Internal Revenue
bulletin

Bulletin No. 1999–35
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 99–36, page 319.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calender quarter beginning October 1, 1999, will be 8 percent for overpayments (7 percent in the case of corporate overpayments), 8 percent for underpayments, 5.5 percent for the portion of a corporate overpayment exceeding $10,000, and 10 percent for large corporate underpayments.

T.D. 8832, page 315.

Final regulations under section 3221 of the Code relate to the exception from the supplemental annuity tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and to a related excise tax with respect to employees for whom the exception applies.

T.D. 8835, page 317.

REG–105237–99, page 331.

Proposed, temporary, and final regulations under section 6109 of the Code relate to alternative identifying numbers for income tax preparers.

Notice 99–34, page 323.

Treasury depreciation study: request for public comment. This notice invites public comment relating to the current depreciation system under section 168 of the Code. The Treasury Department will review and consider all comments received in response to this notice in preparing the depreciation study as directed in the Tax and Trade Relief Extension Act of 1998.

Notice 99–41, page 325.

Timely filing or payment; private delivery services. An updated list of designated private delivery services is provided for purposes of section 7502 of the Code. The list remains unchanged from previous list published in Notice 98–47, 1998–37 I.R.B. 8. Rev. Proc. 97–19, 1997–1 C.B. 644, and Notice 97–26, 1997–1 C.B. 413, are modified.

EMPLOYEE PLANS

Notice 99–40, page 324.

Certain governmental plans; nondiscrimination rules. The effective date of the nondiscrimination rules for certain governmental plans within the meaning of section 414(d) of the Code is described. Notice 96–64 is modified.

Notice 99–44, page 326.

Limitations on contributions and benefits; qualified plans. A notice describes the implementation of section 1452 of the Small Business Job Protection Act of 1996 that repealed section 415(e) of the Code for limitation years beginning after December 31, 1999. As a result of the statutory change, an employer is no longer required to maintain a limitation on contributions and benefits as defined in section 415(e).

EXEMPT ORGANIZATIONS

Announcement 99–87, page 333.

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

ADMINISTRATIVE

Notice 99–42, page 325.

Federal tax deposits; payments; magnetic media. This notice advises taxpayers of the termination of the Internal Revenue Service magnetic tape program for the reporting of federal tax deposits and certain established income tax payments effective with respect to deposits or payments made after January 31, 2000.

Announcement 99–86, page 332.

This document contains corrections to final regulations (T.D. 8823) regarding certain deductions and losses, including built-in deductions and losses, of members who join a consolidated group.

Finding Lists begin on page ii.
Actions Relating to Court Decisions begin on page 314.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Actions Relating to Court Decisions

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

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

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

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

The announcements published in the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year, and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decisions:

Internal Revenue Service v. Waldschmidt (In re Bradley),[1]
(M.D. Tenn. 1999)

Estate of Mellinger v. Commissioner,[2] 112 T.C. 4 (1999)

Hospital Corp. of America and Subsidiaries v. Commissioner,[3]
109 T.C. 21 (1997)

Boyd Gaming Corporation v. Commissioner,[4]
F.3d (9th Cir. 1999)

The Commissioner NONACQUIESCES in the following decisions:

Vulcan Materials Company and Subsidiaries v. Commissioner,[5]
96 T.C. 410 (1991)

St. Jude Medical, Inc. v. Commissioner,[6]
34 F.3d 1394 (8th Cir. 1994)

Hospital Corp. of America and Subsidiaries v. Commissioner,[7]
109 T.C. 21 (1997)

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[1] Acquiescence in result only relating to whether gain on the sale of the debtor's residence is excluded from gross income of the bankruptcy estate to the extent provided by I.R.C. §121 and in accord with section 1398.

[2] Acquiescence in result only relating to whether, for estate tax valuation purposes, a minority interest in a closely-held corporation held in a Qualified Terminable Interest Property (QTIP) trust, which is includible in the gross estate under I.R.C. §2044, is aggregated with a minority interest in the same corporation that is includible in a decedent's gross estate under other provisions of the Code.

[3] Acquiescence in result only relating to whether the tests developed under the investment tax credit (ITC) prior to the 1981 adoption of the cost recovery system are applicable in determining a structural component for the purposes of Accelerated Cost Recovery System (ACRS) and Modified Accelerated Cost Recovery System (MACRS).

[4] Acquiescence in result only relating to whether a meal furnished by the taxpayer/employer on its business premises to an employee is furnished for "the convenience of the employer" within the meaning of that phrase in section 119 of the Internal Revenue Code.

[5] Nonacquiescence in result only relating to whether the term "accumulated profits" as used in the denominator of the section 902 deemed paid credit fraction before the Tax Reform Act of 1986 means all of a foreign corporation's accumulated profits for the taxable year. This revised action on decision clarifies the Service's position on this issue in cases appealable to the 11th Circuit.

[6] Nonacquiescence in result only relating to whether section 1.861–8(e)(3) of the Income Tax Regulations is invalid as applied to DISC combined taxable income (CTI) calculations.

[7] Nonacquiescence in result only relating to whether certain items treated as tangible personal property and depreciated over a 5-year recovery period were in fact structural components of the buildings to which they relate which must be depreciated over the same recovery period as the buildings, pursuant to I.R.C. § 168.

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

Section 3221.—Rate of Tax

26 CFR 31.3221–4: Exception from supplemental tax.

T.D. 8832

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 31

Exception From Supplemental Annuity Tax on Railroad Employers

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to employers covered by the Railroad Retirement Tax Act. The Railroad Retirement Tax Act imposes a supplemental tax on those employers, at a rate determined by the Railroad Retirement Board, to fund the Railroad Retirement Board's supplemental annuity benefit. These regulations provide rules for applying the exception from the supplemental annuity tax with respect to employees covered by a supplemental pension plan established pursuant to a collective bargaining agreement and for applying a related excise tax with respect to employees for whom the exception applies.

DATES: *Effective Date:* These regulations are effective August 6, 1999.

Applicability Date: These regulations generally apply beginning on October 1, 1998, except as provided in §31.3221–4(e)(2).

FOR FURTHER INFORMATION CONTACT: Linda S. F. Marshall, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR Part 31) under section 3221(d). On September 23, 1998, REG–209769–95, 1998–41 I.R.B. 8, was published in the **Federal Register** (63 F.R. 50819) under section 3221(d). The proposed regulations provide guidance regarding the section 3221(d) exception from the tax imposed under section 3221(c) with respect to employees covered by a supplemental pension plan of the employer established pursuant to an agreement reached through collective bargaining. Two written comments were received on the proposed regulations. A public hearing was held on the proposed regulations on January 20, 1999. After consideration of the comments, the proposed regulations under section 3221(d) are adopted as revised by this Treasury decision.

Under the Railroad Retirement Act of 1974, as amended, codified at 45 U.S.C. 231 et seq., if an employee has performed at least 25 years of covered service with the railroad industry, including service with the railroad industry before October 1, 1981, the Railroad Retirement Board (RRB) will pay the employee a supplemental annuity at retirement. The monthly amount of the supplemental annuity ranges from $23 to $43, based on the employee's number of years of service. See 45 U.S.C. 231b(e). Under 45 U.S.C. 231a(h)(2), the employee's supplemental annuity is reduced by the amount of payments received by the employee from any plan determined by the RRB to be a supplemental pension plan of the employer, to the extent those payments are derived from employer contributions.

Section 3221(c) imposes a tax on each railroad employer to fund the supplemental annuity benefits payable by the RRB. The tax imposed under section 3221(c) is based on work-hours for which compensation is paid. The RRB establishes the rate of tax under section 3221(c) quarterly, and calculates the rate to generate sufficient tax revenue to fund the RRB's current supplemental annuity obligations.

Under section 3221(d), the tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan established pursuant to an agreement reached through collective bargaining between the employer and employees. However, if an employee for whom the employer is relieved of any tax under the section 3221(d) exception becomes entitled to a supplemental annuity from the RRB, the employer is subject to an excise tax equal to the amount of the supplemental annuity paid to the employee (plus a percentage determined by the RRB to be sufficient to cover administrative costs attributable to those supplemental annuity payments).

Section 3221(d) was enacted by Public Law 91–215, 84 Stat. 70, which amended the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act. The legislative history to Public Law 91–215 indicates that the exception under section 3221(d) from the tax imposed under section 3221(c) was "directed primarily at the situation existing on certain short-line railroads which are owned by the steel companies. The employees of these lines are, for the most part, covered by other supplemental pension plans established pursuant to collective bargaining agreements between the steel companies and the unions representing the majority of their employees. * * * [T]hese railroads will no longer be required to pay a tax to finance the supplemental annuity fund, but will be required to reimburse the Railroad Retirement Board for any supplemental annuities that their employees may be paid upon retirement." S. Rep. 91–650, 91st Cong., 2d Sess. 6 (February 3, 1970).

Explanation of Provisions

These regulations retain the rules set forth in the proposed regulations for determining whether a plan is a supplemental pension plan established pursuant to an agreement reached through collective bargaining. Under these regulations, a plan is a supplemental pension plan only if the plan is a pension plan within the meaning of §1.401–1(b)(1)(i). Under this definition, a plan is a pension plan only if the plan is established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Thus, for example, a plan generally is not a supplemental pension plan if distributions from the plan that are attributable to employer contributions may be made prior to a participant's death, disability, or termination

of employment. See Rev. Rul. 74–254 (1974–1 C.B. 90); Rev. Rul. 56–693 (1956–2 C.B. 282). A pension plan that is tax-qualified under section 401(a) is subject to special rules with respect to joint and survivor benefits under sections 401(a)(11) and 417.

One commentator requested clarification that these regulations do not preclude a plan from being a supplemental pension plan merely because the plan provides for a single sum distribution form (in addition to providing for periodic payments as described above). A plan is not precluded from being a pension plan within the meaning of §1.401–1(b)(1)(i) merely because it provides for a single sum distribution form in addition to providing for the required periodic payment forms. See section 417(e)(1) and (2). Thus, the availability of a single sum distribution form (offered in addition to the periodic payment form or forms described above) does not preclude a plan from being a supplemental pension plan under these regulations.

Another commentator requested clarification that a plan in which the employer contribution is discretionary or conditioned on contributions made at the election of employees pursuant to a qualified cash or deferred arrangement described in section 401(k)(2) could not qualify as a supplemental pension plan under section 3221(d) and the regulations. A plan that provides for discretionary employer contributions cannot be a pension plan under §1.401(b)–1(b)(1)(i) because it does not provide for the payment of definitely determinable benefits. Under section 401(k)(1), a qualified cash or deferred arrangement under section 401(k) must be part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan. Thus, a plan that provides for a section 401(k) qualified cash or deferred arrangement with employer matching contributions cannot be a pension plan under §1.401(b)– 1(b)(1)(i) (unless the plan is a pre-ERISA money purchase plan or a rural cooperative plan). Thus, apart from these narrow exceptions for certain pre-ERISA and rural cooperative plans, neither of the types of plans noted by the commentator could qualify as supplemental pension plans under section 3221(d) and these regulations.

As provided in the proposed regulations, these regulations also require that the RRB determine that a plan is a private pension under its regulations in order for the plan to be a supplemental pension plan under section 3221(d) and these regulations. This requirement is included because the section 3221(d) exception to the section 3221(c) tax is based on the assumption that any participant for whom the exception applies will receive a reduced supplemental annuity because of the supplemental pension plan on account of which the section 3221(c) tax is eliminated.

These regulations also retain the rules set forth in the proposed regulations for determining whether a plan is established pursuant to a collective bargaining agreement with respect to an employee. These rules generally follow the rules applicable to qualified plans for this purpose. Under these regulations, a plan is established pursuant to a collective bargaining agreement with respect to an employee only if the employee is included in the collective bargaining unit covered by the collective bargaining agreement.

One commentator maintained that employers should also be exempted from supplemental annuity tax with respect to nonbargaining unit employees covered by a plan that is the subject of collective bargaining. The IRS and Treasury Department have determined that it is inappropriate to extend the exception to nonbargaining unit employees. This determination is consistent with the RRB's administrative rulings. As noted below, the final regulations include a delayed effective date for this requirement.

Section 3221(d) imposes an excise tax equal to the amount of the supplemental annuity paid to any employee with respect to whom the employer has been excepted from the section 3221(c) excise tax under the section 3221(d) exception. These regulations retain the rules set forth in the proposed regulations for applying this excise tax under section 3221(d).

Effective Date

These regulations generally apply beginning on October 1, 1998, as provided in the proposed regulations. However, the IRS and Treasury have determined that it is appropriate to provide a delayed applicability date with respect to the portion of the final regulations clarifying what constitutes a plan established pursuant to a collective bargaining agreement with respect to an employee for purposes of section 3221(d). Accordingly, the final regulations provide that the definition in §31.3221–4(c) applies beginning on January 1, 2000.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31–EMPLOYMENT TAXES AND COLLECTION OF INCOME AT SOURCE

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

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

Par. 2. Section 31.3221-4 is added under the undesignated center heading "Tax on Employers" to read as follows:

§31.3221–4 Exception from supplemental tax.

(a) *General rule.* Section 3221(d) provides an exception from the excise tax imposed by section 3221(c). Under this exception, the excise tax imposed by section 3221(c) does not apply to an employer with respect to employees who are covered by a supplemental pension plan, as defined in paragraph (b) of this section, that is established pursuant to an agreement reached through collective bargaining between the employer and employees, within the meaning of paragraph (c) of this section.

(b) *Definition of supplemental pension plan*–(1) *In general.* A plan is a supplemental pension plan covered by the section 3221(d) exception described in paragraph (a) of this section only if it meets the requirements of paragraphs (b)(2) through (b)(4) of this section.

(2) *Pension benefit requirement.* A plan is a supplemental pension plan within the meaning of this section only if the plan is a pension plan within the meaning of §1.401–1(b)(1)(i) of this chapter. Thus, a plan is a supplemental pension plan only if the plan provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. A plan need not be funded through a qualified trust that meets the requirements of section 401(a) or an annuity contract that meets the requirements of section 403(a) in order to meet the requirements of this paragraph (b)(2). A plan that is a profit-sharing plan within the meaning of §1.401–1(b)(1)(ii) of this chapter or a stock bonus plan within the meaning of §1.401–1(b)(1)(iii) of this chapter is not a supplemental pension plan within the meaning of this paragraph (b).

(3) *Railroad Retirement Board determination with respect to the plan.* A plan is a supplemental pension plan within the meaning of this paragraph (b) with respect to an employee only during any period for which the Railroad Retirement Board has made a determination under 20 CFR 216.42(d) that the plan is a private pension, the payments from which will result in a reduction in the employee's supplemental annuity payable under 45 U.S.C. 231a(b). A plan is not a supplemental pension plan for any time period before the Railroad Retirement Board has made such a determination, or after that determination is no longer in force.

(4) *Other requirements.* [Reserved]

(c) *Collective bargaining agreement.* A plan is established pursuant to a collective bargaining agreement with respect to an employee only if, in accordance with the rules of §1.410(b)–6(d)(2) of this chapter, the employee is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

(d) *Substitute section 3221(d) excise tax.* Section 3221(d) imposes an excise tax on any employer who has been excepted from the excise tax imposed under section 3221(c) by the application of section 3221(d) and paragraph (a) of this section with respect to an employee. The excise tax is equal to the amount of the supplemental annuity paid to that employee under 45 U.S.C. 231a(b), plus a percentage thereof determined by the Railroad Retirement Board to be sufficient to cover the administrative costs attributable to such payments under 45 U.S.C. 231a(b).

(e) *Effective date*–(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies beginning on October 1, 1998.

(2) *Delayed effective date for collective bargaining agreement provisions.* Paragraph (c) of this section applies beginning on January 1, 2000.

John M. Dalrymple,
Acting Deputy Commissioner of Internal Revenue.

Approved July 27, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 5, 1999, 8:45 a.m., and published in the issue of the Federal Register for August 6, 1999, 64 F.R. 42831)

Section 6109.—Identifying Numbers

26 CFR 1.6109–2: Furnishing identifying number of income tax return preparer.

T.D. 8835

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Furnishing Identifying Number of Income Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations that allow income tax return preparers to elect an alternative to their social security number (SSN) for purposes of identifying themselves on returns they prepare. The regulations are needed to implement changes made to the applicable law by the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect individual preparers who elect to identify themselves using a number other than their SSN. The text of the temporary regulations also serves as the text of the proposed regulations set forth in REG–105237–99, see page 331.

DATES: *Effective Date:* These regulations are effective August 12, 1999.

Applicability Date: For dates of applicability of these regulations, see §§1.6109–2(d) and 1.6109–2T(d).

FOR FURTHER INFORMATION CONTACT: Andrew J. Keyso, (202) 622-4910 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 6109(a)(4) of the Internal Revenue Code provides that any return or claim for refund prepared by an income tax return preparer must bear the identifying number of the preparer as required by regulations prescribed by the Secretary. Prior to its amendment by the Internal Revenue Service Restructuring and Re-

form Act of 1998 (Public Law 105–206, 112 Stat. 685 (RRA '98)), section 6109(a) provided that the identifying number of an individual preparer was that preparer's social security number (SSN).

Section 3710 of RRA '98 amended section 6109(a) by removing the requirement that an individual preparer's identifying number be the preparer's SSN. Instead, the Secretary may prescribe alternatives to the SSN for purposes of identifying individual preparers.

Explanation of Provisions

On December 21, 1998, the IRS published Notice 98–63, 1998–51 IRB 15, to inform preparers of the IRS's intention to develop a system of alternative identifying numbers. This document contains amendments to the Income Tax Regulations (26 CFR part 1) to allow individual preparers to either use their SSN or elect an alternative identifying number for purposes of identifying themselves on returns they prepare. The IRS will develop a form on which preparers may apply for an alternative identifying number.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register.** Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Andrew J. Keyso, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6109–2 is amended by:

1. Revising the first sentence of paragraph (a) introductory text;

2. Adding paragraph (d).

The revision and addition read as follows:

§1.6109–2 Furnishing identifying number of income tax return preparer.

(a) *Furnishing identifying number.* For returns or claims for refund filed prior to January 1, 2000, each return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must bear the identifying number of the preparer required by §1.6695–1(b) to sign the return or claim for refund. * * *

* * * * *

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed prior to January 1, 2000. For returns or claims for refund filed after December 31, 1999, see §1.6109–2T(a).

Par. 3. Section 1.6109–2T is added to read as follows:

§1.6109–2T Furnishing identifying number of income tax return preparer (temporary).

(a) *Furnishing identifying number.* (1) Each return of tax, or claim for refund of tax, under subtitle A of the Internal Revenue Code prepared by one or more income tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or employer must also appear on the return or claim for refund. For the definition of the term income tax return preparer (or preparer) see section 7701(a)(36) and §301.7701–15 of this chapter.

(2) The identifying number of a preparer who is an individual (not described in paragraph (a)(3) of this section) is that individual's social security account number, or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a preparer (whether an individual, corporation, or partnership) who employs or engages one or more persons to prepare the return or claim for refund (other than for the preparer) is that preparer's employer identification number.

(b) and (c) [Reserved]. For further guidance, see §1.6109–2(b) and (c).

(d) *Effective date.* Paragraph (a) of this section and this paragraph (d) apply to returns or claims for refund filed after December 31, 1999. For returns or claims for refund filed prior to January 1, 2000, see §1.6109–2(a).

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved August 3, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 11, 1999, 8:45 a.m., and published in the issue of the Federal Register for August 12, 1999, 64 F.R. 43910)

Section 6621.— Determination of Interest Rate

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calender quarter beginning October 1,

1999, will be 8 percent for overpayments (7 percent in the case of corporate overpayments), 8 percent for underpayments, 5.5 percent for the portion of a corporate overpayment exceeding $10,000, and 10 percent for large corporate underpayments.

Rev. Rul. 99-36

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning October 1, 1999, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See § 6621(c) and § 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of July 1999 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning October 1, 1999. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning October 1, 1999, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 1999, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95–17, 1995–1 C.B. 556, 570, 573, 575, and 579.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Bailey on (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 – PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 – PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS—Continued

FROM JANUARY 1, 1991 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 - PRESENT

	RATE	1995–1 C.B TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570

Part III. Administrative, Procedural, and Miscellaneous

Treasury Depreciation Study: Request for Public Comment

Notice 99–34

PURPOSE

As directed by Congress in the Tax and Trade Relief Extension Act of 1998 (the Act), the Treasury Department is conducting a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code. This notice invites public comment on the determination of depreciation recovery periods and methods. The Treasury Department will review and consider all comments and other information received in response to this notice in preparing its depreciation study.

BACKGROUND

Section 167 provides for a depreciation deduction representing a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business, or property held for the production of income.

Section 168 provides a modified Accelerated Cost Recovery System (MACRS) for determining depreciation deductions for most tangible property placed in service after December 31, 1986. Section 168(e) classifies tangible property into a number of asset types based on either a specific statutory provision or the property's class life. The class life of tangible property is determined with reference to the list of class lives provided by the Treasury Department that was in effect as of January 1, 1986, now listed in Rev. Proc. 87–56, 1987–2 C.B. 674. A property's classification determines the applicable depreciation method under section 168(b), recovery period under section 168(c), and first-year convention under section 168(d) that are used to calculate the property's allowable depreciation deductions.

Special recovery periods and methods apply in certain situations. In particular, section 168(g) establishes an Alternative Depreciation System (ADS) for certain property, including tangible property used predominantly outside the United States, tax-exempt use property, tax-exempt bond financed property, and property for which an election is made to use the ADS. The ADS specifies use of the straight-line method with alternative recovery periods (generally equal to the property's class life) for calculating allowable depreciation deductions. The ADS also is used to determine depreciation allowances for most tangible property for the purpose of computing corporate earnings and profits (section 312(k)(3)).

Section 205 of the Act directed the Secretary of the Treasury (or the Secretary's delegate) to conduct a comprehensive study of the recovery periods and depreciation methods under section 168. The Secretary is directed to submit the results of the study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than March 31, 2000.

REQUEST FOR PUBLIC COMMENT

In accordance with the Act's directive to study depreciation recovery periods and methods, the Treasury Department's Office of Tax Analysis (OTA) requests public comment and information relating to problems encountered under current law. OTA also seeks recommendations for possible improvements to the current system.

OTA is specifically interested in information pertaining to alternative approaches to measuring asset depreciation and in alternative frameworks for analyzing current issues in depreciation. Where appropriate, each public submission should include an analysis (with supporting data) that informs OTA on specific depreciation issues. Issues may include, but need not be limited to, the following: (1) principles that should govern the classification of tangible depreciable property, (2) the meaning of a class life and the method or methods that should be used to estimate class lives, (3) the institutions and procedures under which asset class definitions and class lives should be reviewed and (if necessary) modified, (4) methods by which class lives should be estimated for newly developing industries (where historical data may not be available), (5) the rules under which depreciation recovery periods and methods should be derived from asset class lives, (6) the application of the methods used to compute depreciation allowances, and (7) situations in which the application of the current section 168 approach is inappropriate or unnecessary for the determination of a reasonable measure of tangible property depreciation.

Because the Treasury Department was directed to provide general recommendations for determining depreciation recovery periods and methods in a more rational manner, the study is not intended to recommend specific changes in particular current class lives, recovery periods, or depreciation methods. Thus, this notice is an invitation to the public to submit information, including specific examples, that will highlight general problems with the current depreciation system, rather than narrower problems with respect to particular class lives or types of property. It is also a request for analysis and commentary that can lead to improvements that will cause depreciation allowances to better reflect the actual reductions in tangible asset values over time or that reduce taxpayer compliance and IRS administrative burdens.

Taxpayers should be aware that all comments and information submitted are subject to public disclosure. Consideration will be given to all submissions received by November 1, 1999.
Written submissions should be sent to:

Depreciation Study
Office of Tax Analysis
Room 4217, Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Alternatively, comments may be submitted through the Internet to: *taxpolicy@do.treas.gov.* The Internet e-mail *subject line must include* "Depreciation Study".

DRAFTING INFORMATION

The principal author of this notice is David Brazell, Financial Economist, Office of Tax Analysis. For further information regarding this notice, please contact

Mr. Brazell on (202) 622-1786 (not a toll-free call).

Extension of Relief Relating to Application of Nondiscrimination Rules for Certain Governmental Plans

Notice 99–40

I. PURPOSE

This notice provides that certain governmental plans shall be deemed to satisfy § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) of the Internal Revenue Code until the first day of the first plan year beginning on or after January 1, 2001. In accordance with this relief, the regulations relating to these provisions do not apply until plan years beginning after that date. This relief is available with respect to governmental plans within the meaning of § 414(d) other than plans of State and local governments or political subdivisions, agencies or instrumentalities thereof. This relief is provided in light of difficulties, which are unique to the governmental employers that maintain these plans, in determining compliance with the nondiscrimination requirements. See § 3.07 of Rev. Proc. 99–23, 1999–16 I.R.B. 5, for the remedial amendment period for disqualifying provisions of these plans relating to these nondiscrimination and other requirements.

II. BACKGROUND

A. Governmental Plans

Section 414(d) of the Code provides that the term "governmental plan" means a plan established and maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 (the "Act") applies and which is financed by contributions under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

Section 1505 of the Taxpayer Relief Act of 1997 ("TRA '97") generally provides that the nondiscrimination rules do not apply to State and local governmental plans. In particular, § 1505 amended the Code to provide that § 401(a)(3), 401(a)(4), and 401(a)(26) shall not apply to such plans. Section 1505 of TRA '97 amended § 401(k) of the Code to provide that State and local governmental plans shall be treated as meeting the requirements of § 401(k)(3). In addition, § 1505(a)(3) of TRA '97 amended § 410(c) of the Code to provide that governmental plans shall be treated as meeting the requirements of § 410 for purposes of § 401(a). This amendment to § 410(c), by its terms, is not limited to State and local governmental plans but applies to all governmental plans within the meaning of § 414(d).

B. Administrative Guidance

The nondiscrimination requirements under the Code were substantially changed by the Tax Reform Act of 1986 (TRA '86). Announcement 95–48, 1995–23 I.R.B. 13, and Notice 96–64, 1996–2 C.B. 229, provided that the regulations under §§ 401(a)(4), 401(a)(26), 410(b) and 414(s) apply, in the case of governmental plans described in § 414(d), to plan years beginning on or after the later of January 1, 1999, or 90 days after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously ("1999 legislative date"). Notice 96–64 also provided that the regulations under § 401(k) and (m) apply to governmental plans only for plan years beginning on or after the later of October 1, 1997, or 90 days after the opening of the first legislative session beginning on or after October 1, 1997, of the governing body with authority to amend the plan, if that body does not meet continuously. For plan years beginning before the applicable effective date, governmental plans are deemed to satisfy §§ 401(a)(4), 401(a)(26), 401(k), 401(m), 410(b), and 414(s).

Section 3.07 of Rev. Proc. 99–23 extended, in the case of governmental plans described in § 414(d), the remedial amendment period under § 401(b) for certain amendments ("TRA '86 remedial amendment period") until the date described in Rev. Proc. 98–14, 1998–4 I.R.B. 22: the later of (i) the last day of the last plan year beginning before January 1, 2001, or (ii) the last day of the first plan year beginning on or after the 1999 legislative date. The amendments to which the TRA '86 remedial amendment period applies are those required to comply with TRA '86 and subsequent legislation through the Omnibus Budget Reconciliation Act of 1993.

III. EXTENSION OF RELIEF RELATING TO APPLICATION OF NONDISCRIMINATION RULES FOR CERTAIN GOVERNMENTAL PLANS

Under the relief provided by this notice, governmental plans within the meaning of § 414(d), other than those maintained by State or local governments or political subdivisions, agencies or instrumentalities thereof, shall be treated as satisfying the requirements of § 401(a)(4), 401(a)(26), 401(k)(3), and 401(m) until the first plan year beginning on or after January 1, 2001. In accordance with this relief, the regulations under §§ 401(a)(4), 401(a)(26), 401(m), 410(b) and 414(s), and the regulations implementing § 401(k)(3), apply to governmental plans described in this part only for plan years beginning on or after January 1, 2001.

IV. COMMENTS

Comments or suggestions regarding this notice should be addressed to CC:DOM:CORP:R (Notice 99–40), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may hand-deliver comments between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 99–40), Courier's desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or may submit comments electronically by using the following site: cynthia.grigsby@m1.irscounsel.treas.gov

V. EFFECT ON OTHER DOCUMENTS

Notice 96–64 is modified.

DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Employee Plans Division. For further information regard-

ing this notice, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074 or (202) 622-6075, between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Ms. Bloom may be reached at (202) 622-6214. These telephone numbers are not toll-free.

Designated Private Delivery Services

Notice 99–41

This notice updates the list of designated private delivery services ("designated PDSs") set forth in Notice 98–47, 1998–37 I.R.B. 8, for purposes of the "timely mailing as timely filing/paying" rule of § 7502 of the Internal Revenue Code, effective September 1, 1999. The list of designated PDSs remains unchanged. Also, this notice modifies Rev. Proc. 97–19, 1997–1 C.B. 644 and Notice 97–26, 1997–1 C.B. 413 (both previously modified by Notice 97–50, 1997–2 C.B. 305), to provide that the Service will no longer routinely publish an annual list of designated PDSs. Instead, the Service will publish a new list only when a designated PDS (or service) is being added to, or removed from, the current list.

Section 7502(f) authorizes the Secretary to designate certain PDSs for the "timely mailing as timely filing/paying" rule of § 7502. Rev. Proc. 97–19 provides the criteria currently applicable for designation of a PDS. Notice 97–26 provides special rules to determine the date that will be treated as the postmark date for purposes of § 7502. Notice 97–50, modifying Rev. Proc. 97–19 and Notice 97–26, provides that each year there will be only one application period to apply for designation, which will end on June 30th. Notice 97–50 also provides that the Service will issue a notice providing a new list of designated PDSs on or before September 1st of each year for which Rev. Proc. 97–19 is in effect.

Effective September 1, 1999, the list of designated PDSs is as follows:

1. Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, and Second Day Service;

2. DHL Worldwide Express (DHL): DHL "Same Day" Service and DHL USA Overnight;

3. Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, and FedEx 2Day; and

4. United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, and UPS 2nd Day Air A.M.

The list above remains unchanged from the list published in Notice 98–47. Airborne, DHL, FedEx, and UPS are not designated with respect to any type of delivery service not identified above.

The list of designated PDSs and services set forth above will remain in effect until further notice. The Service will publish a subsequent notice setting forth a new list only if a designated PDS (or service) is added to, or removed from, the current list. Delivery services that wish to be designated in time for an upcoming filing season must continue to submit applications by June 30th of the year preceding that filing season, as required by Rev. Proc. 97–19 (as modified by Notice 97–50). Notice 97–26 continues to provide special rules used to determine the date that will be treated as the postmark date for purposes of § 7502.

EFFECT ON OTHER DOCUMENTS

Revenue Procedure 97–19 and Notice 97–26 are modified. Notices 97–50 and 98–47 are modified and, as so modified, are superseded.

EFFECTIVE DATE

This notice is effective on September 1, 1999.

FOR FURTHER INFORMATION

The principal author of this notice is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. France at (202) 622-6232 (not a toll-free call).

Elimination of Magnetic Tape Program for Federal Tax Deposits

Notice 99–42

This notice advises taxpayers of the termination of the Internal Revenue Service magnetic tape program for the reporting of federal tax deposits and certain estimated income tax payments effective with respect to deposits or payments made after January 31, 2000.

BACKGROUND

On February 10, 1999, the Internal Revenue Service announced in the Federal Register (64 F.R. 6739) that consideration was being given to ending the program which allows certain reporting agents to transmit to the Service by magnetic tape federal tax deposit and estimated income tax information.

Rev. Proc. 89–48, 1989–2 C.B. 599, provides the requirements under which qualifying reporting agents may submit magnetic tapes to report their clients' federal tax deposit payments instead of using paper coupons (Form 8109–Federal Tax Deposit Coupon). The authorization to use magnetic tape extends only to those reporting agents who have a minimum of 200 clients and who satisfy all of the requirements of the revenue procedure.

Rev. Proc. 89–49, 1989–2 C.B. 615, provides that certain banks and financial institutions having a Treasury Tax and Loan Account (TT&L Account), and acting as fiduciaries with respect to at least 200 taxable trusts, are *required* to submit the trusts' estimated income tax payment information on magnetic tape instead of using vouchers (Form 1041-ES, Estimated Income Tax for Estates and Trusts). In addition, the revenue procedure provides that authorizations will also be extended to those fiduciaries which have at least 50 but fewer than 200 taxable trusts with or without a TT&L account and that wish to submit estimated income tax information by magnetic tape.

MAGNETIC TAPE REPORTING OF FEDERAL TAX DEPOSITS IS TERMINATED

The program under which qualifying reporting agents may submit magnetic tapes to report their clients' federal tax deposit information and under which certain fiduciaries submit magnetic tape to report trust estimated income tax payment information is terminated for federal tax deposits or estimated tax payments made after January 31, 2000.

After termination of the program, current magnetic tape filers may either use paper coupons (Form 8109), estimated tax vouchers (Form 1041-ES), or the

Electronic Federal Tax Payment System (EFTPS). If the client is required to deposit using EFTPS, the reporting agent must also use EFTPS with respect to that client. In addition, the reporting agent may voluntarily use EFTPS with respect to any other client that is voluntarily enrolled in EFTPS.

Rev. Proc. 98–32, 1998–17 I.R.B. 11, provides information about the EFTPS programs for Batch Filers and Bulk Filers. These electronic programs are used by Batch Filers and Bulk Filers (Filers) to submit enrollments, federal tax deposits, and federal tax payments on behalf of multiple taxpayers. The Bulk Filer program is recommended for Filers who anticipate making 750 or more payments on a peak day. The Batch Filer program is recommended for all other Filers who anticipate submitting 50 or more enrollments.

In addition, a Single Debit Filer application is available for banks and financial institutions that prefer to make a single payment out of one account to cover the estimated taxes of multiple trusts. Filers should consult Publication 3394, EFTPS Single Debit Guide, and Publication 3393, EFTPS Single Debit Technical Requirements, for assistance in using this program.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 89–48 and Rev. Proc. 89–49 are obsolete after January 31, 2000.

EFFECTIVE DATE

This notice is effective with respect to federal tax deposits or estimated income tax payments made after January 31, 2000.

DRAFTING INFORMATION

The principal author of this Notice is Vincent G. Surabian of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this Notice contact Mr. Surabian on (202) 622-4940 (not a toll-free call). For further information regarding alternate reporting options available to current magnetic tape users, contact Melvyn S. Barkin at (202) 283-0259 (not a toll-free call).

Section 415 Limitations on Benefits and Contributions Under Qualified Plans

Notice 99–44

I. PURPOSE

This notice provides guidance relating to the repeal of the combined limitation on defined benefit and defined contribution plans under § 415(e) of the Internal Revenue Code (the Code) made by the Small Business Job Protection Act of 1996 (SBJPA), Pub. L. 104-88. In addition, this notice provides guidance on the amendment to the definition of compensation under § 415(c)(3) made by the same act. Specifically, this notice provides questions and answers on

- Benefit increases that may be provided upon the repeal of § 415(e).
- Plan amendments that may be adopted to take into account the repeal of § 415(e).
- The treatment of the repeal of § 415(e) for purposes of applying the minimum funding standards under § 412.
- The effect of the repeal of § 415(e) and the modification of § 415(c)(3) on other qualification requirements.
- Relief under § 7805(b)(8) for certain plans that continue to use a definition of compensation under § 415(c)(3) as it existed prior to SBJPA.

II. BACKGROUND

Section 415 of the Code imposes limitations on contributions and benefits under qualified plans. Section 415(e) imposes limitations that apply to an individual who participates in both a defined benefit plan and a defined contribution plan maintained by the same employer. Section 1452(a) of SBJPA repealed § 415(e) of the Code, effective for limitation years beginning on or after January 1, 2000. The limitations of § 415(e) as in effect immediately prior to this effective date are referred to in this notice as the "pre-SBJPA § 415(e) limitations."

Section 415(c)(3) of the Code and the regulations thereunder provide a definition of compensation for purposes of computing the limitations on contributions and benefits for a participant in a qualified plan. Section 1434 of SBJPA amended § 415(c)(3) to include elective deferrals described in § 402(g)(3), and elective contributions to a § 125 cafeteria plan or a § 457(b) eligible deferred compensation plan, in a participant's compensation, effective for limitation years beginning on or after January 1, 1998.

Section 411(a) prescribes rules as to when an employee's right to his or her normal retirement benefit must become nonforfeitable under a qualified plan. Section 411(d)(6) generally prohibits a plan amendment, except for an amendment described in § 412(c)(8), that has the effect of decreasing a participant's accrued benefits under the plan.

Section 1106(h) of the Taxpayer Reform Act of 1986, Pub. L. 99–514, provides that notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury, a plan may incorporate by reference the limitations under § 415 of the Code. In Notice 87–21, 1987–1 C.B. 458, Q&A-11, the Service provided guidance for plans to incorporate by reference the limitations of § 415, for limitation years beginning on or after January 1, 1987.

Section 401(a)(4) prescribes nondiscrimination rules for qualified plans. Section 1.401(a)(4)–2 of the Income Tax Regulations imposes requirements relating to nondiscrimination in amount of employer contributions under a defined contribution plan. For this purpose, § 1.401(a)(4)–2(b) provides two safe harbor tests, and § 1.401(a)(4)–2(c) provides a general test. Plans that satisfy one of these safe harbors must provide for either a uniform allocation formula or a uniform points allocation formula as described in the regulation. Under § 1.401(a)(4)–2(b)(4)(iv), a safe-harbor plan does not fail to satisfy these uniformity requirements merely because the plan limits allocations otherwise provided under the allocation formula in accordance with the limitations of § 415.

Section 1.401(a)(4)–3 imposes requirements relating to nondiscrimination in amount of benefits under a defined benefit plan. For this purpose, § 1.401(a)(4)– 3(b) provides for several safe harbor tests, and § 1.401(a)(4)–3(c) provides a general test. To satisfy one of these safe harbors, a plan must provide for a uniform normal retire-

ment benefit, uniform post-normal retirement benefit, and uniform subsidies. Under § 1.401(a)(4)–3(b)(6)(v), a safe-harbor plan does not fail to satisfy these uniformity requirements merely because the plan limits benefits otherwise provided under the benefit formula or accrual method in accordance with the limitations of § 415. Plans that satisfy the general test may do so by testing benefits with or without the application of the § 415 limitations.

Section 401(b) specifies a remedial amendment period during which a plan may be amended retroactively, under certain circumstances, to comply with the Code's qualification requirements. Pursuant to Rev. Proc. 99–23, 1999–16 I.R.B. 5, the remedial amendment period for plan amendments relating to recent legislation for most plans has been extended until the last day of the first plan year beginning on or after January 1, 2000. Section 4 of Rev. Proc. 99–23 provides that this remedial amendment period applies to plan amendments made to implement the repeal of § 415(e).

III. QUESTIONS AND ANSWERS

Q-1: What is the effective date of the repeal of § 415(e) of the Code by § 1452(a) of SBJPA?

A-1: In accordance with § 1452(d)(1) of SBJPA, § 415(e) of the Code is repealed effective as of the first day of the first limitation year beginning on or after January 1, 2000. With respect to limitation years beginning on or after January 1, 2000, a defined contribution plan will not fail to satisfy § 415 solely because the annual additions for any participant for such years exceed the pre-SBJPA § 415(e) limitations. With respect to limitation years beginning on or after January 1, 2000, a defined benefit plan will not fail to satisfy § 415 solely because the plan provides that the benefit of any participant exceeds the pre-SBJPA § 415(e) limitations. Accordingly, the pre-SBJPA § 415(e) limitations will not limit the benefit of a participant in a defined benefit plan whose benefit has not commenced as of the first day of the first limitation year beginning on or after January 1, 2000. For rules regarding the application of the pre-SBJPA § 415(e) limitations to a participant in a defined benefit plan whose benefit has commenced as of that date, see Q&A-3 and 4.

Q-2: If a plan is not amended to take into account the repeal of § 415(e), how may the benefits of plan participants be affected?

A-2: If a plan is not amended to take into account the repeal of § 415(e), the effect on the benefits of plan participants will depend on the plan's existing provisions for applying the limitations of § 415(e) and any other relevant plan provisions. In some circumstances, a plan's existing provisions could result in automatic benefit increases for participants as of the effective date of the repeal of § 415(e) for the plan. For example, the repeal of § 415(e) could result in automatic benefit increases for participants in defined benefit plans that incorporate by reference the limitations under § 415. Similarly, the repeal of § 415(e) could result in automatic changes to annual additions for participants in defined contribution plans.

Q-3: May a defined benefit plan provide for benefit increases to reflect the repeal of § 415(e) for a current or former employee who has commenced benefits under the plan prior to the effective date of the repeal?

A-3: A defined benefit plan may provide for benefit increases to reflect the repeal of § 415(e) for a current or former employee who has commenced benefits under the plan prior to the effective date of the repeal of § 415(e) for the plan, but only if the employee or former employee is a participant in the plan on or after that effective date. For this purpose, an employee or former employee is a participant in the plan on a date if the employee or former employee has an accrued benefit (other than an accrued benefit resulting from a benefit increase that arises solely as a result of the repeal of § 415(e)) on that date. Thus, benefit increases to reflect the repeal of § 415(e) cannot be provided to current or former employees who do not have accrued benefits under the plan on or after the effective date of the repeal of § 415(e) for the plan. However, if a current or former employee accrues additional benefits under the plan that could have been accrued without regard to the repeal of § 415(e) (including benefits that accrue as a result of a plan amendment) on or after the effective date of the repeal of § 415(e) for the plan, then the current or former employee may receive a benefit arising from the repeal of § 415(e).

Q-4: How is the maximum permissible benefit increase calculated for a current or former employee who has commenced benefits under a defined benefit plan prior to the effective date of the repeal of § 415(e) for the plan?

A-4: For any limitation year beginning on or after the effective date of the repeal of § 415(e) for the plan, the benefit payable to any current or former employee who has commenced benefits under the plan prior to that date in a form not subject to § 417(e)(3) may be increased to a benefit that is no greater than the benefit that would have been permitted for that year under § 415(b) for the employee had § 415(e) not limited the benefit at the time of commencement. Thus, the annual benefit for limitation years beginning on or after the effective date of the repeal of § 415(e) for the plan is limited to the § 415(b) limitation for the employee (increased for cost-of-living-adjustments, if the plan provided for such adjustments) based on the employee's age at the time of commencement. In the case of a form of benefit that is subject to § 417(e)(3), the benefit payable for any limitation year beginning on or after the effective date of the repeal of § 415(e) for the plan may be increased by an amount that is actuarially equivalent to the amount of increase that could have been provided had the benefit been paid in the form of a straight life annuity. Whether or not the form of benefit is subject to § 417(e)(3), benefits attributable to limitation years beginning before January 1, 2000, cannot reflect benefit increases that could not be paid for those years because of § 415(e). In addition, any plan amendment to provide an increase as a result of the repeal of § 415(e) can be effective no earlier than the effective date of the repeal of § 415(e) for the plan. The following examples illustrate these principles:

Example 1: Plan *M*, a defined benefit plan, has a calendar plan year and limitation year. Plan *M* is not a top-heavy plan during any relevant period. Under Plan *M*, participants may elect to receive benefit distributions either in the form of an annuity or a single sum. Plan *M* provides that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code. Plan *M* also provides that benefits will be limited to the extent necessary to satisfy the requirements of § 415(e). In order to reflect the

§ 417(e)(3) change made by GATT, Plan *M* was amended on January 1, 1995, effective as of that date, to substitute the applicable interest rate and the applicable mortality table for the original plan rate and the UP-1984 Mortality Table, respectively, to compute single-sum benefits under the plan. Additionally, Plan *M* was amended on July 1, 1998, effective as of January 1, 1995, to apply the § 415(b)-(2)(E) changes made by GATT and SBJPA to all benefits under the plan on or after the RPA '94 § 415 effective date, as defined in Rev. Rul. 98–1, 1998–2 I.R.B. 5. Under Plan *M*, early retirement benefits and other optional forms of benefit are determined as the actuarial equivalents of a straight life annuity at normal retirement age using the applicable interest rate and applicable mortality table. For purposes of this example, the applicable interest rate for all relevant periods is assumed to be 6 percent.

P was a participant both in Plan *M*, and in Plan *N*, a defined contribution plan, before retiring at the end of 1995. *P* is unmarried and has a date of birth of January 1, 1940. *P*'s social security retirement age is 66. *P* commenced receiving distributions from Plan *M* in the form of a single life annuity on January 1, 1996, at age 56. The dollar limitation of § 415(b)(1)(A) for 1996 was $120,000. *P*'s compensation-based limit under § 415(b)(1)(B) was $150,000 for all relevant periods. Accordingly, the § 415(b) limitation for *P*'s benefit in 1996 was $54,753 ($120,000 reduced for early retirement at age 56).

P's defined contribution fraction for 1996 was 0.36. Therefore, in order to comply with § 415(e) in the manner provided under the plan, *P*'s benefit in Plan *M* was limited so that *P*'s defined benefit fraction was equal to 0.64 (1 minus 0.36). Thus, *P*'s benefit in 1996 was limited to $43,802 (0.64 multiplied by the lesser of (A) 1.25 multiplied by $54,753 or (B) 1.4 multiplied by $150,000).

The dollar limitation under § 415(b)(1)(A) increased to $125,000 in 1997, and to $130,000 in 1998 and 1999. In 1997, because of the indexing of the dollar limitation under Plan *M*, *P*'s benefit was increased to $45,628. Similarly, in 1998, *P*'s benefit was increased to $47,453. In 1999, because the dollar limitation was unchanged from 1998, *P*'s benefit continued to be limited to $47,453. For purposes of this example, it is assumed that the § 415(b)(1)(A) dollar limitation will be $135,000 in 2000.

Effective January 1, 2000, *P*'s annuity payments under Plan *M* are permitted to be increased to a maximum annuity benefit of $61,597 ($135,000 reduced for early retirement at age 56). However, no increase in *P*'s benefit is permitted to reflect the difference between the limitation of § 415(b) and the limitation of § 415(e) in prior limitation years.

Alternatively, if Plan *M* had not provided that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code, but was amended to provide for such increases effective for the limitation year beginning January 1, 2000, *P*'s benefit could be increased from $43,802 (the benefit without adjustment for increases in the § 415(b)(1)(A) dollar limitation) to $61,597, plus the annual amount that is actuarially equivalent to the $9,128 that could have been paid in the prior limitation years ($1,826 for 1997, and $3,651 each for 1998 and 1999) had the plan provided for benefit increases to reflect the cost-of-living increases under § 415(d).

Example 2: Assume the same facts as in *Example 1*, except that Plan *M* does not provide that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code, and *P* commenced distributions from Plan *M* in the form of ten equal annual installments commencing on January 1, 1996. Accordingly, the § 415(b) limitation for *P*'s benefit in 1996 was $89,635 ($120,000 reduced for early retirement at age 56 and adjusted for the installment option). In order to comply with § 415(e), *P*'s installment payment in 1996 was limited to $71,707. Similarly, for the years 1997 through 1999, *P* received installment payments of $71,707. As of January 1, 2000, *P* has six installment payments remaining. Because Plan *M* does not provide for cost-of-living adjustments under § 415(d), *P*'s six remaining installment payments under Plan *M* are permitted to be increased, effective January 1, 2000, by the actuarial equivalent (spread over a period of six years) of the value of the increases in the single life annuity that would have been payable beginning on January 1, 2000 (i.e., the increase from $43,802 to $54,753) if *P* had elected a single life annuity rather than the installment payment option.

If Plan *M*, however, was amended to provide for cost-of-living adjustments under § 415(d), effective January 1, 2000, then *P*'s six remaining installment payments would be permitted to be increased by the actuarial equivalent (spread over a period of six years) of the value of the increases in the single life annuity that would have been payable beginning on January 1, 2000 (i.e., the increase from $43,802 to $61,597) if *P* had elected a single life annuity rather than the installment payment option. Furthermore, Plan *M* could provide that each of *P*'s six remaining installment payments under Plan *M* are increased by the actuarial equivalent (spread over six years) of the value of the increases in the prior installment payment that would have been paid in the prior limitation years had the plan provided for increases in the installment payments to reflect the increases under § 415(d).

Q-5: How will a plan that takes into account the repeal of § 415(e) as of the first day of the first limitation year beginning on or after January 1, 2000, satisfy the nondiscrimination in amount of benefits requirement?

A-5: A plan that uses the safe harbor and takes into account the repeal of § 415(e) as of the first day of the first limitation year beginning on or after January 1, 2000, will not fail to satisfy the uniformity requirements of §§ 1.401(a)(4)–2(b) or 1.401(a)(4)–3(b)(2) merely because the repeal of § 415(e) is taken into account under the plan.

For purposes of the general test for nondiscrimination in amount of contributions, increased contributions allocated under the terms of a defined contribution plan due to the repeal of § 415(e) must be taken into account in accordance with the rules of § 1.401(a)(4)–2(c)(2)(ii) for the plan year for which the increased allocations are made. For purposes of the general test for nondiscrimination in amount of benefits, increased benefits provided to an employee under the terms of a defined benefit plan due to the repeal of § 415(e) must be included as increases in the employee's accrued benefit (within the meaning of § 411(a)(7)(A)(i)) and the employee's most valuable optional form of payment of the accrued benefit (within the meaning of § 1.401(a)(4)–3(d)(1)(ii)) in accordance with the rules of § 1.401(a)(4)–3(d), and must be included in the computation of both the normal and most valuable accrual rates for any measurement period that includes the plan year for which the increase occurs. If the limitations of § 415 are taken into account in testing the plan for limitation years beginning on or after January 1, 2000, those limitations must reflect the repeal of § 415(e).

Q-6: If benefit increases are provided to employees and former employees under a plan as a result of the repeal of § 415(e), how are the requirements of §§ 1.401(a)-(4)–5 and 1.401(a)(4)–10 of the regulations satisfied?

A-6: If benefit increases resulting from the repeal of § 415(e) are provided, as of the effective date of the repeal of § 415(e) for the plan, to either (1) all current and former employees who have an accrued benefit under the plan immediately before the effective date of the repeal of § 415(e) for the plan, or (2) all employees participating in the plan that have one hour of service after the effective date of the repeal of § 415(e) for the plan, through the adoption of a plan amendment, then the timing of such an amendment satisfies the requirements of § 1.401(a)(4)–5 of the regulations, and the requirements of § 1.401(a)(4)-10(b) of the regulations are satisfied. In addition, if benefit increases are provided, as of the effective date of the repeal of § 415(e) for the plan, to either of the two groups described in the preceding sentence through the operation

of the plan's existing provisions, then the requirements of §§ 1.401(a)(4)–5 and 1.401(a)(4)-10(b) of the regulations are satisfied.

If benefit increases due to the repeal of § 415(e) are provided only to a certain group of current or former employees not described in the preceding paragraph through the adoption of a plan amendment, or if a plan amendment to reflect the repeal of § 415(e) is effective as of a later date than the effective date of the repeal of § 415(e) for the plan, then the timing of such an amendment (considered in conjunction with the effect of the repeal of § 415(e)) must satisfy a facts-and-circumstances determination under § 1.401(a)(4)–5(a)(2) of the regulations, and the requirements of § 1.401(a)(4)–10 must be applied.

Q-7: May a plan be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the repeal of § 415(e)?

A-7: Yes, a plan may be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the repeal of § 415(e). However, see Q&A-8 for certain qualification requirements that may be affected by such an amendment. A plan sponsor may wish to make a plan amendment to preclude a benefit increase that would otherwise occur as a result of the repeal of § 415(e) in order to provide time for the plan sponsor to consider the extent to which a benefit increase relating to the repeal of § 415(e) should or should not be provided at some later date consistent with all relevant qualification requirements. A plan amendment to limit the extent to which such a benefit increase would otherwise occur that is not both adopted prior to, and effective as of, the first day of the first limitation year beginning on or after January 1, 2000, may fail to satisfy § 411(d)(6). Therefore, a plan amendment that is intended to limit such a benefit increase should be both adopted prior to, and effective as of, the first day of the first limitation year beginning on or after January 1, 2000 (even though the plan could be later amended during the plan's remedial amendment, at the option of the plan sponsor, to retroactively provide for the benefit increase). The following is an example of language that could be used by a plan sponsor, on an interim or permanent basis, in amending a defined benefit plan that would otherwise provide for a benefit increase due to the repeal of § 415(e), to retain the effect of the pre-SBJPA § 415(e) limitations in determining a participant's accrued benefit under the plan (without failing to satisfy § 411(d)(6)):

> *Effective as of the first day of the first limitation year beginning on or after January 1, 2000 (the "Effective Date"), and notwithstanding any other provision of the Plan, the accrued benefit for any participant shall be determined by applying the terms of the Plan implementing the limitations of § 415 as if the limitations of § 415 continued to include the limitations of § 415(e) as in effect on the day immediately prior to the Effective Date. For this purpose, the defined contribution fraction is set equal to the defined contribution fraction as of the day immediately prior to the Effective Date.*

Q-8: Are there qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations?

A-8: There are some qualification requirements that may not be satisfied for a plan if the plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations. Any exception from the otherwise applicable qualification rules that is permitted solely in order to satisfy the maximum limitations on contributions or benefits under § 415 with respect to a participant does not apply if the participant's contributions or benefits are below the limitations of § 415. Thus, such an exception is not permitted where a plan limits benefits in a manner that is more restrictive than required under § 415. For example, at any time on or after the first day of the first limitation year beginning on or after January 1, 2000, a qualified defined contribution plan could not provide that the provisions of § 1.415-6(b)(6) would be applied to place an amount that does not exceed the limitations under § 415, but that does exceed the pre-SBJPA § 415(e) limitations, in an unallocated suspense account as an excess annual addition. Similarly, a qualified cash or deferred arrangement could not provide that the provisions of § 1.415–6(b)(6)(iv) would be applied to permit the distribution of elective deferrals that do not exceed the limitations under § 415, but that exceed the pre-SBJPA § 415(e) limitations. See Q&A-10 for a description of the effects that the continued application of the pre-SBJPA § 415(e) limitations may have on the requirements for nondiscrimination testing. Additionally, if a participant's annual additions to a defined contribution plan result in a decrease in the participant's accrued benefit under a defined benefit plan (under the terms of both plans), the relief previously provided under Q&A G-10 of Notice 83–10, 1983–1 C.B. 536 no longer applies, and such a reduction would violate § 411.

The qualification issues described in this Q&A-8 may arise whenever a lower limitation is applied under a plan in lieu of a statutory § 415 limitation that applies for the limitation year. For example, the issues described in this Q&A-8 may arise if a lower limitation is applied under a plan as a result of using a definition of compensation that is not within the meaning of § 415(c)(3), as amended by SBJPA. Q&A-9 provides § 7805(b)(8) relief that applies where a plan uses the pre-SBJPA § 415(c)(3) definition of compensation instead of the current § 415(c)(3) definition.

Q-9: To the extent that a qualified defined contribution plan applies the rules in § 1.415–6(b)(6) with respect to excess annual additions, must the plan apply the rules in § 1.415–6(b)(6) using a definition of compensation within the meaning of § 415(c)(3) as amended by SBJPA?

A-9: For limitation years ending on or after December 1, 1999, to the extent that a plan applies the rules in § 1.415–6(b)(6), a defined contribution plan will not satisfy the requirements of § 401(a) unless the rules of § 1.415–6(b)(6) are applied using a definition of compensation within the meaning of § 415(c)(3) as amended by SBJPA. However, for limitation years ending on or before November 30, 1999, pursuant to § 7805(b)(8), the Service will not treat a defined contribu-

tion plan as failing to satisfy the requirements of § 401(a) merely because the rules in § 1.415-6(b)(6) are applied using a definition of compensation within the meaning of § 415(c)(3) prior to its amendment by SBJPA.

Q-10: How may a plan that continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations, satisfy the nondiscrimination in amount of benefits requirement?

A-10: A plan does not fail to satisfy the uniformity requirements of §§ 1.401(a)-(4)–2(b) or 1.401(a)(4)–3(b)(2) merely because the limitations under § 415 are taken into account under the safe harbor requirements. The continued application of the pre-SBJPA § 415(e) limitations for a plan year after the effective date of the repeal of § 415(e) for a plan would cause the plan to fail to satisfy the uniformity requirements for the otherwise applicable nondiscrimination in amount safe harbor. However, if a plan limits benefits at any time on or after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations for highly compensated employees (but not for nonhighly compensated employees), the plan will not fail to satisfy the uniformity requirements and thus will not fail to satisfy a nondiscrimination in amount safe harbor merely because of this limited application of the pre-SBJPA § 415(e) limitations. See §§ 1.401(a)(4)–2(b)(4)(v) and 1.401(a)-(4)–3(b)(6)(x) of the regulations.

If a plan continues to limit benefits on or after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations, the annual additions or accrued benefits that are taken into account in performing the general tests for nondiscrimination in amount of contributions or benefits must reflect the plan provisions that limit benefits in this manner.

Q-11: How is the repeal of § 415(e) treated under the plan for purposes of § 412?

A-11: For purposes of § 412, any increase in the liabilities of a plan as a result of the repeal of § 415(e) must be treated as occurring pursuant to a plan amendment effective no earlier than the first day of the first limitation year beginning on or after January 1, 2000 (whether the increase in liabilities under the terms of the plan arises pursuant to a plan amendment, or pursuant to existing plan provisions, e.g., where benefits automatically increase as of the effective date of the repeal of § 415(e) for the plan). Accordingly, any amortization base that is established under § 412 for an increase in liabilities under a plan resulting from the repeal of § 415(e) must have an amortization period of 30 years. A plan amendment that makes the repeal of § 415(e) effective for a plan cannot be taken into account for purposes of § 412 prior to the effective date of the repeal of § 415(e) for the plan.

Q-12: What is the effect of the repeal of § 415(e) on an "old-law benefit" defined in Q&A-12 of Rev. Rul. 98–1, 1998–2 I.R.B. 5?

A-12: Under Q&A-13 of Rev. Rul. 98–1, a participant's old-law benefit under a plan is determined as of a specified freeze date that precedes the final implementation date for the plan. Under Q&A-15 of Rev. Rul. 98–1, a participant's old-law benefit cannot increase after the participant's freeze date. Under Q&A-12 of Rev. Rul. 98–1, the final implementation date for the plan cannot be later than the first day of the first limitation year beginning after December 31, 1999. Because the freeze date must precede the final implementation date, the latest possible freeze date under a plan is the day before the first day of the first limitation year beginning after December 31, 1999. Thus, the latest possible freeze date for a plan is the day before the effective date of the repeal of § 415(e) for the plan. As a result, the repeal of § 415(e) generally will have no effect on the amount of a participant's old-law benefit, as the old-law benefit would be determined prior to the effective date of the repeal of § 415(e) for the plan. Nevertheless, if the old-law benefit for a participant in a defined benefit plan was reduced during the period between the freeze date and the effective date of the repeal of § 415(e) for the plan because of annual additions credited to a participant's account in an existing defined contribution plan, the old-law benefit may increase to the freeze-date level as of the effective date of the repeal of § 415(e) for the plan.

Q-13: Are the requirements of § 415(b)(4)(B) affected by the repeal of § 415(e)?

A-13: No. Section 415(b)(4)(B) generally provides that the limitation on benefits under a defined benefit plan under § 415(b) with respect to a participant cannot be less than $10,000, but only if the employer has not at any time maintained a defined contribution plan in which the participant participated. The statutory provision repealing § 415(e) did not modify § 415(b)(4)(B). Accordingly, the requirements of § 415(b)(4)(B) are unaffected by the repeal of § 415(e).

Q-14: How will the repeal of § 415(e) affect the regulations relating to § 403(b)?

A-14: Under § 415(c)(4)(D) and the regulations regarding the exclusion allowance under § 403(b)(2), an employee may elect to have the provisions of § 415(c)(4)(C) apply for a taxable year. If the employee so elects, the employee's exclusion allowance is the maximum amount under § 415 that could be contributed by the employer for the benefit of the employee if the annuity contract for the benefit of the employee were treated as a defined contribution plan maintained by the employer. The fourth sentence of § 1.403(b)–1(d)(5) provides that the rules under § 415(e) apply where such an election is made. Section 1504(b) of the Taxpayer Relief Act of 1997, Pub. L. 105-34, provides that regulations regarding the exclusion allowance under § 403(b)(2) of the Code shall be modified to reflect the repeal of § 415(e). Accordingly, the Commissioner intends to modify the regulations such that the fourth sentence of § 1.403(b)–1(d)(5) does not apply after the effective date of the repeal of § 415(e).

IV. EFFECT ON OTHER DOCUMENTS

Notice 83–10 is modified.

V. DRAFTING INFORMATION

The principal author of this notice is Martin Pippins of the Employee Plans Division. For further information regarding this notice, contact the Employee Plans Division's taxpayer assistance number at (202) 622-6076 (not a toll-free number) between the hours of 2:30 p.m. and 3:30 p.m., Eastern Time, Monday through Thursday. Mr. Pippins' telephone number is (202) 622-7863 (also not a toll-free number).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross Reference to Temporary Regulations

Furnishing Identifying Number of Income Tax Return Preparer

REG–105237–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: The IRS is proposing regulations relating that allow income tax return preparers to elect an alternative to their social security number (SSN) for purposes of identifying themselves on returns they prepare. The text of the temporary regulations T.D. 8835, page 317, also serve as the text of these proposed regulations. The regulations affect individual preparers who elect to identify themselves using a number other than the SSN.

DATES: Written or electronically generated comments and requests for a public hearing must be received by November 10, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105237–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105237–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Andrew J. Keyso, (202) 622-4910; concerning submissions, Michael Slaughter, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** (64 F.R. 43910) amends the Income Tax Regulations (26 CFR part 1) relating to section 6109. The temporary regulations provide that an income tax return preparer who is an individual may furnish either a social security number or an alternative identifying number to satisfy the requirements of section 6109(a)(4). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

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 regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Andrew J. Keyso, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. In §1.6109–2, is amended by revising paragraphs (a) and (d) to read as follows:

§1.6109–2 Furnishing identifying number of income tax return preparer.

(a) [The text of this proposed paragraph (a) is the same as the text of §1.6109–2T(a) published in T.D. 8835.]

* * * * *

(d) [The text of this proposed paragraph (d) is the same as the text of §1.6109–2T(d) published in T.D. 8835.]

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on August 11, 1999, 8:45 a.m., and published in the issue of the Federal Register for August 12, 1999, 64 F.R. 43969)

Consolidated Returns, Limitations on the Use of Certain Losses and Deductions; Correction

Announcement 99–86

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to T.D. 8823, 1999–29 I.R.B. 34, which were published in the **Federal Register** on Friday, July 2, 1999, (64 F.R. 36092), relating to consolidated returns and limitations on the use of certain losses and deductions.

DATES: This correction is effective July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Vogel or Marie Milnes-Vasquez at (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 8823, 1999–29 I.R.B. 34) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8823), which were the subject of F.R. Doc. 99–16161, is corrected as follows:

1. On page 36095, column 3, in the preamble under the heading, Built-in Losses, line 2 from the bottom of the paragraph, the language "latter or the SRLY event or section 382" is corrected to read "latter of the SRLY event or section 382".

§1.1502–15 [Corrected]

2. On page 36103, column 1, §1.1502–15(d), paragraph (i) of *Example 3.*, line 3, the language "M are each common parents of a" is corrected to read "M are each the common parent of a".

3. On page 36103, column 3, §1.1502–15(d), paragraph (vii) of *Example 4.*, lines 6 and 7, the language "determining the SRLY limitation for these additional losses in Year 4 (or any" is corrected to read "determining the SRLY limitation for this additional loss in Year 4 (or any".

4 & 5. On page 36104, column 3, §1.1502–15 paragraph (g)(4)(i) and (g)(4)(ii) are corrected to read as follows:

§1.1502–15 SRLY limitation on built-in losses.

* * * * *

(g) * * *

(4) * * *

(i) All members of the SRLY subgroup with respect to those built-in losses are also included in a loss subgroup (as defined in §1.1502–91(d)(2)); and

(ii) All members of a loss subgroup (as defined in §1.1502–91(d)(2)) are also members of a SRLY subgroup with respect to those built-in losses.

* * * * *

6. On page 36105, column 1, §1.1502–15(g)(6), paragraph (v) of *Example 1.*, the last line in the paragraph, the language "and the application of the section 382." is corrected to read "and the application of section 82.".

7. On page 36105, column 1, §1.1502–15(g)(6), paragraph (ix) of *Example 1.*, the last line in the paragraph, the language "recognized with the recognition period." is corrected to read "recognized within the recognition period.".

§1.1502–21 [Corrected]

8. On page 36109, column 2, §1.1502–21(c)(2), line 13 from the bottom of the introductory text, the language "(the former group), or for a carryover" is corrected to read "(the former group), whether or not the group is a consolidated group, or for a carryover".

9. On page 36110, column 1, §1.1502–21(c)(2)(viii), paragraph (i) of *Example 1.*, lines 2 and 3, the language "S, T and M. P and M are each common parents of a consolidated group. During Year" is corrected to read "S, T, and M. P and M are each the common parent of a consolidated group. During Year".

10. On page 36110, column 3, §1.1502–21(c)(2)(viii), paragraph (i) of *Example 2.*, lines 2 and 3, the language "of the stock of S, T, P and M. P and M are each common parents of a consolidated" is corrected to read "of the stock of S, T, P, and M. P and M are each the common parent of a consolidated".

11. On page 36111, column 1, §1.1502–21(c)(2)(viii), paragraph (i) of *Example 3.*, lines 2 and 3, the language "the stock of S, T, P and M. S, P and M are each common parents of a consolidated" is corrected to read "the stock of S, T, P, and M. S, P, and M are each the common parent of a consolidated".

12. On page 36112, column 3, §1.1502–21(g)(5), paragraph (i) of *Example 4.*, line 3, the language "for 6 years. For Year 6, T has an net operating" is corrected to read "for 6 years. For Year 6, T has a net operating".

13. On page 36112, column 3, §1.1502–21(g)(5), paragraph (i) of *Example 5.*, line 5, the language "unrelated to A, owns all of the stock of P, the" is corrected to read "unrelated to Individual A, owns all of the stock of P, the".

14. On page 36113, column 3, §1.1502–21(g)(5), paragraph (i) of *Example 9.*, line 11, the language "Individual A. On January 1 of Year 3, M" is corrected to read "Individual A. On December 31 of Year 2, M".

15. On page 36113, column 3, §1.1502–21(g)(5), paragraph (iii) of *Example 9.*, lines 1 through 3, the language "M's January 1 purchase of 51% of P is a section 382 event because it results in an ownership change of S and T that gives rise" is corrected to read "M's December 31 purchase of 51% of P is a section 382 event because it results in an ownership change of the S loss subgroup that gives rise".

16. On page 36113, column 3, §1.1502–21(g)(5), paragraph (v) of *Example 9.*, lines 1 through 3, the language "Because the SRLY event and the change date of the section 382 event occur on the same date and the SRLY subgroup and loss" is corrected to read "Because the SRLY event occurred within six months of the change date of the section 382 event and the SRLY subgroup and loss".

§1.1502–23 [Corrected]

17. On page 36116, column 1, §1.1502–23(d)(1), second line from the bottom of the paragraph, the language "consolidated return is taxable years is" is corrected to read "consolidated return is".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on July 30, 1999, 8:45 a.m., and published in the issue of the Federal Register for August 2, 1999, 64 F.R. 41783)

Foundations Status of Certain Organizations

Announcement 99–87

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

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

Affordable Housing Alliance Inc., Irvine, CA
Ahepa Hellenic Center, Dayton, OH
Amandla Community Development Corporation, Detroit, MI
American Friends of Netivot Family Institute Inc., Flushing, NY
American Help Network, Inc., Middletown, NY
American Hope Foundation, Irvington, NJ
American Spirit Foundation, Beverly Hills, CA
Ancient Cities, Ancient Eyes, Inc., Redondo Beach, CA
Apostles of Christ-A-Confraternity of the Faithful, Oakland, CA
Applewick Sports Fitness Corp., Hamilton, OH
Association of North Carolina Big Brothers-Big Sisters Agencies, Greensboro, NC
Bachbridge Limited a Non Profit Corporation, Riverside, CA
Barnabas, Beatrice, NE
Beta Pi Boule Inc., Harrisburg, PA
Bethea Institute for Research on the Transformation of Humanity, Boulder, CO
Buddha Dharma Kyokai Society Inc., Emerson, NJ
Cardinal Scholarship Fund, North Plainfield, NJ
Children of Hope, Inc., Brandon, VT
Cognitive Developmental Institute for Youth Incorporated, Osceola, IN
Concerned About Recovery Education, Inc., Santa Rosa, CA
Cooperative Service League, West Chester, OH
Council Valley Volunteer Fire Fighters Association, Inc., Council, ID
Creative Educational Learning Inc., Philadelphia, PA
Creative Mountain Incorporated, Salida, CO
Crossing the Bridge, Inc., Houston, TX
Diversity Business Development Network, Bellevue, WA
Domestic Violence Emergency Services of Grant County Ind., Ulysses, KS
Edlo Charities Inc., Eagle Rock, VA
Education-Yours, Inc., Chagrin Falls, OH
Elder Circle Inc., Scarborough, MA
Emma R. Webster Trust UA-Utica 2-2596-0, Buffalo, NY
Energy America Education Fund Inc., Warner, NH
Estonian-Revelia Academic Fund, Inc., Bowie, MD
Eubank Elementary Parent Teacher Student Organization,
Fleming Providercare, Inc., Baltimore, MD
Freedoms Way Inc., Stem, NC
Friends of Karayan Inc., Jamaica, NY
FSL Corporation, Morrisville, VT
Georgia Center for Community Empowerment, Atlanta, GA
Gods Glory Land, Inc., Winchester, VA
Grand Valley Public Radio Company, Grand Junction, CO
Greater Grace Downriver Community Service Corporation, Taylor, MI
Hope Development Company, Baltimore, MD
Industrial Tribology Institute, Inc., Austin, TX
In His Footsteps Ministries, Inc., Lexington, OK
Interamerican Health and Education Foundation, San Antonio, TX
Intergenerational Community Action Network, Pacific Grove, CA
Jos House Inc., Houston, TX
Kent Bramlett Foundation, Inc., Nashville, TN
Life Improvement Inc., Cleburne, TX
Living Water Ministries, Inc., Tonawanda, NY
Long Island Sickle Cell Support Group Inc., Bay Shore, NY
Manitou Park Affordable Housing Development Corporation Incorporated, Newark, NJ
Mena Area Historic Museum Trust, Mena, AR
Minority Unity Foundation, Los Angeles, CA
More Than Conquerors Inc., Lithonia, GA
Nannie Berry Elementary Parent Teacher Org PTO Hendersonville, TN, Hendersonville, TN
Natchitoches Student Housing Corporation, Shreveport, LA
National High School Football Hall of Fame Foundation, Inc., Valdosta, GA
Native American Pedagogic Institute, Bigfork, MT
Nautilus Malacology Institute, La Jolla, CA
Neb Avrohom Chaim Foundation, Brooklyn, NY
Network Housing Inc., Portland,OR
New Horizons Haven for Boys Incorporated, Middletown, OH
Nicole Capuana Foundation, Rochester, NY
Niota Flood Control Council, Niota, IL
North Pulaski Development & Management, Inc., North Little Rock, AR
Oakview Inc., Columbus, IN
Ohio Aerospace Council, Cleveland, OH
Olatunji International School for Life Learning, Charlotte, NC
One Good Turn Inc., Sedona, AZ
Owatonna Youth Baseball Association Inc., Owatonna, MN
Paramus Affordable Housing Corporation, Paramus, NJ
Peer Inc., Revo, NV

Pentecostal International Missions for Christ, Inc., Cleveland, TN
Port Stephen Decatur, Decatur, AL
Prairie Fire Urban Rural Renewal Inc., Lincoln, NE
Project Barter Feed, Inc., Boynton Beach, FL
Protect the Children, Salt Lake City, UT
Public Housing, Inc., Gordo, AL
Rebuild Inc., St. Louis, MO
Renaissance Worldwide, Inc., San Ramon, CA
A Second Chance-A Haven for Abuse-N-Battered Women & Children, Philadelphia, PA
Serving Humanity and Relief Effort Inc., North Logan, UT
Shakti Foundation for the Performing Arts, Torrance, CA
Sierra County Eldercare Services, Truth of Consequences, NM
S O H I, Glendale, AZ
Sun of Man, New York, NY
Sustainable Resource Development, Bothell, WA
T & E, Inc., Cortaro, AZ
Texas Child Nutrition & Care Corporation, Inc., Houston, TX
Texas Internal Medicine Educational Foundation, Austin, TX
Ultimate Potential Fitness and Training Facility, Inc., Columbus, OH
United Helping Hands, San Diego, CA
USA Compete Inc., Greeley, CO
Utah Amateur Sports Foundation Inc., Bountiful, UT
Valley Multi Purpose Center, Inc., N. Hollywood, CA
V I A Art Inc., New York, NY
Victory Over Addiction International Inc., Stuart, FL
Vietnam Forum Foundation, Inc., Houston, TX
Westchester Jewish Historical Society Inc., Scarsdale, NY
Wheels of Fire, Dallas, TX
Wiz Kids Enrichment Center, Rockford, IL
Write to Change Inc., Clemson, SC
Yellow Breeches Creek Allance, Inc., Carlisle, PA
Youth Business League, Kansas City, MO
Youth Educational Support Services, Houston, TX

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

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–1 through 1999–26 will be found in Internal Revenue Bulletin 1999–27, dated July 6, 1999.

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[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1999–1 through 1999–26 will be found in Internal Revenue Bulletin 1999–27, dated July 6, 1999.

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