Bulletin No. 2000–9
February 28, 2000

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. 2000–7, page 712.

Removal costs, capital expenditures. This ruling holds that if the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, the costs incurred in removing the retired asset are not required to be capitalized under section 263 or 263A of the Code as part of the cost of the replacement asset. Rev. Proc. 99–49 modified and amplified.

EMPLOYEE PLANS

T.D. 8873, page 713.

Final regulations under sections 402(f), 411(a)(11), and 3405(e) of the Code provide applicable standards for transmitting certain notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices.

Notice 2000–2, page 727.

Weighted average interest rate update. Guidelines are set forth for determining the weighted average interest rate for February 2000 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation under section 412(c)(7) of the Code.

EMPLOYMENT TAX

Page 721.

Railroad retirement; rate determination; quarterly. The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 26 1/2 cents for the quarter beginning January 1, 2000.

ADMINISTRATIVE

Rev. Proc. 2000–18, page 722.

Automobile owners and lessees. This procedure provides owners and lessees of passenger automobiles (including electric automobiles) with tables detailing the limitations on depreciation deductions for automobiles first placed in service during calendar year 2000 and the amounts to be included in income for automobiles first leased during calendar year 2000. In addition, this revenue procedure provides the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 2000 for which the vehicle cents-per-mile valuation rule provided under section 1.61–21(e) of the Income Tax Regulations may be applicable.

(Continued on next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.

Notice 2000–12, page 727.

Pilot pre-filing agreement program. This notice announces a pilot program for Pre-Filing Agreements (PFAs) under which large business taxpayers may request examination and resolution of specific issues relating to tax returns they expect to file between September and December 2000.

Notice 2000–13, page 732.

Low-income housing tax credit. Resident population figures for the states, Puerto Rico, and the insular areas (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands) for determining the 2000 calendar year (1) state housing credit ceiling under section 42(h) of the Code, and (2) private activity bond volume cap under section 146, are reproduced.

Announcement 2000–9, page 733.

This document contains a correction to Notice 2000–4 (2000–3 I.R.B. 313) in which an erroneous address was given for comments to be submitted electronically.

Announcement 2000–10, page 733.

This announcement contains a change to the date and time of a public hearing relating to proposed regulations (REG–116733–98, 1999–36 I.R.B. 392) under section 355(e) of the Code. The original public hearing on January 26, 2000, has been rescheduled for March 2, 2000.

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.

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

The Commissioner NONACQUIESCES in the following decision:

Simpson v. United States,[1]
183 F.3d 812 (8th Cir. 1999), **rev'g**
17 F. Supp. 2d 972 (W.D. Mo. 1998)

[1] Nonacquiescence relating to whether a transfer of property to decedent's grandchildren, pursuant to decedent's exercise of a general testamentary power of appointment, was exempt from the generation-skipping transfer (GST) tax under the effective date provisions in the Tax Reform Act of 1986 (TRA 86).

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

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

This procedure provides the maximum value of employer-provided automobiles first made available to employees for personal use in calendar year 2000 for which the vehicle cents-per-mile valuation rule provided under §1.61–21(e) of the Income Tax Regulations may be applicable. See Rev. Proc. 2000–18, page 722.

Section 162.—Trade or Business Expenses

26 CFR 1.162–1: Business expenses.

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, are the costs incurred in removing the retired asset required to be capitalized under § 263(a) or 263A as part of the cost of the replacement asset? See Rev. Rul. 2000–7, page 712.

Section 165.—Losses

26 CFR 1.165–3: Demolition of buildings.

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, are the costs incurred in removing the retired asset required to be capitalized under § 263(a) or 263A as part of the cost of the replacement asset? See Rev. Rul. 2000–7, page 712.

Section 167.—Depreciation

26 CFR 1.167(a)–8: Retirements.

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, are the costs incurred in removing the retired asset required to be capitalized under § 263(a) or 263A as part of the cost of the replacement asset? See Rev. Rul. 2000–7, page 712.

Section 263.—Capital Expenditures

26 CFR 1.263(a)–1: Capital expenditures; in general. (Also §§ 162, 165, 167, 263A; 1.165–3, 1.167(a)–8, 1.167(a)–11, 1.263A–1)

Removal costs, capital expenditures. This ruling holds that if the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, the costs incurred in removing the retired asset are not required to be capitalized under section 263 or 263A of the Code as part of the cost of the replacement asset.

Rev. Rul. 2000–7

ISSUE

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, are the costs incurred in removing the retired asset required to be capitalized under section 263(a) or 263A as part of the cost of the replacement asset?

FACTS

The assets of *X,* a telephone company, include telephone poles *A* and *B*. *X* placed Pole *A* in service in 1979 on land it owned. *X* placed Pole *B* in service in 1982 on land owned by *Y* under the terms of an easement permitting *X* to have one pole on *Y*'s land. In 2000, *X* undertakes a project to replace telephone poles in the service area in which Pole *A* is situated. As part of that project, *X* incurs costs in 2000 in removing and discarding Pole *A* and installing a new telephone pole, Pole *C*, in the same location. *X* also undertakes a second project to replace telephone poles in the service area in which Pole *B* is situated. *X* installs a new telephone pole, Pole *D*, on *Y*'s land, but not in the same location as Pole *B*. As part of this second project and to comply with the easement, *X* incurs costs in 2000 in removing and discarding Pole *B*.

LAW AND ANALYSIS

Section 162 of the Internal Revenue Code and § 1.162–1 of the Income Tax Regulations generally allow a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

Section 165 allows as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise. For the allowance under § 165(a) of losses arising from the permanent withdrawal of depreciable property from use in a trade or business or in the production of income, § 1.165–2(c) cross references § 1.167(a)–8(a), which permits, in part, a loss from physical abandonment of retired property.

Under §§ 263(a) and 1.263(a)–1(a), no deduction is allowed for capital expenditures, such as amounts paid for new buildings or for permanent improvements or betterments made to increase the value of any property. Section 1.263(a)–2(a) provides that capital expenditures include the costs of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year.

Section 263A generally requires taxpayers that are producing real or tangible personal property to capitalize direct material costs, direct labor costs, and indirect costs that are properly allocable to the produced property. Section 263A(g)(1) provides that, for purposes of § 263A, the term "produce" includes construct, build, install, manufacture, develop, or improve. Under § 1.263A–1(e)(3)(i), indirect costs are allocable to produced property under § 263A when the costs directly benefit or are incurred by reason of the performance of production activities.

The costs of removing an asset have been historically allocable to the removed asset and, thus, generally deductible when the asset is retired and the costs are incurred. A deduction generally is allowed whether a taxpayer accounts for the retired asset in a single asset account or in a multiple asset account (*e.g.*, a general asset account or a mass asset account). *See* § 1.165–3(b); § 1.167(a)–1(c); § 1.167(a)– 11(d)(3)(*x*); Rev. Rul. 74–455, 1974–2 C.B. 63; Rev. Rul. 75–150, 1975–1 C.B. 73. *But see* § 280B, requiring that the costs of demolishing buildings be added to the basis of the land, and § 1.165–3(a), requiring capitalization of demolition costs when the taxpayer acquires an asset with the intent to demolish it. *See, e.g.*, *Wood County Telephone Co. v. Commissioner*, 51 T.C. 72 (1968); Rev. Rul. 69–62, 1969–1 C.B. 58.

The removal costs of Poles *A* and *B* are not required to be capitalized under § 263(a). In both situations the removal costs are properly allocable to the retired

poles, and thus do not relate to assets having a useful life in the taxpayer's business extending substantially beyond the taxable year in which the removal costs are incurred. The fact that Poles *A* and *B* are retired as part of a replacement project does not mean that the removal costs are required to be capitalized under § 263(a). Furthermore, the removal costs are not required to be capitalized under § 263A because the costs are incurred for the purpose of retiring Poles *A* and *B* and not by reason of the installation of Poles *C* and *D*. The analysis in this ruling does not apply to the removal of a component of a depreciable asset, the costs of which are either deductible or capitalizable based on whether replacement of the component constitutes a repair or an improvement. *See* §1.162–4 and § 1.263(a)–1(b).

HOLDING

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, the costs incurred in removing the retired asset are not required to be capitalized under § 263(a) or 263A as part of the cost of the replacement asset.

APPLICATION

Any change in a taxpayer's method of accounting to conform with this revenue ruling is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply. Except for assets for which depreciation is determined in accordance with § 1.167(a)–11 (ADR), the taxpayer's new method of treating removal costs for assets accounted for in a multiple asset account must be consistent with the taxpayer's method of treating salvage proceeds. *See* Rev. Rul. 74–455. (See sections 2.01 and 2.02 of the Appendix of Rev. Proc. 99–49, 1999–52 I.R.B. 725, for changing a taxpayer's present method of treating salvage proceeds.) A taxpayer wanting to change its method of accounting to conform with the holding in this revenue ruling must follow the automatic change in accounting method provisions of Rev. Proc. 99–49, except that the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply. However, if the taxpayer is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the Form 3115, Application for Change in Accounting Method, to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that it files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate. In addition, if the asset is public utility property within the meaning of § 168(i)(10) or former § 167(l)(3)(A), the taxpayer must comply with the terms and conditions in section 2.01(3)(b)(vi) of the Appendix of Rev. Proc. 99–49.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99–49 is modified and amplified to include this change in accounting method in the APPENDIX.

DRAFTING INFORMATION

The principal author of this revenue ruling is Beverly Katz of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling contact Ms. Katz on (202) 622-4950 (not a toll-free call).

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

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

If the retirement and removal of a depreciable asset occurs in connection with the installation or production of a replacement asset, are the costs incurred in removing the retired asset required to be capitalized under § 263(a) or 263A as part of the cost of the replacement asset? See Rev. Rul. 2000–7, page 712.

Section 280F.—Limitation on Depreciation for Luxury Automobiles; Limitation where Certain Property Used for Personal Purposes

26 CFR 1.280F–7: Property leased after December 31, 1986.

This procedure provides owners and lessees of passenger automobiles (including electric automobiles) with tables detailing the limitations on depreciation deductions for automobiles first placed in service during calendar year 2000 and the amounts to be included in income for automobiles first leased during calendar year 2000. See Rev. Proc. 2000–18, page 722.

Section 411.—Minimum Vesting Standards

26 CFR 1.411(a)–11: Restriction and valuation of distributions.

T.D. 8873

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 35, and 602

New Technologies in Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

DATES: *Effective Date*: These regulations are effective January 1, 2001.

Applicability Date: These regulations apply to plan years beginning on or after January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1632. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to,

a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent and/or recordkeeper is 76 minutes.

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 35) under sections 402(f), 411(a)(11) and 3405(e)(10)(B). The regulations under section 3405(e)(10)(B) (new Q/A d–35 and d–36 of section 35.3405–1), like the regulations under sections 402(f) and 411(a)(11) are final regulations. These regulations finalize proposed regulations that were published as a notice of proposed rulemaking (REG–118662–98, 1999–13 I.R.B. 13) in the **Federal Register** (63 FR 70071) on December 18, 1998. A public hearing was held on the proposed regulations on April 15, 1999.

In addition to the proposed regulations, the IRS and Treasury issued Notice 99–1 (1999–2 I.R.B. 8), and Announcement 99–6 (1999–4 I.R.B. 24), concerning the use of electronic media under retirement plans. Notice 99–1 confirms that the "paperless" administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions do not cause a qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). Announcement 99–6 authorizes the electronic transmission of Form W-4P.

The proposed regulations, Notice 99–1, and Announcement 99–6 were issued pursuant to section 1510 of the Taxpayer Relief Act of 1997. That section provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit paperless transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

Explanation of Provisions

General

Commentators generally praised the approach taken in the proposed regulations of providing broad, flexible standards for the transmission of certain notices and consent required for distributions through electronic media. Commentators stated that the guidelines set forth in the proposed regulations facilitate the expanded use of new technologies and recognize the likelihood of future technological advances in plan administration. Accordingly, the final regulations retain this approach and:

- Permit electronic delivery of the notice of distribution options and the right to defer distribution under section 411(a)(11), the rollover notice under section 402(f), and the withholding notice under section 3405(e)(10)(B);
- Permit electronic transmission of participant consent to a distribution under section 411(a)(11); and
- Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

Notices Under Sections 402(f), 411(a)(11), and 3405(e)(10)(B)

1. Use of electronic media for delivery of notices

The proposed regulations provide that, in general, a plan may furnish a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations require that any electronic notice be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document and that the participant be advised of the right to request and to receive a copy of the notice on a written paper document without charge. The final regulations adopt these rules without change.

One commentator noted that the proposed regulations do not define the term *reasonably accessible* and suggested that the final regulations require that participants have effective access at their place of work to any electronic medium used to deliver the notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). The IRS and Treasury, after further consideration, believe that the reasonably accessible standard protects the interests of plan participants and, therefore, have retained the proposed terminology.

The same commentator raised more general concerns with the use of electronic media to transmit notices. This commentator argued that an electronic notice should be "actually received (not just sent or available) and read by the participant, be permanently accessible, and easily converted to a printed document, by using an available printer and/or through a request for a paper writing." In response to these concerns, the IRS and Treasury reiterate the view, expressed in the preamble to the proposed regulations, that the legal standards for the delivery of distribution-related notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B) should be the same regardless of the medium of delivery. Additionally, the IRS and Treasury note that many of the concerns raised by this commentator about electronic media are adequately addressed by the requirement in the regulations that participants always have the right to request and to receive a written paper notice without charge.

Several commentators objected to the requirement that participants be able to receive the notice on a written paper document upon request. These commentators argued that simply making written paper

notices available through an electronic medium (such as a printing option on an e-mail system or a plan web site) protects the interests of participants in having access to written paper notices without placing the burden of providing written paper notices on plan sponsors and administrators. However, the IRS and Treasury believe that the right to request and to receive a written paper notice is an important fail-safe for paperless plan administration. The requirement ensures that no participant is denied ready access to a usable copy of a required distribution notice, and it limits the need for the IRS and Treasury to regulate the manner in which written paper notices are made available through electronic media. The IRS and Treasury believe that the burden for plan sponsors and administrators to maintain a process that will generate written paper notices upon request is outweighed by the important safeguards provided by the requirement. In addition, as indicated in the preamble to the proposed regulations, the written paper notice provided on request need not be identical to the electronic notice. Therefore, the written paper notice can be either a printed version of the electronic notice or a separate notice prepared for distribution on paper. In light of these considerations, the requirement is retained in the final regulations.

One commentator requested clarification that the proposed regulations under section 3405 would permit the electronic delivery of the annual notice described in section 3405(e)(10)(B)(i)(III) (which is provided to recipients of periodic payments). The proposed regulations, as written, apply to that annual notice; however, the final regulations make this point expressly. One commentator asked that the proposed regulations be amended to provide for electronic withholding elections under section 3405 in addition to electronic transmission of notices under section 3405. It is unclear what, if any, utility such a change in the regulations would have in light of the ability to use electronic media for transmission of Form W-4P, as set out in Announcement 99–6. Therefore, no change has been made to the regulations on this point.

2. Flexibility for timing requirement in providing notices

Commentators favored the provision in the proposed regulations that provided flexibility with respect to the 90-day period under sections 402(f) and 411(a)(11) by providing an alternative timing rule. Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period under those sections. The full notice is not required to be provided on a regular periodic basis and may be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is given. The proposed regulations provide that the summary notice must set out the principal provisions of the full notice, must refer the participant to the most recent occasion on which the full notice was provided, and must advise the participant of the right to request and to receive a copy of the full notice without charge.

Several commentators interpreted the requirement in the proposed regulations that the summary refer the participant to the most recent occasion on which the full notice was provided as requiring an indication of the precise date on which the participant was given the full notice and the precise location of the full notice if it was provided in a document containing other information (such as the summary plan description). These commentators argued that this information may vary on a participant-by-participant basis and so imposes a considerable administrative burden on plan sponsors and administrators.[1]

The IRS and Treasury did not intend for the proposed regulations to be construed as requiring individualized information about the full notice. Therefore, the final regulations clarify, first, that the summary must refer participants to the most recent *version* of the full notice. The purpose of this rule is to minimize confusion among participants if more than one version of a full notice has been provided in the past. In many of those cases, this reference could reasonably be made by calendar year (for example, by referring to the 1999 version of the section 402(f) notice). If more than one version of a distribution notice was provided in a single calendar year, more precise reference should be made (for example, by referring to the May 1999 version of the section 402(f) notice). Reference to the notice by month or year would not be necessary if only one version of the notice had been provided in the past. If the full notice were constantly available (for example, a notice that is available on a plan web site and is kept up-to-date), it would be adequate to state that fact.

Additionally, the regulations have been modified to provide that, in the case of a full notice provided in a document containing other information, the summary must identify that document and must provide a reasonable indication of where the notice may be found in the document. This requirement could be satisfied through a number of means, including identification of page number, section heading, an index reference, the title of the notice, or any other reference that would reasonably direct the participant to the notice.

One commentator objected to the alternative timing rule set out in the proposed regulations. This commentator argued that distribution-related notices should be tied to a specific event (such as a participant request for a distribution) and that "it is inappropriate to provide a notice of the notice when using electronic or other new technologies when it is just as easy to provide the actual notice itself." The IRS and Treasury agree that the information contained in the section 402(f) and section 411(a)(11) notices should be provided to a participant in connection with the participant's contemplation of a distribution, but the IRS and Treasury believe that providing a summary of a previously provided notice and informing the participant of the right to request and to receive the full notice adequately protect the interests of participants in this regard.

The preamble to the proposed regulations includes an example of a summary section 402(f) notice provided through an automated telephone system. Many commentators raised questions about this example. Several commentators argued that the sample summary is too long and com-

[1] For example, many plan sponsors provide a copy of the summary plan description to each employee when the employee is first hired. If the full notice is provided through the summary plan description, the precise date on which the full notice was last provided could differ for each participant.

plex to be of use in plan administration; others argued that it does not include reference to every potentially applicable rule concerning the taxation of plan distributions (for example, it does not refer to the taxation of net unrealized appreciation on the distribution of employer securities). Commentators also inquired about the legal status of the example because of its placement in the preamble. The example was intended merely to illustrate a summary notice that, in the view of the IRS and Treasury, satisfies the requirements of the proposed regulations. It was not intended as a model summary or as the exclusive form for such a summary. Although the example is not restated in these final regulations, the IRS and Treasury are considering whether to issue additional guidance providing additional examples of summary notices. In this regard, the IRS and Treasury will solicit comments from interested parties regarding the development of those examples and will invite interested parties to submit draft summary notices to assist in the development of that guidance.

Consent Under Section 411(a)(11)

Consistent with the proposed regulations, the final regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. Comments on this portion of the proposed regulations were generally favorable, and no change has been made in the final regulations.

One commentator, however, objected outright to the use of electronic media for the transmission of participant consent and argued that, at a minimum, such consent "should not be effective until after a written confirmation is received and the participant has a specified amount of time to revoke it." This commentator also argued that the final regulations should prohibit the use of automated telephone systems to provide distribution-related notices and to receive participant consent unless an automatic, mandatory written confirmation of the participant's election of a distribution option is required along with a seven-day right of revocation. The IRS and Treasury concluded that it is not advisable to impose new revocation rules based on the medium through which a participant consents to a distribution. Both the proposed regulations and the final regulations require that the terms of any consent made through an electronic medium be confirmed to the participant. Additionally, the IRS and Treasury do not believe that a right of revocation for a defined period after consent is given is more necessary or appropriate in the case of consent made through an electronic medium than it is in the case of consent made through a written paper document. More generally, the IRS and Treasury do not believe that the use of electronic media is improper or inappropriate for the transmission of a participant's consent under section 411(a)(11). If the requirements of the regulations are satisfied, consent provided in that manner should reflect the considered wishes of the participant as reliably as a consent provided through a written paper document.

Changes to the Examples in the Regulations

Several commentators expressed concern about details in the examples illustrating the proposed regulations for distribution notices and consent. One of the concerns involved the statement in the examples that a participant who wished to change a PIN electronically would be unable to proceed with a distribution transaction until the plan sent a confirmation of the change to the participant. Commentators stated that the electronic systems maintained by plan sponsors and administrators use an array of security features to ensure participant identity, some of which might permit an electronic transaction to proceed after a PIN change. Although the prohibition on proceeding with an electronic transaction after a PIN change was intended only to illustrate a commonly used system and not as a substantive requirement, the final regulations omit the statement from the examples for the sake of clarity. Of course, the examples in the final regulations presuppose that plan sponsors and administrators maintain adequate measures to ensure participant identity when a PIN is changed.

Notice 99–1 and Announcement 99–6

Commentators expressed support for Notice 99–1, which indicates that a qualified plan will not fail to meet the requirements of section 401(a) (and that a qualified cash-or-deferred arrangement will not fail to meet the requirements of section 401(k)) merely because it permits a participant or beneficiary to use electronic media to effect a transaction for which no specific provision of the Code, the regulations, or other guidance of general applicability sets forth rules or standards regarding the media through which it may be conducted. Announcement 99–6 permits the electronic transmission of Form W-4P.

Commentators asked for clarification whether Form W-4P may be transmitted through a telephone system. The underlying standards for the electronic transmission of Form W-4P are intended to be the same as those for the electronic transmission of Form W-4, as set out in §31.3402(f)(5)–1(c). The preamble to the proposed regulations for the electronic transmission of Form W-4 indicates that "[i]f an employer chooses to establish an electronic system, the employer will be free to determine the type of system (such as telephone or computer) or systems available to its employees." (59 FR 18508 (Apr. 15, 1994)). Therefore, the use of a telephone system for electronic transmission of Form W-4P, if otherwise consistent with Announcement 99–6 and §31.3402(f)(5)–1(c), is permissible.

Commentators also asked the IRS and Treasury to reconsider the requirement, stated in Announcement 99–6, that the electronic signature on Form W-4P be the final entry in the submission of the form. These commentators argue that this effectively requires the participant in most cases to enter a PIN at both the beginning

and the end of a transaction that involves the use of an electronic Form W-4P. The IRS and Treasury are considering this issue and anticipate issuing additional guidance on this question.

Scope of These Regulations

These regulations do not address the application of Title I of ERISA (except for section 203(e)) to the use of electronic media for any plan communication or transaction. Several commentators requested that the regulations be expanded to include matters not covered by the proposed regulations. Most notably, commentators asked that the IRS and Treasury provide guidance on the use of electronic media for plan loans under section 72(p), nondiscrimination safe-harbor notices under sections 401(k)(12) and 401(m)(11), notices under section 204(h) of ERISA, and distribution notices, elections, and spousal consents governed by sections 401(a)(11) and section 417.

The IRS and Treasury are actively considering comments submitted on regulations proposed under section 72(p) and expect to issue additional guidance under that section. It is anticipated that any guidance on the use of electronic media in connection with plan loans would be issued in connection with that additional guidance. As the IRS and Treasury have noted in the past, notices under sections 401(k)(12) and 401(m)(11) and ERISA section 204(h) present legal issues distinct from those presented by notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B). Notice 2000–3 (2000–4 I.R.B. 413) provides that, pending further guidance, notices under sections 401(k)(12) and 401(m)(11) may be issued through electronic media if standards set forth in Notice 2000–3 which are similar to those applicable to notices under these regulations, are satisfied. Because of the unique considerations applicable to notices under ERISA section 204(h), guidance with respect to the use of electronic media in connection with section 204(h) notices is not being issued at this time.

Finally, regarding notices, elections, and spousal consents governed by sections 401(a)(11) and section 417, the IRS and Treasury note that the statutory requirement that spousal consent be witnessed either by a notary public or a plan representative appears to presuppose that a spouse be in the physical presence of the notary public or the plan representative at the time consent is given. This appears to place significant limitations on the utility of electronic media in effecting spousal consent.[2] Thus, it is unclear what guidance the IRS and Treasury could issue that would meaningfully facilitate paperless distributions in the case of plans subject to sections 401(a)(11) and 417.

Reliance

Plan sponsors and administrators may rely on these final regulations for guidance for distributions made prior to the effective date.

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 impact analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will not add more than a minor increment to the cost of these distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

[2] One commentator suggested that electronic transmission of spousal consent be permitted if the plan has Areasonable certainty that the spouse has consented.@ That suggested standard appears to fall far short of the witnessing requirement specifically set forth in the statute.

Drafting Information

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

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 35, and 602 are 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 1.402(f)–1 is amended by:

1. Revising Q&A–2.
2. Adding Q&A–5 and Q&A–6.

The revision and additions read as follows:

§1.402(f)–1 Required explanation of eligible rollover distributions; questions and answers.

* * * * *

Q-2: When must the plan administrator provide the section 402(f) notice to a distributee?

A-2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A-2.

(a) This paragraph (a) is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to

attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A-2, the plan administrator may substitute the annuity starting date, within the meaning of §1.401(a)–20, Q&A-10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A-2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A-2, provides the section 402(f) notice to the distributee without charge and no less than 30 days before the date of a distribution (or the annuity starting date), subject to the rules for the distributee's waiver of that 30-day period. The summary described in paragraph (b)(2) of this Q&A-2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent version of the section 402(f) notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q-5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A-2 of this section other than through a written paper document?

A-5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A-2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the distributee at no charge.

Q-6: Are there examples that illustrate the provisions of Q&A-2 and Q&A-5 of this section?

A-6: The following examples illustrate the provisions of Q&A-2 and Q&A-5 of this section:

Example 1. (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In *Example 1*, Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 2. (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document by calling a telephone number indicated on the web page and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice.

(ii) In this *Example 2*, Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 3. (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent version of the section 402(f) notice which was provided in the summary plan description, informs the participant where the section 402(f) notice may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge receipt, review, and comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period).

(ii) In this *Example 3*, Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary is provided to the participant other than through a written paper document.

Example 4. (i) Same facts as *Example 3*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text.

(ii) In this *Example 4*, Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

Example 5. (i) Same facts as *Example 3*, except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant.

(ii) In this *Example 5*, Plan C does not satisfy the notice requirement of section 402(f) because oral delivery alone of the section 402(f) notice through the automated telephone system is not sufficient.

Example 6. (i) The facts are the same as in *Example 1*, except that Participant D requested a distri-

bution by e-mail, then terminated employment, and, following the termination, no longer has reasonable access to Plan A e-mail.

(ii) In this *Example 6*, Plan A does not satisfy the notice requirement of section 402(f) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the section 402(f) notice to Participant D in a written paper document or by an electronic means that is reasonably accessible to Participant D.

Par. 3. Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).

2. Removing the language "Written consent" in paragraph (c)(2)(ii) and (c)(3) and adding "Consent" in its place.

3. Adding paragraphs (f) and (g).

The revisions and additions read as follows:

§1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) *Consent*. (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(*1*) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(*2*) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(*3*) If the participant so requests after receiving the summary described in paragraph (c)(2)(iii)(B)(*2*) of this section, provides the notice to the participant without charge and no less than 30 days before the date the distribution commences, subject to the rules for the participant's waiver of that 30-day period. The summary described in paragraph (c)(2)(iii)(B)(*2*) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent version of the notice (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must provide a reasonable indication of where the notice may be found in that document, such as by index reference or by section heading), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—(1) *Notice*. The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(*2*) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent*. The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples*. The provisions of paragraph (f) of this section are illustrated by the following examples:

Example 1. (i) A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent by e-mail, the plan administrator, by e-mail, sends confirmation of the terms (including the form) of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 1*, Plan A does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 2. (i) Same facts as *Example 1*, except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution.

(ii) In this *Example 2*, Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

Example 3. (i) A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document by calling a telephone number indicated on the web page and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent via e-mail, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) In this *Example 3*, Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 4. (i) A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated telephone system is no less understandable to the participant than a written paper notice.

(ii) In this *Example 4*, Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 5. (i) Same facts as *Example 4*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator.

(ii) In this *Example 5*, Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 6. (i) Same facts as *Example 1*, except that Participant D requested a distribution by e-mail, then terminated employment and, following the termination, no longer has access to e-mail.

(ii) In this *Example 6*, Plan A does not satisfy the notice or consent requirement of section 411(a)(11) because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide Participant D the section 411(a)(11) notice in a written paper document or by an electronic means that is reasonably accessible to Participant D.

Par. 4. The heading for part 35 is revised to read as follows:

PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 5. The authority citation for part 35 is revised to read as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97–248 (96 Stat. 623).

Section 35.3405–1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Section 35.3405–1T also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Par. 6. Redesignate §35.3405–1 as §35.3405–1T and revise the heading to read as follows:

§35.3405–1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).

* * * * *

Par. 7. A new §35.3405–1 is added to read as follows:

§35.3405–1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1986, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Pub. L. 97–248) (TEFRA).

a-1 through d-34 [Reserved] For further guidance, see §35.3405–1T.

* * * * *

d-35. Q. Through what medium may a payor provide the notice required under section 3405 to a payee?

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27 of §35.3405–1T and the annual notice described in d-31 of §35.3405–1T) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the payee at no charge.

d-36. Q. Are there examples that illustrate the provisions of d-35 of this section?

A. The provisions of d-35 of this section are illustrated by the following examples:

Example 1. (i) An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail,

the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 1*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. (i) An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 2*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. (i) An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 3*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. (i) Same facts as *Example 3*, except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text.

(ii) *Conclusion*. In this *Example 4*, the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 5. (I) Same facts as *Example 1*, except that Participant D requested a distribution by e-mail and then terminated employment. Participant D no longer has access to e-mail.

(ii) In *this Example 5*, Plan A does not satisfy the notice requirement of section 3405 because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the notice required by section 3405 to Participant D in a written paper document or by an electronic medium that is reasonably accessible to Participant D.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In §602.101, paragraph (b) is amended by adding the following entry in the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR Part or Section Where Identified and Described	Current OMB Control No.
* * * * *	
1.402(f)–1	1545–1632
* * * * *	
1.411(a)–11	1545–1632
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved January 20, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on February 7, 2000, 8:45 a.m., and published in the issue of the Federal Register for February 8, 2000, 65 F.R. 6001)

Section 3221.—Rate of Tax

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

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2000, shall be at the rate of 26 1/2 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2000, 38.7 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 61.3 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated December 2, 1999.

By Authority of the Board.

Beatrice Ezerski,
Secretary of the Board.

(Filed by the Office of the Federal Register on December 12, 1999, 8:45 a.m., and published in the issue of the Federal Register for December 13, 1999, 64 F.R. 69575)

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, sections 61, 280F; 1.61.21, 1.280F–7)

Rev. Proc. 2000-18

SECTION 1. PURPOSE

This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service during calendar year 2000, including separate limitations on passenger automobiles designed to be propelled primarily by electricity and built by an original equipment manufacturer (electric automobiles); (2) the amounts to be included in income by lessees of passenger automobiles first leased during calendar year 2000, including separate inclusion amounts for electric automobiles; and (3) the maximum allowable value of employer-provided automobiles first made available to employees for personal use in calendar year 2000 for which the vehicle cents-per-mile valuation rule provided under § 1.61-21(e) of the Income Tax Regulations may be applicable. The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7) of the Internal Revenue Code. The maximum allowable automobile value for applying the vehicle cents-per-mile valuation rule reflects the automobile price inflation adjustment of § 280F(d)(7) as required by § 1.61-21(e)(1)(iii)(A).

SECTION 2. BACKGROUND

For owners of automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for the year that the automobile is placed in service and each succeeding year. In the case of electric automobiles placed in service after August 5, 1997, and before January 1, 2005, § 280F(a)(1)(C) requires tripling of these limitation amounts. Section 280F(d)(7) requires the amounts allowable as depreciation deductions to be increased by a price inflation adjustment amount for passenger automobiles placed in service after 1988.

For leased automobiles, § 280F(c) requires a reduction in the deduction allowed to the lessee of the automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of automobiles. Under § 1.280F-7(a), this reduction requires the lessees to include in gross income an inclusion amount determined by applying a formula to the amount obtained from a table. There is a table for lessees of electric automobiles and a table for all other passenger automobiles. Each table shows inclusion amounts for a range of fair market values for each tax year after the automobile is first leased.

For automobiles first provided by employers to employees that meet the requirements of § 1.61-21(e)(1), the value to the employee of the use of the automobile may be determined under the vehicle cents-per-mile valuation rule of § 1.61-21(e). Section 1.61-21(e)(1)(iii)(A) provides that for an automobile first made available after 1988 to any employee of the employer for personal use, the value of the use of the automobile may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to § 1.61-21(d)(5)(i) through (iv)) on the first date the automobile is made available to the employee exceeds $12,800 as adjusted by § 280F(d)(7).

SECTION 3. SCOPE AND OBJECTIVE

01. The limitations on depreciation deductions in section 4.02 of this revenue procedure apply to automobiles (other than leased automobiles) that are placed in service in calendar year 2000 and continue to apply for each tax year that the automobile remains in service.

02. The tables in section 4.03 of this revenue procedure apply to leased automobiles for which the lease term begins in calendar year 2000. Lessees of such automobiles must use these tables to determine the inclusion amount for each tax year during which the automobile is leased.

03. *See* Rev. Proc. 96-25, 1996-1 C.B. 681, for information on determining inclusion amounts for automobiles first leased before January 1, 1997; Rev. Proc. 97-20, 1997-1 C.B. 647, for automobiles first leased during calendar year 1997, including electric automobiles first leased on or after January 1, 1997, and before August 6, 1997; Rev. Proc. 98-24, 1998-1 C.B. 663, for electric automobiles first leased after August 5, 1997, and before January 1, 1998; Rev. Proc. 98-30, 1998-1 C.B. 930, for all automobiles first leased in calendar year 1998; and Rev. Proc. 99-14, 1999-5 I.R.B. 56, for all automobiles first leased in calendar year 1999.

04. The maximum fair market value figure in section 4.04(2) of this revenue procedure applies to employer-provided automobiles first made available to any employee for personal use in calendar year 2000. *See* Rev. Proc. 97-20, for the maximum fair market value figure for automobiles first made available in calendar year 1997; Rev. Proc. 98-30, for the maximum fair market value figure for automobiles first made available in calendar year 1998; and Rev. Proc. 99-14, for the maximum fair market value figure for automobiles first made available in calendar year 1999.

SECTION 4. APPLICATION

01. A taxpayer placing an automobile in service for the first time during calendar year 2000 is limited to the depreciation deduction shown in Table 1 of section 4.02(2) of this revenue procedure or, in the case of an electric automobile, Table 2 of this revenue procedure. A taxpayer first leasing an automobile in calendar year 2000 must determine the inclusion amount that is added to gross income using Table 3 of section 4.03 of this revenue procedure or, in the case of an electric automobile, Table 4 of this revenue procedure. In addition, the procedures of § 1.280F-7(a) must be followed. An employer providing an automobile for the first time in calendar year 2000 for the personal use of any employee may determine the value of the use of the automobile by using the cents-per-mile valuation rule in § 1.61-21(e) if the fair market value of the automobile does not exceed the amount specified in section 4.04(2) of this revenue procedure. If the fair market

value of the automobile exceeds the amount specified in section 4.04(2) of this revenue procedure, the employer may determine the value of the use of the automobile under the general valuation rules of § 1.61-21(b) or under the special valuation rules of § 1.61-21(d) (Automobile lease valuation) or § 1.61-21(f) (Commuting valuation) if the applicable requirements are met.

02. *Limitations on Depreciation Deductions for Certain Automobiles*.

(1) *Amount of the Inflation Adjustment*. Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. The term "CPI automobile component" is defined in § 280F(d)(7)(B)(ii) as the "automobile component" of the Consumer Price Index for all Urban Consumers published by the Department of Labor (the CPI). The new car component of the CPI was 115.2 for October 1987 and 138.8 for October 1999. The October 1999 index exceeded the October 1987 index by 23.6. The Internal Revenue Service has, therefore, determined that the automobile price inflation adjustment for 2000 is 20.49 percent (23.6/115.2 x 100%). This adjustment is applicable to all automobiles that are first placed in service in calendar year 2000. The dollar limitations in § 280F(a) must therefore be multiplied by a factor of 0.2049, and the resulting increases, after rounding to the nearest $100, are added to the 1988 limitations to give the depreciation limitations applicable to passenger automobiles (other than electric automobiles) for calendar year 2000. To determine the dollar limitations applicable to an electric automobile first placed in service during calendar year 2000, the dollar limitations in § 280F(a) are tripled in accordance with § 280F(a)(1)(C) and are then multiplied by a factor of 0.2049; the resulting increases, after rounding to the nearest $100, are added to the tripled 1988 limitations to give the depreciation limitations for calendar year 2000.

(2) *Amount of the Limitation*. For automobiles (other than electric automobiles) placed in service in calendar year 2000, Table 1 of this revenue procedure contains the dollar amount of the depreciation limitations for each tax year. For electric automobiles placed in service in calendar year 2000, Table 2 of this revenue procedure contains these amounts.

REV. PROC. 2000-18, TABLE 1

DEPRECIATION LIMITATIONS FOR AUTOMOBILES
(OTHER THAN ELECTRIC AUTOMOBILES)
FIRST PLACED IN SERVICE IN CALENDAR YEAR 2000

Tax Year	*Amount*
1st Tax Year	$3,060
2nd Tax Year	$4,900
3rd Tax Year	$2,950
Each Succeeding Year	$1,775

REV. PROC. 2000-18, TABLE 2

DEPRECIATION LIMITATIONS FOR ELECTRIC AUTOMOBILES
FIRST PLACED IN SERVICE IN CALENDAR YEAR 2000

Tax Year	*Amount*
1st Tax Year	$9,280
2nd Tax Year	$14,800
3rd Tax Year	$8,850
Each Succeeding Year	$5,325

03. *Inclusions in Income of Lessees of Automobiles*.

The inclusion amounts for automobiles first leased in calendar year 2000 are calculated under the procedures described in § 1.280F-7(a). Lessees of automobiles other than electric automobiles should use Table 3 of this revenue procedure in applying these procedures, while lessees of electric automobiles should use Table 4 of this revenue procedure.

REV. PROC. 2000-18, TABLE 3

DOLLAR AMOUNTS FOR AUTOMOBILES (OTHER THAN ELECTRIC AUTOMOBILES) WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2000

Fair Market Value of Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th and Later
$ 15,500	15,800	3	6	9	10	12
15,800	16,100	5	12	17	20	23
16,100	16,400	8	17	25	30	34
16,400	16,700	10	23	33	40	45
16,700	17,000	13	28	42	49	57
17,000	17,500	16	36	52	62	72
17,500	18,000	20	45	66	78	91
18,000	18,500	25	54	79	95	109
18,500	19,000	29	63	93	111	128
19,000	19,500	33	72	107	127	147
19,500	20,000	37	81	121	143	166
20,000	20,500	41	91	133	160	185
20,500	21,000	45	100	147	176	204
21,000	21,500	50	109	160	193	222
21,500	22,000	54	118	174	209	241
22,000	23,000	60	132	194	234	269
23,000	24,000	68	150	222	266	306
24,000	25,000	77	168	249	298	345
25,000	26,000	85	187	276	331	381
26,000	27,000	93	205	303	364	419
27,000	28,000	102	223	330	396	457
28,000	29,000	110	241	358	429	494
29,000	30,000	119	259	385	461	532
30,000	31,000	127	278	412	493	570
31,000	32,000	135	296	439	527	607
32,000	33,000	144	314	467	558	645
33,000	34,000	152	333	493	591	683
34,000	35,000	160	351	521	623	720
35,000	36,000	169	369	548	656	757
36,000	37,000	177	388	574	689	795
37,000	38,000	185	406	602	721	833
38,000	39,000	194	424	629	754	870
39,000	40,000	202	443	656	786	908
40,000	41,000	210	461	683	819	946
41,000	42,000	219	479	710	852	983
42,000	43,000	227	497	738	884	1,021
43,000	44,000	235	516	765	916	1,058
44,000	45,000	244	534	792	949	1,095
45,000	46,000	252	552	819	982	1,133
46,000	47,000	260	571	846	1,014	1,171
47,000	48,000	269	589	873	1,047	1,208
48,000	49,000	277	607	901	1,079	1,246
49,000	50,000	285	626	927	1,112	1,284
50,000	51,000	294	644	954	1,145	1,321
51,000	52,000	302	662	982	1,177	1,359
52,000	53,000	311	680	1,009	1,210	1,396
53,000	54,000	319	699	1,036	1,242	1,433

REV. PROC. 2000-18, TABLE 3 (Cont'd.)

DOLLAR AMOUNTS FOR AUTOMOBILES (OTHER THAN ELECTRIC AUTOMOBILES)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2000

Fair Market Value of Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th and Later
54,000	55,000	327	717	1,063	1,275	1,471
55,000	56,000	336	735	1,090	1,308	1,508
56,000	57,000	344	754	1,117	1,340	1,546
57,000	58,000	352	772	1,145	1,372	1,584
58,000	59,000	361	790	1,172	1,405	1,621
59,000	60,000	369	808	1,199	1,438	1,659
60,000	62,000	381	836	1,240	1,486	1,715
62,000	64,000	398	873	1,294	1,551	1,790
64,000	66,000	415	909	1,348	1,617	1,865
66,000	68,000	432	945	1,403	1,681	1,941
68,000	70,000	448	982	1,457	1,747	2,016
70,000	72,000	465	1,019	1,511	1,811	2,092
72,000	74,000	482	1,055	1,566	1,876	2,166
74,000	76,000	498	1,092	1,620	1,942	2,241
76,000	78,000	515	1,129	1,673	2,007	2,317
78,000	80,000	532	1,165	1,728	2,072	2,392
80,000	85,000	561	1,229	1,823	2,186	2,523
85,000	90,000	603	1,320	1,959	2,349	2,711
90,000	95,000	644	1,412	2,095	2,511	2,899
95,000	100,000	686	1,504	2,230	2,674	3,087
100,000	110,000	749	1,641	2,433	2,918	3,369
110,000	120,000	832	1,824	2,705	3,243	3,745
120,000	130,000	916	2,006	2,977	3,569	4,120
130,000	140,000	999	2,190	3,248	3,894	4,496
140,000	150,000	1,083	2,372	3,520	4,219	4,872
150,000	160,000	1,166	2,556	3,790	4,545	5,248
160,000	170,000	1,250	2,738	4,062	4,871	5,623
170,000	180,000	1,333	2,921	4,334	5,196	5,998
180,000	190,000	1,416	3,105	4,605	5,521	6,374
190,000	200,000	1,500	3,287	4,877	5,846	6,750
200,000	210,000	1,583	3,470	5,148	6,172	7,126
210,000	220,000	1,667	3,653	5,419	6,498	7,501
220,000	230,000	1,750	3,836	5,691	6,823	7,877
230,000	240,000	1,834	4,019	5,962	7,148	8,253
240,000	250,000	1,917	4,202	6,233	7,474	8,629

REV. PROC. 2000-18, TABLE 4

DOLLAR AMOUNTS FOR ELECTRIC AUTOMOBILES
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2000

Fair Market Value of Automobile		Tax Year During Lease				
Over	Not Over	1st	2nd	3rd	4th	5th and Later
$ 47,000	48,000	7	17	26	32	36
48,000	49,000	14	31	47	57	66
49,000	50,000	20	45	69	82	95
50,000	51,000	27	59	90	107	124
51,000	52,000	33	74	110	133	153
52,000	53,000	39	88	132	157	183
53,000	54,000	46	102	153	183	211
54,000	55,000	52	116	174	209	240
55,000	56,000	59	130	195	234	270
56,000	57,000	65	145	216	259	299
57,000	58,000	72	159	237	284	328
58,000	59,000	78	173	258	310	357
59,000	60,000	85	187	279	335	387
60,000	62,000	95	208	311	373	430
62,000	64,000	107	237	353	423	489
64,000	66,000	120	266	394	474	547
66,000	68,000	133	294	437	524	606
68,000	70,000	146	322	480	574	664
70,000	72,000	159	351	521	625	723
72,000	74,000	172	379	564	675	781
74,000	76,000	185	407	606	727	838
76,000	78,000	198	436	648	777	897
78,000	80,000	211	464	690	828	955
80,000	85,000	234	514	763	916	1,058
85,000	90,000	266	585	869	1,042	1,204
90,000	95,000	298	656	975	1,168	1,350
95,000	100,000	331	727	1,080	1,295	1,495
100,000	110,000	379	834	1,237	1,485	1,714
110,000	120,000	444	975	1,449	1,737	2,006
120,000	130,000	509	1,117	1,660	1,990	2,297
130,000	140,000	574	1,259	1,870	2,243	2,589
140,000	150,000	638	1,402	2,080	2,496	2,881
150,000	160,000	703	1,543	2,292	2,748	3,173
160,000	170,000	768	1,685	2,503	3,000	3,465
170,000	180,000	833	1,827	2,713	3,254	3,756
180,000	190,000	897	1,970	2,923	3,506	4,049
190,000	200,000	962	2,112	3,134	3,759	4,340
200,000	210,000	1,027	2,253	3,346	4,011	4,632
210,000	220,000	1,092	2,395	3,556	4,264	4,924
220,000	230,000	1,156	2,538	3,766	4,517	5,215
230,000	240,000	1,221	2,680	3,977	4,769	5,507
240,000	250,000	1,286	2,821	4,189	5,022	5,798

04. *Maximum Automobile Value for Using the Cents-per- mile Valuation Rule*.

(1) *Amount of Adjustment*. Under § 1.61-21(e)(1)(iii)(A), the limitation on the fair market value of an employer-provided automobile first made available to any employee for personal use after 1988 is to be adjusted in accordance with § 280F(d)(7). Accordingly, the adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of the preceding calendar year exceeds the CPI automobile component for October 1987. *See*, section 4.02(1) of this revenue procedure. The new car component of the CPI was 115.2 for October 1987 and 138.8 for October 1999. The October 1999 index exceeded the October 1987 index by 23.6. The Internal Revenue Service has, therefore, determined that the adjustment for 2000 is 20.49 percent (23.6/115.2 x 100%). This adjustment is applicable to all employer-provided automobiles first made available to any employee for personal use in calendar year 2000. The maximum fair market value specified in § 1.61-21(e)(1)(iii)(A) must therefore be multiplied by a factor of 0.2049, and the resulting increase, after rounding to the nearest $100, is added to $12,800 to give the maximum value for calendar year 2000.

(2) *The Maximum Automobile Value*. For automobiles first made available in calendar year 2000 to any employee of the employer for personal use, the vehicle cents-per-mile valuation rule may be applicable if the fair market value of the automobile on the date it is first made available does not exceed $15,400.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to automobiles (other than leased automobiles) that are first placed in service during calendar year 2000, to leased automobiles that are first leased during calendar year 2000, and to employer-provided automobiles first made available to employees for personal use in calendar year 2000.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding the depreciation limitations and lessee inclusion amounts in this revenue procedure, contact Mr. Harvey at (202) 622-3110; for further information regarding the maximum automobile value for applying the vehicle cents-per-mile valuation rule, contact Ms. Lynne Camillo of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6040 (not toll-free calls).

Weighted Average Interest Rate Update

Notice 2000-2

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for January 2000 is 6.63 percent.

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

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
February	2000	6.03	5.43 to 6.34	5.43 to 6.64

Drafting Information

The principal author of this notice is Todd Newman of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, call the Employee Plans Actuarial hotline, (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Mr. Newman's number is (202) 622-8458 (also not a toll-free number).

Pre-Filing Agreements Pilot Program

Notice 2000-12

1. INTRODUCTION OF PILOT PROGRAM

This Notice announces a pilot program for Pre-Filing Agreements (PFAs), under which large business taxpayers may request examination and resolution of specific issues relating to tax returns they expect to file between September and December, 2000. The purpose of the program is to enable both taxpayers and the Internal Revenue Service (IRS) to resolve before filing the treatment of issues otherwise likely to be disputed in post-filing audits. Through a cooperative effort, the program is intended to reduce the costs, burden and delays encountered in post-filing examinations.

The program is administered by the Large and Mid-size Business Division (LMSB) of the IRS. In its pilot phase, the program is open to large businesses that currently have a Coordinated Examination Team on site. Taxpayers interested in participating in the pilot program, or with questions about the program and its suitability to their situation, should contact their on site Case Manager as soon as possible, and are encouraged to apply on or before March 15, 2000, to ensure their application will be given full consideration. LMSB is willing to meet with taxpayers considering participation in the program to answer questions and explore the desirability of their participation.

During the pilot phase of the program, LMSB plans to select approximately five to ten taxpayers from among those requesting participation in the program. LMSB will select participants as soon as possible after March 15, 2000, and provide taxpayers and audit teams an orientation about the program. The team will work with the selected taxpayer with the expectation of resolving the designated

issue by the taxpayer's filing deadline. Taxpayers participating in the pilot program will be asked to assist in monitoring and evaluating the process. After completing the pilot cases, the IRS will evaluate the program, and may then offer the program, after further modification, on a permanent basis.

The IRS believes that the PFA program offers significant potential benefits for taxpayers as well as the IRS, and invites large business taxpayers to participate in this program.

2. DESCRIPTION OF A PRE-FILING AGREEMENT

A PFA is a closing agreement under § 7121 of the Internal Revenue Code between the IRS and taxpayer relating to one or more specific issues arising from transactions entered into by the taxpayer during a taxable period ending prior to the date of the agreement. The agreement specifies the treatment of the transaction(s) on a tax return to be filed by the taxpayer subsequent to the date of the agreement. A PFA may also resolve related specific items affecting other taxable periods. See Rev. Proc. 68-16, 1968-1 C.B. 770, which describes the preparation of closing agreements under § 7121.

The PFA's application of the law to the taxpayer's facts may result in treating an item differently from earlier treatments of similar items in prior taxable years (*e.g.*, deducting items that previously were capitalized, such as certain ISO 9000 costs). If so, the differing treatment may constitute a change in the method of accounting for that item. The PFA will resolve only the factual characterization of the items at issue, but will not constitute the Commissioner's consent to make any accounting method change that may be required to conform the agreed upon treatment of the item with identical items in earlier years. Permission to make any accounting method changes required by the PFA's resolution of the factual and legal issues must be obtained using the applicable administrative procedures. *See* Rev. Proc. 99-49, 1999-52 I.R.B. 725 (automatic consent to change certain accounting methods); Rev. Proc. 97-27, 1997-1 C.B. 680.

3. SUBJECT MATTER OF AN LMSB PRE-FILING AGREEMENT

In general. The PFA program is intended to advance the resolution of issues that are otherwise likely to be disputed in post-filing audits. The program is intended to reach agreement on factual issues and apply settled legal principles to those facts. In such cases, the presence of an LMSB audit team on site shortly after the completion of the transaction is most likely to enhance the prospects for an agreed resolution of the issue. Questions concerning the correct interpretation of legal rules the interpretation of which is not well settled are more properly presented in requests for private letter rulings. *See* Rev. Proc. 2000-1, 2000-1 I.R.B. 4. Moreover, the program is not available to settle disagreements between a taxpayer and the IRS over the correct interpretation of the tax laws (except as authorized under Delegation Order No. 236 or 247 regarding settlement guidelines).

The IRS will consider entering into a PFA on any issue involving the application of settled legal principles requested by the taxpayer, except as noted below. Issuance of a PFA is discretionary with the LMSB Industry Director. A PFA cannot resolve issues for taxpayers or years outside the jurisdiction of LMSB. In evaluating whether to proceed with the PFA process and to enter into a PFA, the IRS will determine that the issue presented is consistent with the overall goals of the program stated above.

Examples. The following are examples of issues likely to be suitable for resolution through the PFA program:

(1) The valuation of assets (except in the context of transfer pricing), and the allocation of the purchase or sale price of a business among the assets acquired or sold;

(2) The identification and documentation of hedging transactions;

(3) Issues relating to in-house research expenses under section 41;

(4) The allocation of costs among different categories of deductible and capitalizable items in contexts in which there is a published revenue ruling, e.g., repairs (Rev. Rul. 94-12, 1994-1 C.B. 36), advertising (Rev. Rul. 92-80, 1992-2 C.B. 57), and Y2K costs (Rev. Proc. 97-50, 1997-2 C.B. 525);

(5) The determination of which costs are investigatory costs incurred to determine whether to enter a new business and which business to enter for purposes of qualifying as start-up costs under § 195 (*see* Rev. Rul. 99-23, 1999-20 I.R.B. 3);

(6) The determination of 'market' for taxpayers using the lower of cost or market method of inventory valuation in situations involving inactive markets. *See* § 1.471-4(b);

(7) Whether a taxpayer's financial statement preparation of its last-in, first-out (LIFO) inventory is consistent with the LIFO conformity requirement under § 1.472-2(e);

(8) Whether a taxpayer's inventory contains 'sub-normal' goods within the meaning of § 1.471-2(c) and the valuation placed thereon;

(9) Whether a taxpayer is considered the tax owner of the property being produced under § 1.263A-2(a)(1)(ii)(A);

(10) Whether a manufacturing contract newly entered into by a taxpayer is required to be accounted for as a long-term contract under § 460; and

(11) The determination of appropriate asset classes for depreciable property placed in service during the taxable period.

Excluded subjects. A PFA will not be entered into with respect to the following issues:

(1) Issues that can be included in an Advance Pricing Agreement under Rev. Proc. 96-53, 1996-2 C.B. 375, (e.g., transfer pricing);

(2) Issues that can be resolved by requesting a change in accounting method on Form 3115;

(3) Issues under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division (e.g., employee plans);

(4) Issues regarding transactions that lack a bona fide business purpose or have as their principal purpose the reduction of federal taxes;

(5) The satisfaction, for purposes of Subtitle F (Procedure and Administration), of reasonable cause, due diligence, good faith, clear and convincing evidence, or any similar standard; and

(6) The applicability of any penalty or criminal sanction.

Excluded circumstances. In addition, the IRS will not entertain a request for a PFA in the following circumstances:

(1) The issue (for the taxpayer) involves a partnership item as defined in § 6231, or is subject to the procedures set forth in § 6221 through § 6233.
(2) The issue is or will be the subject of a pending or contemporaneous request for a private letter ruling or a change in accounting method by the taxpayer;
(3) The taxpayer's proposed resolution of the issue is contrary to a private letter ruling, technical advice memorandum, or closing agreement previously issued to or regarding the taxpayer;
(4) The taxpayer's proposed resolution of the issue is contrary to a position adverse to the taxpayer proposed by the IRS in response to a private letter ruling (or accounting method change) request that was withdrawn by the taxpayer; or
(4) The issue is the subject of litigation (or has been designated for litigation by the Office of Chief Counsel) between the IRS and the taxpayer with respect to an earlier taxable period.

For the purposes of these excluded circumstances, any reference to the taxpayer also includes a related taxpayer and any predecessor of the taxpayer or a related taxpayer. A related taxpayer is one related within the meaning of § 267 or a member of an affiliated group within the meaning of § 1504 that includes the taxpayer. A predecessor is an entity the tax liability of which the taxpayer or a related taxpayer is or was primarily or secondarily liable.

4. PROCEDURES FOR REQUESTING AN LMSB PRE-FILING AGREEMENT

Before initiating a formal request. Taxpayers interested in participating in the pilot program, or with questions about the program and its suitability to their situation, should contact the LMSB Case Manager supervising the audit of the return currently under examination as soon as possible. Taxpayers also may contact John Petrella, the PFA Program Manager, at (202) 283-8390 (not a toll-free number), for further information about the PFA program.

Initiating the request. After discussing the proposed request with their Case Manager, the taxpayer must submit a request for a PFA in writing through the Case Manager to the LMSB Industry Director. Taxpayers are encouraged to submit the request on or before March 15, 2000, to ensure their application will be given full consideration. The PFA Program Manager and the Case Manager are available to assist in the preparation of the submission.

Contents of the request. The written statement requesting a PFA should concisely:

(1) Provide the taxpayer's name, EIN, and address and the name, title, address and telephone number of a person to contact;
(2) Provide the Case Manager's name and telephone number;
(3) Identify the taxable period for which the PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that period, and (if earlier) the date on which the taxpayer intends to file that return;
(4) Describe the issue(s) for which the PFA is sought. Summarize the material facts and state the legal issue(s) involved. For the purpose of ascertaining that the issue involves the application of settled law, discuss the taxpayer's interpretation of these legal rules and their proposed application to the facts in question;
(5) Discuss the suitability of the issue for the PFA program in light of the purposes and criteria set forth in section 3, above;
(6) Represent that the issue is not described in any of the "Excluded Circumstances" listed in section 3, above;
(7) Discuss whether the resolution of this issue will have any effect in taxable periods either before or after the taxable period for which the PFA is sought;
(8) State whether the taxpayer has ever applied, or intends to apply, for Competent Authority assistance with respect to the issue for the year in question or any prior year;
(9) Discuss whether the issue identified can be resolved through a PFA by the date on which the taxpayer intends to file its return for the taxable period in question;
(10) Describe the organization and location of the records and other evidence that substantiate the taxpayer's proposed position on the issue;
(11) State that the taxpayer agrees that the inspection of records and testimony under the PFA procedures will not preclude or impede (under § 7605(b) or any administrative provisions adopted by the IRS) a later examination of a return or inspection of records with respect to any tax year needed to resolve the issue(s) in the request for a PFA, and that the IRS need not comply with any applicable procedural restrictions (such as providing notice under § 7605(b)) before beginning such examination or inspection; and
(12) Indicate the taxpayer's willingness to participate in a pilot program and to assist in monitoring and evaluating the process.

Perjury statement. A request for a PFA, and any supplemental submission (including additional documents), must include a declaration, signed by a person currently authorized to sign the taxpayer's federal income tax return, in the following form:

> Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of the request for the Pre-Filing Agreement are true, correct and complete.

Signature. The request for a PFA must be signed by the taxpayer or the taxpayer's authorized representative. If the request is signed by an authorized representative, a copy of Form 2848, Power of Attorney and Declaration of Representative, must accompany the request.

No user fee. During the pilot phase of this program, no user fee is required to request a PFA.

5. PROCEDURES FOR SELECTING TAXPAYERS FOR THE PILOT PROGRAM

Case Manager's role. Case Managers will inform the PFA Program Manager of all instances in which taxpayers express interest in participation in the program, and will forward a copy of any written request to the LMSB Industry Director and the PFA Pro-

gram Manager. The Case Manager will also submit to the LMSB Industry Director a recommendation as to whether LMSB should proceed with the PFA request. The Case Manager should discuss, in particular, the IRS resources required (including any specialists or outside consultants), the ability to coordinate the PFA process with the examination of the taxpayer's previously filed returns, the availability of taxpayer records and personnel, and the probability of completing examination of the issue in a timely manner. If the Case Manager plans to recommend against proceeding with consideration of the PFA request, the Case Manager will discuss the proposed recommendation with the taxpayer before submitting the recommendation.

LMSB Industry Director's decision. The LMSB Industry Director with jurisdiction over the taxpayer will make the final decision as to whether to proceed with the taxpayer's request towards resolution through the PFA program. Criteria for selecting taxpayers to participate in the pilot phase of the PFA program include:

(1) The suitability of the issue presented for the program;
(2) The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;
(3) Providing a cross-section of issues and industries for the pilot; and
(4) The probability of completing the examination of the issue and entering into a PFA by the target date.

Communication with taxpayer. The LMSB Industry Director or Field Operations Director will contact the taxpayer within 14 days of receipt of the request to discuss the potential suitability of the requested issue for inclusion in the pilot program. Thereafter, LMSB will inform the taxpayer in writing of LMSB Industry Director's decision to accept or reject the issue(s) for consideration in the PFA pilot program. A taxpayer is not entitled to a conference to appeal an LMSB Industry Director's decision not to go forward with the PFA process. A taxpayer not selected for the pilot program remains eligible for other procedures for early issue resolution, including the Accelerated Issue Resolution (AIR) program (*see* Rev. Proc. 94-67, 1994-2 C.B. 800).

6. PROCESSING A REQUEST FOR AN LMSB PRE-FILING AGREEMENT

Consultation with taxpayer. If the IRS accepts the request for consideration, the LMSB Industry Director or Field Operations Director, will contact the taxpayer to discuss scheduling an orientation program about the PFA process with the taxpayer and the audit team. This will initiate a planning process for factual development and issue resolution with respect to the issue(s) accepted for consideration. In this planning process, the IRS and the taxpayer will seek to agree on a proposed time-frame, the identification of relevant records and testimony, IRS access to records and testimony, and, ultimately, the potential scope and nature of the proposed agreement(s),

Factual and issue development. After acceptance by the LMSB Industry Director, the Case Manager will contact the taxpayer to discuss any questions that the IRS may have, to ask for any additional information needed to process the request, to verify data supplied, or to request additional supporting data. True copies of all contracts, agreements, instruments and other documents, as well as testimony pertaining to a request for a PFA must be submitted by the taxpayer upon request. The issues will be developed and facts confirmed consistent with auditing standards and all other applicable rules and regulations in effect regarding proper auditing techniques. The audit team will work closely with the taxpayer to resolve the issue.

Audit Team recommendation. After developing the facts and issues, the Case Manager will prepare a recommendation for the LMSB Industry Director about entering into a PFA with the taxpayer. Before submitting the recommendation to the LMSB Industry Director, the Case Manager will provide the proposed recommendation to the taxpayer. If the taxpayer disagrees with the Case Manager's proposed recommendation, the Case Manager will offer the taxpayer an opportunity for a conference before submitting the recommendation to the LMSB Industry Director.

Coordination with other functions. In considering the request for a PFA, the LMSB Industry Director will obtain approval from, or coordinate with, all appropriate IRS functions as necessary or, in his judgment, desirable.

Program Manager and Chief Counsel review. The LMSB Industry Director will submit any proposed PFA to the PFA Program Manager, and through the PFA Program Manager to the Office of Chief Counsel, for review before it is executed.

Conference with LMSB Industry Director. If the Case Manager recommends entering into a PFA on terms agreed to by the taxpayer, but the LMSB Industry Director is tentatively unwilling to enter into such a agreement, the LMSB Industry Director will offer the taxpayer an opportunity for a conference before rejecting all or part of a proposed PFA. In all other cases, the LMSB Industry Director is not obligated to offer the taxpayer such a conference, although the taxpayer may request one.

Executing the PFA. The LMSB Industry Director may execute a PFA if the LMSB Industry Director determines:

(1) That entering into the PFA is consistent with the goals of the PFA program as stated in this Notice;
(2) That the tax results provided for in the PFA reflect settled legal principles and correctly apply those principles (or positions authorized under Delegation Order No. 236 or 247) to the facts found by the Audit Team; and
(3) That there appears to be an advantage in having the issue(s) permanently and conclusively closed for the taxable period covered by the PFA, or that the taxpayer shows good and sufficient reasons for desiring a closing agreement and that the United States will sustain no disadvantage through consummation of such an agreement (*see* § 301.7121-1(a) of the Regulations on Procedure and Administration).

Return filing requirements not affected. The IRS' acceptance of a taxpayer's request to attempt to reach a PFA on specified issue(s) does not suspend or waive the normal filing requirements for any tax returns that are affected by the proposed PFA. In the event that a PFA is reached prior to the filing of the return, the taxpayer will report the transaction(s) addressed in the PFA in accordance with the terms of the PFA.

Continuation of process after filing, coordination with Accelerated Issue Resolution procedure, and Appeals. If a PFA is not executed prior to the filing of

the return(s), the IRS and the taxpayer may continue to attempt to resolve the issue and enter into a PFA under these procedures until July 31, 2001. If, as of July 31, 2001, the IRS and taxpayer have not entered into a PFA and the IRS disagrees with the taxpayer's claimed tax treatment of the transaction(s), the taxpayer and the IRS can continue the effort to reach an agreement using AIR procedures under Rev. Proc. 94-67, 1994-2 C.B. 800. This continuation of the issue resolution process does not require a new application. In addition to the AIR procedures, the taxpayer retains the right to pursue administrative appeal either by requesting an Early Referral to Appeals, or by protesting any proposed deficiency related to the issue.

7. WITHDRAWAL FROM THE PFA PROCESS

Withdrawal by the taxpayer or the LMSB Industry Director. At any time prior to the execution of the PFA by the LMSB Industry Director, either the taxpayer or the LMSB Industry Director may withdraw all or part of the request for a PFA from consideration. The withdrawal must be communicated in writing.

Effect of withdrawal. Notwithstanding the withdrawal by either the taxpayer or the LMSB Industry Director of any or all of the issues in the request for a PFA, the taxpayer's agreement that the inspection of records and testimony under the PFA procedures will not preclude or impede (under § 7605(b) or any administrative provisions adopted by the IRS) a later examination of a return or inspection of records with respect to any tax year needed to resolve the issue(s) in the request for a PFA, and that the IRS need not comply with any applicable procedural restrictions (such as providing notice under § 7605(b)) before beginning such examination or inspection, will remain effective.

Availability of Early Referral to Appeals. If the taxpayer and the IRS are unable to reach either a PFA or an AIR agreement, the possibility of forwarding the disputed issues to Appeals may be available under the Early Referral to Appeals procedures set forth in Rev. Proc. 99-28, 1999-29 I.R.B. 109.

8. FORM AND CONTENT OF A PRE-FILING AGREEMENT

A PFA between the taxpayer and the IRS is a closing agreement under § 7121. See Rev. Proc. 68-16, 1968-1 C.B. 770, for further information on the form and content of a closing agreement. A PFA must comply with the requirements of Rev. Proc. 68-16. The PFA will be prepared by the taxpayer and the examination team with assistance, as necessary, from the PFA Program Manager, the Office of Chief Counsel, or other IRS personnel.

9. DISCLOSURE

PFAs are closing agreements entered into pursuant to I.R.C. § 7121. As such, it is the position of the IRS that both PFAs and the information generated or received by the IRS during the PFA process constitute confidential return information as defined by I.R.C. § 6103(b)(2)(A), that PFAs are not written determinations under I.R.C. § 6110, and, accordingly, are exempt from disclosure to the public under the Freedom of Information Act (FOIA). However, the issue of whether certain closing agreements must be disclosed under the FOIA has been the subject of recent litigation; thus far, courts addressing this issue have agreed with the IRS position. *See Tax Analysts v. IRS*, 53 F.Supp. 2d 449 (D.D.C. 1999); *Tax Analysts v. IRS*, 1999 U.S. Dist. LEXIS 16733 (D.D.C. Aug. 6, 1999), appeal docketed, No. 5284 (D.C. Cir. Aug. 13, 1999).

10. MISCELLANEOUS

Record keeping requirements. No aspect of the PFA process will affect the record keeping requirements imposed by any section of the Internal Revenue Code.

Record retention. The taxpayer must maintain a copy of the PFA and supporting documents, and books of account and records sufficient to enable the IRS to examine the taxpayer's compliance with the PFA. These records may be specified in the PFA itself or in separate agreements.

11. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545-1684.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information in this notice are in sections 4, 6, and 10. The information collected under section 4 (application) is required to provide the IRS with the information necessary to determine which taxpayers should be included in the PFA pilot program. The information collected under section 6 will be used to resolve the taxpayer's issue and to support any PFA entered into between the taxpayer and the IRS. The recordkeeping requirement under section 10 will be used for tax administration. The collections of information under sections 4 and 6 are voluntary. Once a PFA is entered into, the recordkeeping requirements under section 10 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 967 hours.

The estimated annual burden per respondent/recordkeeper varies from 5 hours to 126 hours, depending on whether a taxpayer applying to the PFA pilot program is accepted into the program. The estimated annual burden for taxpayers who apply to the PFA pilot program and are accepted is 126 hours. The estimated annual burden for taxpayers that apply to the PFA pilot program and are not accepted is 5 hours. The estimated number of taxpayers who apply to the PFA pilot program and are accepted is 7. The estimated number of taxpayers who apply to the PFA pilot program and are not accepted is 17. The estimated total number of respondents and/or recordkeepers is 24.

The estimated annual frequency of responses is on occasion.

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

12. COMMENTS

The IRS invites interested persons to comment on this program. Send submissions to CC:DOM:CORP:R (Notice 2000-12), room 5226, Internal Revenue

Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 2000-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, interested persons may submit comments via e-mail to:

sharon.y.horn@m1.irscounsel.treas.gov

These addresses are for comments on the pilot program. Requests by eligible taxpayers to participate in the pilot program should be submitted through their Case Manager.

13. FURTHER INFORMATION

For further information regarding this Notice, contact John Petrella on (202) 283-8390 (not a toll-free number).

Low-Income Housing Tax Credit–2000 Calendar Year Resident Population Estimates

Notice 2000-13

This notice informs (1) state and local housing credit agencies that allocate low-income housing tax credits under § 42 of the Internal Revenue Code and (2) states and other issuers of tax-exempt private activity bonds under § 141, of the proper population figures to be used for calculating the 2000 calendar year population-based component of the state housing credit ceiling (Credit Ceiling) under § 42(h)(3)(C)(i) and the 2000 calendar year volume cap (Volume Cap) under § 146.

The population figures both for the population-based component of the Credit Ceiling and for the Volume Cap are determined by reference to § 146(j). That section provides generally that determinations of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the Bureau of the Census before the beginning of such calendar year.

The proper population figures for calculating the Credit Ceiling and the Volume Cap for the 2000 calendar year are the estimates of the resident population of the states, Puerto Rico, and the insular areas (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands) of the United States for July 1, 1999, released by the Bureau of the Census on December 29, 1999, in press releases CB99-251, CB99-253, and CB99-254. For convenience, these estimates are reprinted below.

Resident Population Estimates for July 1, 1999.

Alabama	4,369,862
Alaska	619,500
American Samoa	63,781
Arizona	4,778,332
Arkansas	2,551,373
California	33,145,121
Colorado	4,056,133
Connecticut	3,282,031
Delaware	753,538
D.C.	519,000
Florida	15,111,244
Georgia	7,788,240
Guam	151,968
Hawaii	1,185,497
Idaho	1,251,700
Illinois	12,128,370
Indiana	5,942,901
Iowa	2,869,413
Kansas	2,654,052
Kentucky	3,960,825
Louisiana	4,372,035
Maine	1,253,040
Maryland	5,171,634
Massachusetts	6,175,169
Michigan	9,863,775
Minnesota	4,775,508
Mississippi	2,768,619
Missouri	5,468,338
Montana	882,779
Nebraska	1,666,028
Nevada	1,809,253
New Hampshire	1,201,134
New Jersey	8,143,412
New Mexico	1,739,844
New York	18,196,601
North Carolina	7,650,789
North Dakota	633,666
Northern Mariana Islands	69,216
Ohio	11,256,654
Oklahoma	3,358,044
Oregon	3,316,154
Pennsylvania	11,994,016
Puerto Rico	3,889,507
Rhode Island	990,819
South Carolina	3,885,736
South Dakota	733,133
Tennessee	5,483,535
Texas	20,044,141
U.S. Virgin Islands	119,615
Utah	2,129,836
Vermont	593,740
Virginia	6,872,912
Washington	5,756,361
West Virginia	1,806,928
Wisconsin	5,250,446
Wyoming	479,602

The principal authors of this notice are Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) and Timothy L. Jones of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this notice contact Mr. Wilson on (202) 622-3040 (not a toll-free call).

Part IV. Items of General Interest

Like-kind Exchange and Involuntary Conversion of MACRS Property; Correction

Announcement 2000-9

This document contains a correction to Notice 2000-4 (2000-3 I.R.B. 313), in which an erroneous address was given for comments to be submitted electronically. Notice 2000-4 provides that the Internal Revenue Service and the Treasury Department intend to issue regulations under § 168 of the Internal Revenue Code (MACRS property) to address the depreciation of MACRS property acquired in a § 1031 like-kind exchange or § 1033 involuntary conversion.

The corrected provision reads as follows:

Alternatively, comments may be submitted electronically via:

sharon.y.horn@m1.irscounsel.treas.gov

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition; Hearing

Announcement 2000-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date and time of public hearing.

SUMMARY: This document contains a notice of date and time change of a public hearing on proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition.

DATES: The public hearing originally scheduled for Wednesday, January 26, 2000, is rescheduled for Thursday, March 2, 2000, at 10 a.m. The due date for outlines of topics to be discussed at the hearing was January 5, 2000.

ADDRESSES: The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, and/or to be placed on the building access list to attend the hearing LaNita VanDyke, (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is proposed regulations (REG-116733-98, 1999-36 I.R.B. 392) that was published in the **Federal Register** on Thursday, August 24, 1999 (64 FR 46155).

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

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

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

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 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

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