporations With Total Assets of \$10 Million or More*. In general, for taxable years ending on or after December 31, 2004, any corporation (or U.S. consolidated tax group) required to file Form 1120, *U.S. Corporation Income Tax Return*, that reports total assets at the end of the corporation's (or U.S. consolidated tax group's) taxable year that equal or exceed \$10 million on Schedule L of Form 1120 is required to complete and file Schedule M-3.

SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that is required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6).

SECTION 4. APPLICATION

.01 *Corporation required to complete Schedule M-3 for a taxable year ending on or after December 31, 2004.* For a taxable year ending on or after December 31, 2004, a corporation required to file Schedule M-3 that completes and files Schedule M-3 (in accordance with the instructions

to the form, including draft instructions until such instructions are finalized) with the corporation's timely-filed original tax return (including extensions) for the taxable year is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) for that taxable year.

.02 *Taxpayer not required to complete Schedule M-3 for a taxable year ending on or after December 31, 2004.* A taxpayer that is required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6), but is not required to complete Schedule M-3, for a taxable year ending on or after December 31, 2004, will continue to be subject to the disclosure requirements of § 1.6011-4. However, the taxpayer is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) for a taxable year ending on or after December 31, 2004, if the taxpayer complies with the alternative disclosure procedures described in section 4.04 of this revenue procedure for that taxable year.

.03 *Alternative disclosure procedures for a taxable year ending before December 31, 2004, for transactions entered into on or after January 1, 2003.* For a taxable year ending before December 31, 2004, a taxpayer required to disclose reportable transactions under § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) that were entered into on or after February 28, 2003, is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to those transactions if the taxpayer complies with the alternative disclosure procedures described in section 4.04 of this revenue procedure. These rules also may be relied upon for taxable years ending before December 31, 2004, with respect to transactions entered into on or after January 1, 2003, and before

February 28, 2003, that are subject to disclosure under § 1.6011-4 or § 1.6011-4T with respect to transactions described in § 1.6011-4(b)(6) or § 1.6011-4T(b)(6), respectively.

.04 *Alternative disclosure procedures for transactions with a significant book-tax difference.*

(1) *In general.* A taxpayer described in section 4.02 or section 4.03 of this revenue procedure is deemed to satisfy the disclosure requirements of § 1.6011-4 with respect to transactions described in § 1.6011-4(b)(6) if the taxpayer discloses on a Schedule M-3 each item of income, gain, loss, deduction, or credit for which the difference between the amount included in the taxpayer's financial statement net income (loss) for the taxable year and the amount included in taxable income for the taxable year ("difference") is greater than \$10 million. The taxpayer must separately state and adequately disclose, on the applicable line of Column B and Column C of Part II and Part III of Schedule M-3, each difference that is greater than \$10 million. The Schedule M-3 must be completed (and filed in accordance with section 4.04(2) of this revenue procedure) as if the taxpayer were a corporation required to complete and file Schedule M-3 for that taxable year. For purposes of this section 4.04(1), the rules applicable to a corporation (or U.S. consolidated tax group) required to complete and file Schedule M-3 (for example, guidance provided in the form of instructions to Schedule M-3 (including draft instructions until such instructions are finalized)) will apply, including rules for determining: (i) an item of income, gain, loss, deduction, or credit; (ii) how to separately state and adequately disclose a difference; (iii) whether an item(s) can be combined with another item(s); (iv) the classification of a difference as temporary or permanent; and (v) the information required to be provided for items of partnerships and flow-through entities.

For purposes of this section 4.04(1), the taxpayer's financial statement net income (loss) is the financial statement net income (loss) of the taxpayer if the taxpayer were a corporation required to complete Schedule M-3 (that is, the amount that would be reported on line 11, Part I of Schedule M-3). In addition, in the case of a member of a group of affiliated corporations filing

a U.S. consolidated tax return, whether an item of difference exceeds \$10 million is based on the separate activity of that group member, and is not based on the consolidated activity of the U.S. consolidated tax group.

(2) *Time and manner for complying with the alternative disclosure procedures of section 4.04(1).* The Schedule M-3 required under section 4.04(1) of this revenue procedure, and any supporting statements, must be attached to the taxpayer's timely filed original tax return (including extensions). The taxpayer must include its name and identification number on the top of Page 1 of Schedule M-3 and also must include the following statement on the top of Page 1 of Schedule M-3: "*Alternative disclosure under Rev. Proc. 2004-45 for transactions with a significant book-tax difference under § 1.6011-4(b)(6).*" In addition, the taxpayer must send a copy of the Schedule M-3 required under section 4.04(1) of this revenue procedure, and any supporting statements, to the Office of Tax Shelter Analysis, Internal Revenue Service LM:PFTG:OTSA, Large & Mid-Size Business Division, 1111 Constitution Ave., NW, Washington, DC 20224, on or before the due date for the taxpayer's timely filed original tax return (including extensions). If a taxpayer does not have a difference in excess of \$10 million as determined under section 4.04(1) of this revenue procedure, the taxpayer is not required to file a Schedule M-3 otherwise required by this revenue procedure and the taxpayer also is not required to file Form 8886, *Reportable Transaction Disclosure Statement*, otherwise required by § 1.6011-4, with respect to transactions described in § 1.6011-4(b)(6).

(3) *Use of draft final version of Schedule M-3.* For purposes of complying with the alternative disclosure procedures described in section 4.04(1) and (2) of this revenue procedure, a taxpayer must use the most recent draft version of Schedule M-3 (and any guidance provided in the form of instructions to Schedule M-3, including draft instructions) referred to in section 2.03 of this revenue procedure until Schedule M-3 is released in final form.

.05 *Effect on other disclosure obligations.* This revenue procedure does not affect any of a taxpayer's disclosure obligations under §§ 1.6011-4, 20.6011-4, 25.6011-4, 31.6011-4, 53.6011-4,

54.6011-4, or 56.6011-4 with respect to a transaction described in one or more of §§ 1.6011-4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(7), even if the transaction also is described under § 1.6011-4(b)(6).

.06 The Service and the Treasury will continue to evaluate whether the disclosure requirements described in this revenue procedure and Schedule M-3 provide the Service and Treasury adequate information regarding significant book-tax differences.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective July 7, 2004.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1894.

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

The collection of information in this revenue procedure is in section 4. The information will be used to determine if taxpayers have complied with the disclosure requirements in § 1.6011-4. This information collection is voluntary. Taxpayers may choose this alternate procedure of disclosing instead of disclosing the information on Form 8886.

The likely respondents are business or other for-profit institutions. The estimated total annual reporting burden associated with this alternative method of compliance is zero. This is because the burden is already accounted for under control number 1545-1685 which applies to the regulations under § 1.6011-4.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is Tara P. Volungis of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis at (202) 622-3070 (not a toll-free number). For information regarding Schedule M-3, contact Diane Litecky at (732) 452-8134 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.
(Also: Part 1, §§ 2631; 2642; 301.9100-3.)

Rev. Proc. 2004-46

SECTION 1. PURPOSE

This revenue procedure provides a simplified alternate method for certain taxpayers to obtain an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of the generation-skipping transfer (GST) exemption in accordance with § 2642(b)(1) of the Internal Revenue Code (the Code). This alternate method may be used in lieu of the letter ruling process. No user fee is charged for requests filed under this revenue procedure.

SECTION 2. BACKGROUND

.01 Chapter 13 of the Code imposes a GST tax on all transfers, whether made directly or indirectly, to skip persons. Under § 2613(a), a skip person includes a person who is two or more generations below the generation of the transferor or a trust, if all of the interests are held by skip persons. Generally, under § 2652, the transferor is the individual who transfers property in a transaction subject to the federal gift or estate tax. Under § 2611(a), transfers that are subject to the GST tax are direct skips, taxable distributions, and taxable terminations.

.02 Section 2602 provides that the amount of GST tax imposed on a transfer is determined by multiplying the amount transferred by the applicable rate. Under § 2641, the applicable rate for a transfer is the maximum federal estate tax rate multiplied by the inclusion ratio, and the

inclusion ratio (defined under § 2642) is one minus the applicable fraction. The applicable fraction is a fraction the numerator of which is the amount of GST exemption allocated to the trust (or to the property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip) reduced by federal estate tax and state estate and death taxes actually recovered from the trust (or transferred property) and any charitable deduction allowed under § 2055 or 2522 with respect to the property.

.03 Section 2631 allows every transferor a GST exemption of \$1,000,000 that may be allocated to transfers made by the transferor either during the transferor's life or at death. For calendar years after 1998, the exemption amount has been indexed for inflation and, for transfers made between January 1, 2004, and December 31, 2009, inclusive, the exemption equals the amount that is exempted from transfer tax by the applicable credit amount described in § 2010.

.04 An outright transfer to an individual who is a skip person that qualifies for the gift tax exclusion under § 2503(b) or 2503(e) is deemed to have an inclusion ratio of zero and, thus, is not subject to the GST tax. A different rule, however, applies for a transfer to a trust that is a direct skip. Under § 2642(c)(2), a transfer to a trust for the benefit of one beneficiary that qualifies for the gift tax annual exclusion will be deemed to have a zero inclusion ratio only if certain requirements are met. Many trusts, however, have more than one beneficiary and thus will not have an inclusion ratio of zero by reason of § 2642(c)(2), even if the trust meets the other requirement of that section. In this case, the transferor must affirmatively allocate GST exemption to the trust if the transferor desires to reduce the inclusion ratio to zero.

.05 Affirmative allocations of GST exemption to transfers made during life generally are made on a federal gift tax return (Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*), and can be made whether or not the return is timely filed. Under § 2642(b)(1), if a transferor allocates GST exemption on a timely filed federal gift tax return, the transferor may allocate an amount of GST exemption equal to the value of the property on the date of the transfer to reduce the inclu-

sion ratio to zero. If, however, the transferor allocates GST exemption on a gift tax return that is not timely filed (late allocation), then under § 2642(b)(3), to reduce the inclusion ratio to zero, the transferor must allocate an amount of GST exemption equal to the value of the property either on the date the return is filed or on the first day of the month in which that return is filed.

.06 Automatic allocations of GST exemption are made under § 2632 to certain transfers made during life that are direct skips, so that the inclusion ratio for such transfers may be reduced to zero even without any affirmative allocation of GST exemption. As a result of The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. No. 107-16, § 561, 115 Stat. 91, automatic allocations are also made to certain transfers made after 2000 that are not direct skips. With regard to pre-2001 transfers made during life, however, if a transferor failed to make an affirmative allocation of the GST exemption on a timely filed gift tax return, no relief was available, other than to make a late allocation based on the value of the property as of the filing of the late allocation.

.07 Section 564 of EGTRRA added § 2642(g) to the Code, which provides, generally, that the Secretary is to prescribe by regulations the circumstances and procedures under which an extension of time will be granted to affirmatively allocate GST exemption, and that the time for making the allocation shall be treated as if not expressly prescribed by statute. In response, the Internal Revenue Service issued Notice 2001-50, 2001-2 C.B. 189, which announced that transferors may seek an extension of time to make an allocation of GST exemption. That notice provides, generally, that under § 301.9100-3, relief will be granted if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that a grant of the requested relief will not prejudice the interests of the government. Thus, if relief is granted under § 301.9100-3 and the allocation is made, the amount of GST exemption necessary to reduce the inclusion ratio to zero is based on the value of the property on the date of the transfer and the allocation is effective as of the date of the transfer.

.08 To date, the Service has issued several letter rulings under § 301.9100-3 granting an extension of time to make a timely allocation in situations in which a transfer to a trust qualified for the gift tax annual exclusion under § 2503(b), but was not deemed to have a zero inclusion ratio because the trust did not meet one or more of the requirements of § 2642(c)(2) (for example, because there was more than one beneficiary of the trust). In most of these cases, the transferor failed to allocate GST exemption to the trust on a timely filed gift tax return because the transferor was not aware of the need to affirmatively allocate the exemption to the transfers. The Service believes that in these cases, it is appropriate to provide an alternate simplified method to obtain an extension of time to make an allocation of GST exemption, provided that certain requirements (set forth in sections 3 and 4 of this revenue procedure) are met. In such a case, the transferor's GST exemption remaining at the time the gift tax return is filed pursuant to this revenue procedure may be allocated to the transfer based on the value of the property as of the date of the transfer.

SECTION 3. SCOPE

.01 *In General.* This revenue procedure applies only to a taxpayer who satisfies the following requirements:

(1) On or before December 31, 2000, the taxpayer made or was deemed to have made a transfer by gift to a trust from which a GST may be made;

(2) At the time the taxpayer files the request for relief under this revenue procedure, no taxable distributions have been made and no taxable terminations have occurred;

(3) The transfer qualified for the annual exclusion under § 2503(b), and the amount of the transfer, when added to the value of all other gifts by the transferor to that donee in the same year, was equal to or less than the amount of the applicable annual exclusion for the year of the transfer;

(4) No GST exemption was allocated to the transfer, whether or not a Form 709 was filed;

(5) At the time the taxpayer files a request for relief under this revenue procedure, the taxpayer has unused GST exemption available to allocate to the transfer; and

(6) All requirements of section 4 of this revenue procedure are satisfied.

.02 *Failure to Qualify for Relief Under This Revenue Procedure.* Taxpayers who are denied relief or who are otherwise outside the scope of this revenue procedure may request an extension of time to allocate GST exemption by requesting a letter ruling under the provisions of § 301.9100-3. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2004-1, 2004-1 C.B. 1 (or its successors). If a letter ruling is requested after relief has been denied under this revenue procedure, the letter ruling request must indicate that relief was requested and denied under this revenue procedure. Rev. Proc. 2004-1, Appendix C, 2004-1 I.R.B. 70.

SECTION 4. RELIEF FROM LATE ALLOCATIONS OF GST EXEMPTION

.01 *Procedural Requirements.*

(1) File a Form 709 for the year of the transfer to the trust, regardless of whether a Form 709 had been previously filed for that year. State at the top of the Form 709 that the return is "FILED PURSUANT TO REV. PROC. 2004-46."

(2) Report on the Form 709 the value of the transferred property as of the date of the transfer.

(3) Allocate GST exemption to the trust by attaching a statement to the Form 709 entitled "Notice of Allocation." The notice of allocation must contain the following information:

(a) clear identification of the trust, including the trust's identifying number, as defined in § 6109 and the regulations thereunder, when applicable;

(b) the value of the property transferred as of the date of the transfer (adjusted to account for split gifts, if any);

(c) the amount of taxpayer's unused GST exemption at the time this Notice of Allocation is filed (taxpayers are reminded that they must have unused GST exemption at the time this Notice of Allocation is filed);

(d) the amount of GST exemption allocated to the transfer;

(e) the inclusion ratio of the trust after the allocation; and

(f) a statement that all of the requirements of section 3.01 of this revenue procedure have been met.

(4) Subject to any change in applicable instructions in future forms, instructions, or guidance published by the Service, send the Form 709 with attachments to the Cincinnati Service Center for processing.

(a) If a private delivery service is used, the Form 709 with attachments should be sent to:

Internal Revenue Service Center
201 W. Rivercenter Blvd.
Covington, KY 41012.

(b) If a private delivery service is not used, the Form 709 with attachments should be sent to:

Internal Revenue Service Center
Cincinnati, OH 45999.

(5) The Form 709 must be filed on or before the date prescribed for filing the federal estate tax return for the transferor's estate (determined with regard to any extensions actually obtained), regardless of whether an estate tax return is required to be filed.

.02 *Relief from Late GST Exemption Allocation.* Upon receipt of a request for relief under section 4.01 of this revenue procedure, the Service Center will determine whether the requirements for granting relief to make a GST exemption allocation under this revenue procedure have been satisfied and will notify the taxpayer of the result of this determination. If the Service Center determines that the requirements for granting relief to make a GST exemption allocation under this revenue procedure have been satisfied, the allocation will be effective as of the date of the transfer.

.03 *Subsequent Estate Tax Inclusion Period.* A grant of relief under this revenue procedure does not preclude a subsequent determination that the transfer is one described in § 2642(f), specifically an inter vivos transfer the value of which would be included in the transferor's gross estate under chapter 11 (other than by reason of § 2035) if the transferor died immediately after making the transfer. If it is determined that the transfer is one described in § 2642(f), the GST exemption allocated pursuant to this revenue procedure would not be changed, but the effective date and effect of that allocation of GST exemption would be governed by § 26.2632-1(c)

of the Generation-Skipping Transfer Tax Regulations.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2001-50 is modified.

SECTION 6. EFFECTIVE DATE

.01 *In General.* This revenue procedure is effective August 2, 2004.

.02 *Transition Rule for Pending Letter Ruling Requests.* If a taxpayer has filed a request for a letter ruling seeking an extension of time to allocate GST exemption and that request is pending in the national office on August 2, 2004, the taxpayer may withdraw that letter ruling request and receive a refund of the taxpayer's user fee if, prior to the earlier of September 16, 2004, or the issuance of the letter ruling, the taxpayer notifies the national office that it will withdraw its letter ruling request. Otherwise, the national office will process letter ruling requests pending on August 2, 2004, and will retain the user fee paid.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1895.

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

The collections of information in this revenue procedure are in section 4. This information is required to be submitted to the applicable service center in order to obtain an automatic extension of time to allocate GST exemption. This information will be used to determine whether the eligibility requirements for obtaining relief have been met. The collection of information is required to obtain a benefit. The likely respondents are individuals.

The estimated total annual reporting burden is 350 hours.

The estimated annual burden per respondent varies from 2 hours to 10 hours, depending on individual circumstances, with an estimated average burden of 7 hours to complete the statements required under this revenue procedure. The estimated number of respondents is 50.

The estimated annual frequency of responses is on occasion.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Lian A. Mito of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Lian A. Mito at (202) 622-7830 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Election Out of GST Deemed Allocations

REG-153841-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance for making the election under section 2632(c)(5)(A)(i) of the Internal Revenue Code to not have the deemed allocation of unused generation-skipping transfer (GST) tax exemption under section 2632(c)(1) apply with regard to certain transfers to a GST trust, as defined in section 2632(c)(3)(B). The proposed regulations also provide guidance for making the election under section 2632(c)(5)(A)(ii) to treat a trust as a GST trust. The regulations primarily affect individuals.

DATES: Written and electronic comments and requests for a public hearing must be received by October 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-153841-02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-153841-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (IRS - REG-153841-02).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622-3090 (not a toll-free number).

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, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by September 13, 2004. 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 service to provide information.

The collection of information in this proposed regulation is in §26.2632-1(b)(2)(ii), (b)(2)(iii), and (b)(3). This information is required by the IRS for taxpayers who elect to have the automatic allocation rules not apply to the current transfer and/or to future transfers to the trust or to terminate such election. This information is also required

by the IRS for taxpayers who elect to treat trusts described in section 2632(c)(3)(B)(i) through (vi) as GST trusts or to terminate such election. This information will be used to identify the trusts to which the election or termination of election will apply. The collection of information is required in order to have a valid election or termination of election. The likely respondents are individuals contributing to trusts that have skip persons as beneficiaries.

Estimated total annual reporting burden: 12,500 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 25,000.

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 2601 imposes a tax on every generation-skipping transfer (GST). Under section 2631(a), for purposes of determining the amount of GST tax imposed on a transfer, every individual is allowed a GST exemption (\$1,500,000 in 2004) that may be allocated by the individual (or his or her executor) to any property with regard to which the individual is the transferor. Generally, under section 2632(a), an allocation of an individual's GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for the individual's estate (determined with regard to extensions).

Section 2632 also provides deemed allocation rules pursuant to which an individual's available GST exemption is automatically allocated to certain kinds of

transfers, without any action on the part of the transferor. Under section 2632(b), an individual's unused GST exemption is automatically allocated to transfers made during that individual's lifetime that are direct skips as defined in section 2612(c), to the extent necessary to make the inclusion ratio zero for the property transferred. Under section 2632(c), in the case of a lifetime transfer made after December 31, 2000, that is an indirect skip, the transferor's available GST exemption is automatically allocated to the transfer to the extent necessary to make the inclusion ratio zero for the property transferred. Section 2632(c)(3)(A) defines an indirect skip as a transfer of property (other than a direct skip) subject to gift tax that is made to a GST trust. A GST trust is defined in section 2632(c)(3)(B), in general, as any trust that could have a generation-skipping transfer. However, no trust described in section 2632(c)(3)(B)(i) through (vi) is treated as a GST trust, because a sufficient possibility exists (based on the statutory criteria) that the trust corpus will not be distributed to lower generations. A transfer to any trust described in section 2632(c)(3)(B)(i) through (vi) will not be subject to the automatic allocation of the GST exemption. The automatic allocation under section 2632(c) also applies to an indirect skip occurring upon the post-2000 termination of an estate tax inclusion period.

Under section 2632(c)(5)(A)(i)(I), an individual may elect out of the deemed allocation rules so that GST exemption will not be allocated automatically to a particular transfer that is an indirect skip. Under section 2632(c)(5)(B)(i), this election out with regard to a particular indirect skip shall be deemed timely if made on a timely filed gift tax return for the calendar year in which the transfer was made, or deemed to have been made under section 2632(c)(4) with regard to trusts subject to an estate tax inclusion period, or on such later dates as may be prescribed in regulations.

Under section 2632(c)(5)(A)(i)(II), an individual may elect out of the deemed allocation rules for indirect skips so that GST exemption will not be allocated automatically to any or all transfers made to the trust by that individual, regardless of when a transfer is, or may in the future be, made. Under section 2632(c)(5)(B)(ii), this elec-

tion out with regard to any or all transfers to the trust by that individual may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Alternatively, under section 2632(c)(5)(A)(ii), an individual may elect to treat any trust as a GST trust with regard to any or all transfers made by that individual to the trust. If this election is made, the rules for the automatic allocation of the GST exemption will apply with regard to that individual's transfers to the trust, notwithstanding that the trust is described in section 2632(c)(3)(B)(i) through (vi). Under section 2632(c)(5)(B)(ii), the election to treat a trust as a GST trust may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Notice 2001-50, 2001-2 C.B. 189, states that the Treasury Department and the IRS will issue regulations providing that the election out of the automatic allocation for indirect skips and the election to treat any trust as a GST trust must be made on a timely filed federal gift tax return (which is the same rule that applies for the election out of the automatic allocation for direct skips contained in section 2632(b)(3) and §26.2632-1(b)(1)(i)).

Explanation of Provisions

Under the proposed regulations, the election out of the automatic allocation rules for indirect skips and the election to treat any trust as a GST trust are to be made on a timely filed federal gift tax return.

Under the proposed regulations, a transferor who wants to elect out of the automatic allocation rules for indirect skips has the option of electing out for the specific transfer to the GST trust, or making a single election with regard to the trust that applies to the current transfer and all subsequent transfers made by that transferor to the trust. Under the second option, once the election is made with regard to a trust, the election remains effective for all subsequent transfers to that trust by the electing transferor, until that transferor's election is terminated. Practitioners have commented that in many cases, particularly situations in which trust corpus consists of primarily insurance contracts, the transferor may not be required to file a Federal gift tax return

reporting annual transfers to a GST trust because the transfers qualify for the gift tax annual exclusion under section 2503(b). If under the terms of the trust instrument distributions to skip persons are unlikely, the transferor may choose not to allocate GST exemption to the trust. The rule in the proposed regulation is intended to alleviate the need to repeatedly file a gift tax return to elect out of the automatic allocation rules for transfers that would not otherwise require a Federal gift tax return to be filed. Thus, once the transferor "elects out" of the automatic allocation rule for indirect skips with regard to any or all transfers made by that transferor to the trust, the election out, until terminated, remains effective for all subsequent transfers made by that transferor to the trust, without any further reporting requirement on the part of the transferor. A similar rule applies with regard to the election to treat a trust as a GST trust.

Finally, the proposed regulations revise the examples illustrating the rules for allocation of GST exemption to reflect the recent statutory changes.

Proposed Effective Date

The regulations are proposed to be applicable for elections made on or after the date that the proposed regulations are published in the **Federal Register**. However, any election under section 2632(c)(5)(A) made before that date will be recognized if the election was made on a timely filed gift tax return in a manner that provided adequate notice to the Commissioner that the transferor made the election.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations

will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mayer R. Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. If you have any questions concerning these proposed regulations, please contact Mayer R. Samuels at (202) 622-3090. Other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 26 — GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Paragraph 1. The authority citation for part 26 continues to read, in part, as follows:

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

Par. 2. In §26.2600-1, the table is amended under the entries for §26.2632-1 by revising the entry for paragraph (b)(2) and adding entries for paragraphs (b)(3), (b)(4) and (e) to read as follows:

§26.2600-1 Table of contents.

* * * * *

§26.2632-1 Allocation of GST exemption.

* * * * *

(b) * * *

(2) Automatic allocation to indirect skips made after December 31, 2000.

(3) Election to treat trust as GST trust.

(4) Allocation to other transfers.

* * * * *

(e) Effective date

* * * * *

Par. 3. Section 26.2632-1 is amended as follows:

1. Paragraph (b)(2) is redesignated as paragraph (b)(4).

2. Paragraphs (b)(2) and (b)(3) are added.

3. In newly designated paragraph (b)(4)(i), the third sentence is revised.

4. In newly designated paragraph (b)(4)(ii)(A)(I), the fourth sentence is revised.

5. In newly designated paragraph (b)(4)(ii)(B):

a. All references to paragraph “(b)(2)(ii)(A)(I)(i)” are removed and “(b)(4)(ii)(A)(I)(i)” is added in its place.

b. All references to paragraph “(b)(2)(ii)(A)(I)(ii)” are removed and “(b)(4)(ii)(A)(I)(ii)” is added in its place.

c. All references to paragraph “(b)(2)(ii)(A)(I)(iii)” are removed and “(b)(4)(ii)(A)(I)(iii)” is added in its place.

6. *Examples 1 through 5* in newly designated paragraph (b)(4)(iii) are revised.

7. In paragraph (c)(1), the first sentence is removed and two sentences are added in its place.

8. In paragraph (d)(1), the fourth sentence is revised.

9. Paragraph (e) is added.

The additions and revisions read as follows:

§26.2632-1 Allocation of GST exemption.

* * * * *

(b) * * *

(2) *Automatic allocation to indirect skips made after December 31, 2000—(i) In general.* An indirect skip is a transfer of property to a GST trust as defined in section 2632(c)(3)(B) provided that the transfer is subject to gift tax and does not

qualify as a direct skip. In the case of an indirect skip made after December 31, 2000, to which section 2642(f) (relating to transfers subject to an estate tax inclusion period) does not apply, the transferor’s unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). In the case of an indirect skip to which section 2642(f) does apply, the indirect skip is deemed to be made at the close of the estate tax inclusion period and the GST exemption is deemed to be allocated at that time. The transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip, as provided in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Election to have automatic allocation rules not apply to the current transfer.* The transferor may prevent the automatic allocation of GST exemption with regard to the current indirect skip (and not to any other transfer) to a trust, or to one or more separate shares that are treated as separate trusts under §26.2654-1(a)(1), by attaching a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the transfer was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the transfer, and specifically provide that the transferor is electing, pursuant to section 2632(c)(5)(A), to have the automatic allocation rules contained in section 2632(c)(1) not apply to the described transfer to the trust (or separate share). In the case of a transfer treated as made one-half by the transferor and one-half by the transferor’s spouse under section 2513, a statement must be attached to the return filed by each transferor seeking to prevent the automatic allocation. The election will apply only with regard to the described transfer, and all subsequent transfers to the trust (or separate share) will be subject to the automatic allocation rules, unless the transferor subsequently files an election described in paragraph (b)(2)(iii) of this section, or files an election under this paragraph with regard to each transfer as additional transfers are made.

(iii) *Election to have automatic allocation rules not apply to both the current transfer and any or all future transfers*

to the trust—(A) *In general.* The transferor may prevent the automatic allocation of GST exemption to both the current transfer and any or all subsequent transfers made by the transferor to the trust or to one or more separate shares that are treated as separate trusts under §26.2654-1(a)(1). The transferor must attach a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the current transfer was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the current transfer, and specifically provide that pursuant to section 2632(c)(5)(A) the transferor is electing to have the automatic allocation rules contained in section 2632(c)(1) not apply to the described current transfer as well as all future transfers made by the transferor to the trust (or separate share). The election, unless and until terminated, will remain in effect for all future transfers made by the transferor to the trust (or separate share). No future gift tax return will have to be filed by the transferor in order to prevent the automatic allocation of the GST exemption to such future transfers.

(B) *Termination of election.* The election described in paragraph (b)(2)(iii)(A) of this section may be terminated by the transferor for transfers to the trust (or separate share) in a subsequent year by attaching a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the first transfer to which the election is not to apply was made (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust (or separate share), describe the transfer, and provide that the prior election out of the GST automatic allocation rule described in §26.2632-1(b)(2)(iii)(A) is terminated. Accordingly, the automatic allocation rules contained in section 2632(c)(1) are to apply to the described current transfer as well as to all future transfers made by the transferor to the trust (or separate share) unless and to the extent that another election under section 2632(c)(5)(A) is made in the future.

(iv) *Subsequent allocations.* Making an election under paragraph (b)(2)(ii) or (iii) of this section does not prevent the transferor from allocating the transferor's available GST exemption to a current transfer

(or, in the case of an election made under paragraph (b)(2)(iii) of this section, to any future transfer) to a trust (or separate share) either on a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) reporting the transfer, or at a later date in accordance with the provisions of paragraph (b)(4) of this section.

(3) *Election to treat trust as GST trust—(i) In general.* A transferor may elect to treat any trust as a GST trust, in which case the automatic allocation rules will apply to current and future transfers made by the electing transferor to the trust. The transferor must attach a statement to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which a transfer was made by the transferor (whether or not a Form 709 would otherwise be required for that year). The statement must identify the trust, describe the current transfer, and specifically provide that, pursuant to section 2632(c)(5)(A)(ii), the transferor is electing to have the trust treated as a GST trust as defined in section 2632(c)(3)(B). As a result of this election, the current transfer and all future transfers made by the transferor to the trust will be indirect skips as defined in paragraph (b)(2)(i) of this section to which the transferor's unused GST exemption will be automatically allocated in accordance with paragraph (b)(2) of this section. The election will remain in effect for all future transfers made by the transferor to the trust unless and until terminated (as described below).

(ii) *Termination of election.* The election may be terminated by the transferor in a subsequent year by attaching to a timely filed Form 709 (as defined in paragraph (b)(1)(ii) of this section) for the calendar year in which the first transfer to which the election is not to apply was made (whether or not a Form 709 would otherwise be required for the year), a statement identifying the trust, describing the current transfer, and providing that the prior election to treat the trust as a GST trust as provided under §26.2632-1(b)(3)(i) is terminated. Accordingly, if the trust does not satisfy the definition of a GST trust, the automatic allocation rules contained in section 2632(c)(1) will not apply to the described current transfer or to any future transfers made by the transferor to the trust, unless and until another election under section 2632(c)(5)(A) is made in the future.

(4) *Allocation to other transfers—(i) In general.* * * * See paragraph (b)(4)(ii) of this section. * * *

(ii) *Effective date of allocation—(A) In general.* (I) * * * For purposes of this paragraph (b)(4)(ii), the Form 709 is deemed filed on the date it is postmarked to the Internal Revenue Service address as directed in forms or other guidance published by the Service. * * *

* * * * *

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b):

Example 1. Modification of allocation of GST exemption. On December 1, 2003, T transfers \$100,000 to an irrevocable GST trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 2004. On February 10, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) with respect to the transfer in accordance with paragraph (b)(2)(ii) of this section, and allocates \$50,000 of GST exemption to the trust. On April 13th of the same year, T files an additional Form 709 on which T confirms the election out of the automatic allocation rules contained in section 2632(c)(1) and allocates \$100,000 of GST exemption to the trust in a manner that clearly indicates the intention to modify and supersede the prior allocation with respect to the 2003 transfer. The allocation made on the April 13 return supersedes the prior allocation because it is made on a timely-filed Form 709 that clearly identifies the trust and the nature and extent of the modification of GST exemption allocation. The allocation of \$100,000 of GST exemption to the trust is effective as of December 1, 2003. The result would be the same if the amended Form 709 decreased the amount of the GST exemption allocated to the trust.

Example 2. Modification of allocation of GST exemption. The facts are the same as in *Example 1*, except on July 8, 2004, T files a Form 709 attempting to reduce the earlier allocation. The return is not a timely filed return. The \$100,000 GST exemption allocated to the trust, as amended on April 13, 2004, remains in effect because an allocation, once made, is irrevocable and may not be modified after the last date on which a timely filed Form 709 can be filed.

Example 3. Effective date of late allocation of GST exemption. On December 1, 2003, T transfers \$100,000 to an irrevocable GST trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 2004. On February 10, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) in accordance with paragraph (b)(2)(ii) of this section with respect to that transfer. On December 1, 2004, T files a Form 709 and allocates \$50,000 to the trust. The allocation is effective as of December 1, 2004.

Example 4. Effective date of late allocation of GST exemption. T transfers \$100,000 to a GST trust on December 1, 2003, in a transfer that is not a di-

rect skip. On April 15, 2004, T files a Form 709 on which T properly elects out of the automatic allocation rules contained in section 2632(c)(1) with respect to the entire transfer in accordance with paragraph (b)(2)(ii) of this section and T does not make an allocation of any GST exemption on the Form 709. On September 1, 2004, the trustee makes a taxable distribution from the trust to T's grandchild in the amount of \$30,000. Immediately prior to the distribution, the value of the trust assets was \$150,000. On the same date, T allocates GST exemption to the trust in the amount of \$50,000. The allocation of GST exemption on the date of the transfer is treated as preceding in point of time the taxable distribution. At the time of the GST, the trust has an inclusion ratio of .6667 (1 - (50,000/150,000)).

Example 5. Automatic allocation to split-gift. On December 1, 2003, T transfers \$50,000 to an irrevocable GST Trust described in section 2632(c)(3)(B). The transfer to the trust is not a direct skip. On April 30, 2004, T and T's spouse, S, each files an initial gift tax return for 2003, on which they consent, pursuant to section 2513, to have the gift treated as if one-half had been made by each. Previously, neither T nor S filed a timely gift tax return electing out of the automatic allocation rules contained in section 2632(c)(1). As a result of the election under section 2513, which is retroactive to the date of T's transfer, T and S are each treated as the transferor of one-half

of the property transferred in the indirect skip. Thus, \$25,000 of T's unused GST exemption and \$25,000 of S's unused GST exemption is automatically allocated to the trust. Both allocations are effective on and after the date that T made the transfer. The result would be the same if T's transfer constituted a direct skip subject to the automatic allocation rules contained in section 2632(b).

(c) *Special rules during an estate tax inclusion period*—(1) *In general.* An allocation of GST exemption (including an automatic allocation to a direct skip, but not an indirect skip) to property subject to an estate tax inclusion period (ETIP) cannot be revoked, but becomes effective no earlier than the date of any termination of the ETIP with respect to the trust. See paragraph (b)(2)(i) of this section regarding the automatic allocation of GST exemption to an indirect skip subject to an ETIP. * * *

(d) *Allocations after the transferor's death*—(1) * * * A late allocation of GST exemption by an executor, other than an allocation that is deemed to be made under

section 2632(b)(1) or (c)(1), with respect to a lifetime transfer of property is made on Form 706, Form 706NA, or Form 709 (filed on or before the due date of the transferor's estate tax return) and is effective as of the date the allocation is filed. * * *

(e) *Effective Date.* Paragraphs (b)(2) and (b)(3), the third sentence of paragraph (b)(4)(i), the fourth sentence of paragraph (b)(4)(ii)(A), paragraph (b)(4)(iii), the first two sentences of paragraph (c)(1), and the fourth sentence of paragraph (d)(1) of this section, when published as final regulations, will apply as of July 13, 2004.

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

(Filed by the Office of the Federal Register on July 12, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 13, 2004, 69 F.R. 42000)

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

Announcement 2004-63

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

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

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

Under Title 31, Code of Federal Regulations, Part 10, after notice and an oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Banister, Joseph R.	San Jose, CA	CPA	June 25, 2004

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

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Stukes, Donald A.	Pound Ridge, NY	CPA	May 13, 2004 to May 11, 2005
Moore, Earl	Riverview, FL	CPA	March 26, 2004 to March 24, 2006

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled ac-

tuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Bell, Don W.	Grand Junction, CO	Enrolled Agent	Indefinite from April 1, 2004
Lentz, Carole A.	Mastic, NY	Enrolled Agent	Indefinite from April 23, 2004
Cummiskey Jr., Edward R.	Warwick, NY	Enrolled Agent	Indefinite from April 23, 2004
Goble, Dennis R.	Valparaiso, IN	CPA	Indefinite from April 26, 2004
Grant, Elaine C.	Woodway, WA	Enrolled Agent	May 1, 2004 to October 31, 2004
Rivera, Eduardo M.	Torrence, CA	Attorney	May 1, 2004 to October 29, 2006
Masengale, Thomas J.	Indianapolis, IN	Enrolled Agent	Indefinite from May 1, 2004

Name	Address	Designation	Date of Suspension
Cohick, Jeffrey S.	Newville, PA	Enrolled Agent	May 1, 2004 to October 30, 2004
Bach, Royce E.	Deer Park, TX	Enrolled Agent	Indefinite from May 27, 2004
McMillin, Juanell	Austin, TX	Enrolled Agent	Indefinite from May 28, 2004
Silva, Hesmeregildo V.	Livermore, CA	Enrolled Agent	Indefinite from May 28, 2004
Grossman, Richard	Durham, NC	Attorney	Indefinite from June 1, 2004
Schnieders, Joseph A.	St. Louis, MO	Enrolled Agent	Indefinite from June 1, 2004
Rahn, Miriam C.	Hutchinson, MN	Enrolled Agent	Indefinite from June 8, 2004
Tarantur, Dale B.	Glenview, IL	CPA	Indefinite from June 15, 2004
Derby, Mark	West Newton, MA	CPA	Indefinite from June 15, 2004
Miller, Winfred J.	Harrisonburg, VA	CPA	Indefinite from June 30, 2004
Croom, John A.	Austin, TX	CPA	Indefinite from July 1, 2004
Dion, Paul	Middletown, RI	CPA	Indefinite from July 8, 2004
Todd, Debra R.	Leander, TX	Enrolled Agent	Indefinite from August 30, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

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

Name	Address	Designation	Date of Suspension
Somerville, Sally L.	Havre de Grace, MD	Attorney	Indefinite from May 3, 2004
Simon, Laurence M.	Englishtown, NJ	CPA	Indefinite from May 10, 2004
Taylor, Joelle T.	Carolina Beach, NC	CPA	Indefinite from May 10, 2004
Becker, Joseph C.	Austin, TX	CPA	Indefinite from May 10, 2004
Maffongelli Jr., Joseph	Montclair, NJ	Attorney	Indefinite from May 10, 2004
Lence, John A.	Kalispell, MT	CPA	Indefinite from May 21, 2004
McWade, Kenneth W.	Kaliua, HI	Attorney	Indefinite from June 9, 2004
Sims, William A.	Sausalito, CA	Attorney	Indefinite from June 9, 2004
Sommer, Peter J.	Baltimore, MD	Attorney	Indefinite from June 21, 2004
Eisenberg, Alan D.	Whitefish Bay, WI	Attorney	Indefinite from June 21, 2004
Litwin, Martin E.	Highland Park, IL	Attorney	Indefinite from June 21, 2004
Kiernat, Bruce E.	St. Paul, MN	Attorney	Indefinite from July 1, 2004

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

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

Name	Address	Date of Resignation
Murphy, Claire A.	Viera, FL	May 10, 2004
Murphy, John W.	Viera, FL	May 10, 2004

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Clifton, Michael J.	Augusta, KS	CPA	May 12, 2004
Flaherty, Patrick J.	Traverse City, MI	CPA	May 19, 2004
Monroy, Frances	Petaluma, CA	Enrolled Agent	May 27, 2004
Pearson, Michael N.	Houston, TX	Enrolled Agent	June 7, 2004

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2004–1 through 2004–26 is in Internal Revenue Bulletin 2004–26, dated June 28, 2004.