Internal Revenue
bulletin

Bulletin No. 1999–7
February 16, 1999

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 99–9, page 14.

LIFO; price indexes; department stores. The December 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, December 31, 1998.

T.D. 8792, page 36.

Final regulations under section 7702B of the Code relate to consumer protection with respect to qualified long-term care insurance contracts and relate to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997.

T.D. 8793, page 15.
REG–111435–98, page 55.

Temporary and proposed regulations under sections 6103 and 6311 of the Code authorize the Secretary of the Treasury to accept payment of internal revenue taxes by credit card or debit card.

T.D. 8809, page 27.
REG–117620–98, page 59.

Temporary and proposed regulations under section 6330 of the Code relate to the provision of notice to taxpayers of a right to a hearing before levy. A public hearing will be held on June 15, 1999.

T.D. 8810, page 19.
REG–116824–98, page 57.

Temporary and proposed regulations under section 6320 of the Code relate to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL).

EMPLOYEE PLANS

T.D. 8794, page 4.
REG–113694–98, page 56.

Final, temporary, and proposed regulations under sections 411 and 417 of the Code relate to the increase from $3,500 to $5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent.

T.D. 8795, page 8.

Final regulations under section 411 of the Code provide guidance on the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA.

ADMINISTRATIVE

Rev. Proc. 99–15, page 42.

Insurance companies; loss reserves; discounting unpaid losses. The loss payment patterns and discount factors are set forth for the 1998 accident year. These factors will be used for computing discounted unpaid losses under section 846 of the Code.

Rev. Proc. 99–16, page 50.

Insurance companies; discounting estimated salvage recoverable. The salvage discount factors are set forth for the 1998 accident year. These factors will be used for computing estimated salvage recoverable under section 832 of the Code.

Rev. Proc. 99–17, page 52.

Commodities dealers; securities or commodities traders: procedures for making elections. This procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under section 475 of the Code.

Announcement 99–14, page 60.

Final regulation T.D. 8611, 1995–2 C.B. 286, relating to conduit financing arrangements under section 7701 of the Code, is corrected.

Finding Lists begin on page 62.

Department of the Treasury
Internal Revenue Service

Mission of the Service

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.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

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 of a permanent nature 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.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

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 quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

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

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

Section 411.—Minimum Vesting Standards

26 CFR 1.411(a)–7T: Definitions and special rules (temporary).

T.D. 8794

DEPARTMENT OF THE TREASURY
Interval Revenue Service
26 CFR Parts and 31

Increase In Cash-Out Limit Under Sections (411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing guidance relating to the increase from $3,500 to $5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. In addition, these regulations eliminate, for most distributions, the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. The final and temporary regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The final regulations also amend the existing final regulations to cross-reference the temporary regulations. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in REG–113694–98, page 56 in this Bulletin.

DATES: *Effective Date:* These regulations are effective December 31, 1998.

Applicability Date: These final and temporary regulations generally apply to distributions made on or after March 22, 1999. However, employers are permitted to apply the final regulations and the temporary regulations other than §1.411(a)–11T(c)(i) to plan years beginning on or after August 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Karlan, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations and the Employment Tax Regulations (26 CFR parts 1 and 31) under sections 411(a)(7), 411(a)(11), and 417(e)(1) regarding restrictions on involuntary distributions and joint and survivor annuity requirements for qualified plans. The final and temporary regulations change the existing regulations to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105–34, 111 Stat. 788 (1997).

Explanation of Provisions

A. *Restrictions on Mandatory Distributions*

Prior to the enactment of TRA '97, section 411(a)(11)(A) provided that if the present value of any nonforfeitable accrued benefit exceeded $3,500, a plan met the requirements of section 411(a)(11) only if such plan provided that such benefit could not be immediately distributed without the consent of the participant. TRA '97 changed this cash-out limit to $5,000, effective for plan years beginning after August 5, 1997. For this purpose, both before and after the enactment of TRA '97, the present value of a participant's nonforfeitable benefit is calculated in accordance with section 417(e)(3).

Interpreting the law prior to the enactment of TRA '97, §1.411(a)–11(c)(3) provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than $3,500. If the present value does not exceed $3,500, the consent requirements are deemed satisfied, and the plan may distribute such portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds $3,500, then the present value at any subsequent time is deemed to exceed $3,500; this is commonly referred to as the "lookback rule."

Consistent with the TRA '97 change, these regulations increase the cash-out limit to $5,000. In determining whether a participant's nonforfeitable accrued benefit may be distributed without consent during plan years beginning on or after August 6, 1997, the new cash-out limit of $5,000 is permitted to be applied as though it were in effect for all plan years, including those beginning before August 6, 1997. Thus, for example, a calendar year plan may be amended to provide for the involuntary distribution after December 31, 1997, of the accrued benefit of a participant who terminated employment on or before that date, if the present value of the accrued benefit does not exceed $5,000 at the time of the distribution (subject to the exception described below for optional forms of benefit under which at least one scheduled periodic distribution is still payable). This result is the same even if the accrued benefit could only have been distributed with the participant's or the spouse's consent at termination of employment because the present value of the benefit exceeded $3,500 at that time.

In addition, these temporary regulations eliminate, for many distributions, the lookback rule under §1.411(a)–11(c)-(3). Under these regulations, a plan may provide that the present value of a participant's nonforfeitable accrued benefit generally may be distributed without consent if that present value does not exceed the cash-out limit as determined at the time of the current distribution without regard to the present value of the participant's benefit at the time of an earlier distribution. However, under these temporary regulations, if a participation has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable, and if the present value of the participant's nonforfeitable accrued benefit exceeded the $5,000 cash-out limit at the time of the first distribution under that optional form of benefit, then the present value of the participant's nonforfeitable accrued benefit may not be distributed without consent.

B. *Immediate Distribution of the Present Value of a QJSA or QPSA*

Prior to the enactment of TRA '97, section 417(e)(1) provided that a plan subject to sections 401(a)(11) and 417 could provide that the present value of a qualified joint and survivor annuity ("QJSA") or a qualified preretirement survivor annuity ("QPSA") would be immediately distributed if such value did not exceed $3,500. Pursuant to section 417(e)(1), no distribution could be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant had died, the surviving spouse) consented in writing to such distribution. TRA '97 changed this dollar limit from $3,500 to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These regulations change only the dollar limit in §1.417(e)–1(b)(2)(i) from $3,500 to the dollar limit under section 411(a)(11)(A), and do not revise the lookback rule set forth in that section for plans subject to sections 401(a)(11) and 417.

C. *Proposed Regulations*

The proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register** completely repeal the lookback rule under §§1.411(a)– 11(c)(3) and 1.417(e)–1(b)(2)(i), *i.e.*, both for plans that are and plans that are not subject to sections 401(a)(11) and 417. In accordance with section 417(e)(1), the proposed regulations provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

D. *Disregard of Certain Past Service*

Section 411(a)(7)(B)(i) provides that, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount not more than $3,500 (prior to the amendment of the cash-out limit under TRA '97), as permitted under regulations prescribed by the Secretary. Section 411(a)(7)(B)(i) applies only if the distribution was made on termination of the employee's participation in the plan, and §1.411(a)–7(d)(4)(i)(C) provides that such involuntary distributions must have been made due to the termination of the employee's participation in the plan. TRA '97 changed this $3,500 limit to the dollar limit under section 411(a)(11)(A), effective for plan years beginning after August 5, 1997. These temporary regulations provide that, for purposes of applying section 411(a)(7)(B)(i), an involuntary distribution of an employee's nonforfeitable accrued benefit the present value of which does not exceed $5,000 may be treated as having occurred due to termination of participation if the distribution could have been made due to termination of participation but for the fact that the present value exceeded $3,500 at that time.

E. *Conforming Amendments*

Several other provisions of the Treasury Regulations incorporate the cash-out limit, and these regulations make conforming amendments to those provisions in order to incorporate the new cash-out limit under section 411(a)(11). Specifically, conforming amendments are made to the following sections: §§1.401(a)–20 Q&A-8(d); 1.401(a)–20 Q&A-24; 1.401(a)(4)–4(b)(2)(ii)(C); 1.401(a)(26)–4(d)(2); 1.401(a)(26)–6(c)(4); 1.411(a)–11(b); 1.411(a)–11(c)(7); 1.411(d)–4 Q&A-2(b)(2)(v); 1.411(d)–4 Q&A-4(a); 1.417(e)–1(b)(2)(i); and 31.3121(b)(7)–2(d)(2)(i).

F. *Valuation Rules*

Section 417(e)(3) prescribes rules and definitions for determining the present value of an accrued benefit under a defined benefit plan for purposes of sections 417 and 411(a)(11)(A). (In the case of a defined contribution plan, the present value of the accrued benefit is the value of the account balance.) The present value of a participant's accrued benefit for purposes of the cash-out limit is determined in accordance with section 417(e)(3) using the interest rate and mortality tables in effect under the plan for the annuity starting date. Thus, for example, if the present value of the participant's accrued benefit using the rate described in section 417(e)(3)(B) (often referred to as the "PBGC rate") exceeds $5,000, and the plan is subsequently amended to reflect the interest rate described in section 417(e)(3)(A)(ii), the plan may provide that the present value of the accrued benefit may be distributed without the participant's or spouse's consent if the value of the accrued benefit does not exceed $5,000, as determined under the plan provisions then in effect.

G. *Benefits Protected from Reduction or Elimination*

Section 411(d)(6) provides, in general, that a plan shall be treated as not satisfying the requirements of section 401(a) if the accrued benefit of a participant is decreased, or an optional form of benefit is eliminated, by an amendment of the plan. Section 1.411(d)–4, paragraph (b)(2)(v) of Q&A-2 provides that a plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such distribution is permitted under sections 411(a)(11) and 417(e). In accordance with that provision, a plan may be amended for plan years beginning on or after August 6, 1997, to permit the involuntary distribution of an accrued benefit using a cash-out limit of $5,000, with respect to benefits accrued before the amendment was adopted and effective. Such an amendment is permitted even if the plan, prior to amendment, did not permit involuntary distributions (as well as if the plan permitted involuntary distributions if the present value of the participant's benefit did not exceed the prior cash-out limit of $3,500). Such an amendment will not violate the anti-cutback rules of section 411(d)(6).

H. *Remedial Amendment Period*

Rev. Proc. 98–14 (1998–4 I.R.B. 22) at section 4, provides the remedial amendment period for certain plan amendments made pursuant to TRA '97. A plan may be amended retroactively to implement the increase in the cash-out limit to $5,000 in accordance with section 4 of the revenue procedure.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Adoption of Amendment to the Regulations

Accordingly 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.411(a)–7T and revising the entry for §1.411(d)–4 to read as follows:

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

§1.411(a)–7T also issued under 26 U.S.C. 411(a)(7)(B)(i).

§1.411(d)–4 also issued under 26 U.S.C. 411(d)(6).***

Par. 2. Section 1.411(a)–7 is amended by adding a sentence at the end of the concluding text of paragraph (d)(4)(i) to read as follows:

§1.411(a)–7 Definitions and special rules.

* * * * *

(d) * * *

(4) Certain cash-outs of accrued benefits. (i) ***

* * * * *

*** (For distributions made on or after March 22, 1999, see §1.411(a)–7T.)

* * * * *

Par. 3. Section 1.411(a)–7T is added to read as follows:

§1.411(a)–7T Definitions and special rules (temporary).

(a) through (d)(3) [Reserved]. For further guidance, see §1.411(a)–7(a) through (d)(3).

(d)(4) *Certain cash-outs of accrued benefits*—(1) *Involuntary cash-outs.* For purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution;

(B) The requirements of section 411(a)(11) are satisfied at the time of the distribution;

(C) The distribution is made due to the termination of the employee's participation in the plan; and

(D) The plan has a repayment provision which satisfies the requirements of §1.411(a)–7(d)(4)(iv) in effect at the time of the distribution.

(d)(4)(ii) through (v) [Reserved]. For further guidance, see §1.411(a)–7(d)-(4)(ii) through (v).

(vi) For purposes of paragraph (d)(4)(i) of this section, a distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs, or if such distribution would have been made under the plan by the close of such second plan year but for the fact that the present value of the nonforfeitable accrued benefit then exceeded the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii). For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in §1.411(a)–7(d)(2)(i).

(vii) *Effective date.* Paragraphs (d)(4)(i) and (vi) of this section apply to distributions made on or after March 22, 1999, through December 18, 2001. For plan years beginning before March 22, 1999, see §1.411(a)–7(d)(4)(i). However, an employer is permitted to apply paragraphs (d)(4)(i) and (vi) of this section to plan years beginning on or after August 6, 1997.

(d)(5) and (60 [Reserved]. For further guidance, see §1.411(a)–7(d)(5) and (6).

Par. 4. Section 1.411(a)–11 is amended by adding a sentence at the end of paragraph (c)(3) to read as follows:

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

* * * * *

(c) ***

(3) *$3,500.* *** (For distributions made on or after March 22, 1999, see §1.411(a)–11T.)

Par. 5. Section 1.411(a)–11T is added to read as follows:

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

(a) and (b) [Reserved]. For further guidance, see §1.411(a)–11(a) and (b).

(c) *Consent, etc. requirements*—(1) *General rule.* [Reserved]. For further guidance, see §1.411(a)–11(c)(1).

(2) *Consent.* [Reserved]. For further guidance, see §1.411(a)–11(c)(2).

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see §1.417(e)–1(d). If a participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution ha snot yet been made, and if the present value of the participant's nonforfeitable accrued benefit, determined at the time of the first distribution under that optional form of benefit, exceeded the cash-out limit currently in effect under paragraph

(c)(3)(ii) of this section, then the present value of the participant's nonforfeitable accrued benefit is deemed to continue to exceed the cash-out limit. Thus, for example, if the present value of a participant's accrued benefit does not exceed the cash-out limit on the date of a distribution after termination of employment but did, at the time of an earlier in-service hardship withdrawal, exceed the cash-out limit in effect on the date of the post-termination distribution, the plan is permitted to distribute the present value of the participant's accrued benefit on the date of the post-termination distribution without he participant's consent. However, if a participant began to receive scheduled installment payments under a plan and, at that time, the participant's accrued benefit exceeded the cash-out limit currently in effect, the present value of the participant's accrued benefit is deemed to continue to exceed the cash-out limit and may not be distributed without the participant's consent.

(ii) The cash-out limit in effect for a date is the amount described in section 411(a)(11)(A) for the plan year that includes that date. The cash-out limit in effect for dates in plan years beginning on or after August 6, 1997, is $5,000. The cash-out limit in effect for dates in plan years beginning before August 6, 1997, is $3,500.

(iii) *Effective date.* Paragraphs (c)(3)(i) and (ii) of this section apply to distributions made on or after March 22, 1999 through December 18, 2001. For plan years beginning before March 22, 1999, see §1.11(a)–11(c)(3). However, an employer is permitted to apply paragraph (c)(3)(ii) of this section to plan years beginning on or after August 6, 1997.

(c)(4) through (e) [Reserved]. For further guidance, see §1.411(a)–11(c)(4) through (e).

PARTS 1 AND 31—[AMENDED]

Par. 6. In the table below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.401(a)–20, Q&A-8, paragraph (d), first sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.401(a)–20, Q&A-24, paragraph (a)(1), fourth sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.401(a)(4)–4, paragraph (b)(2)(ii)(C)	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.401(a)(26)–4, paragraph (d)(2), last sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.401(a)(26)–6, paragraph (c)(4), first sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.411(a)–11, paragraph (b), first sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.411(a)–11, paragraph (c)(7), third sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.411(d)–4, Q&A-2, paragraph (b)(2)(v), second, third, and fourth sentences	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
1.411(d)–4, Q&A-2, paragraph (b)(2)(v), second sentence	$1,750	$3,500
1.411(d)–4, Q&A-4, paragraph (a), eighth sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)

1.411(d)–4, Q&A-4, paragraph (a), last sentence in the parenthetical	§1.401(a)–4 Q&A-4	§1.401(a)(4)–4(b)(2)(ii)(C)
1.417(e)–1, paragraph (b)(2)(i), first, fourth, and fifth sentences	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii)
31.3121(b)(7)–2, paragraph (d)(2)(i), last sentence	$3,500	the cash-out limit in effect under §1.411(a)–11T(c)(3)(ii) of this chapter

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

Approved November 18, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 F.R. 70335)

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26 CFR 1.411(d)–6: Section 204(h) notice.

T.D. 8795

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

Notice of Significant Reduction in the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance on the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), relating to defined benefit plans and to individual account plans that are subject to the funding standards of section 302 of ERISA. It requires the plan administrator to give notice of plan amendments, which provide for a significant reduction in the rate of future benefit accrual, to participants in the plan and certain other parties.

DATES: *Effective Date:* December 14, 1998

Applicability Dates: For dates of applicability of these regulations, see Effective Dates under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Diane S. Bloom at(202)622-6214 or Christine L. Keller at (202)622-6090 (not toll-free numbers).

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 of 1995 (44 U.S.C. 3705(d)) under the control number 1545–1477. The collection of information in these final regulations is in §1.411(d)–6. Responses to this collection of information are required in order to obtain a benefit. Specifically, this information is required for a taxpayer who wants to amend a qualified plan to significantly reduce the rate of future benefit accrual. This information will be used to notify participants, alternate payees and employee organizations of the amendment.

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

The estimated average burden per recordkeeper varies from 1 hour to 40 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated number of respondents: 3,000.

Estimated annual frequency of responses: Once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service,** Attn: IRS 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 a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 12, 1995, temporary regulations (T.D. 8631, 1996–1 C.B. 54), under section 411 of the Internal Revenue Code, 26 U.S.C. 411, were filed, providing guidance on section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1054(h). The temporary regulations were published in the **Federal Register** on December 15, 1995 (60 F.R. 64320). A notice of proposed rulemaking (EE–34–95, 1996–1 C.B. 761), cross-referencing the temporary regulations, was published in the **Federal Register** (60 F.R. 64401) on the same day.

After consideration of the comments received regarding the proposed regulations, the temporary regulations are replaced and the proposed regulations are adopted as revised by this Treasury decision.

Section 204(h) was added to ERISA by section 11006(a) of the Single-Employer Pension Plan Amendments Act of 1986 (Title XI of Public Law 99-272), and was amended by section 1879(u)(1) of the Tax Reform Act of 1986, Public Law 99–514. Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA (including section 204 of ERISA). Under section 104 of Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respect to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising such authority, is bound by the regulations issued by the Secretary of the Treasury.

In addition to the proposed and temporary regulations, prior guidance relating to the requirements of section 204(h) has been provided in Rev. Proc. 94–13 (1994–1 C.B. 566), Notice 90–73 (1990–2 C.B. 353), Notice 89–92 (1989–2 C.B. 410), Rev. Proc. 89–65 (1989–2 C.B. 786), Notice 88–131 (1988–2 C.B. 546), and Notice 87–21 (1987–1 C.B. 458).

Explanation of Provisions

Section 204(h) applies if a defined benefit plan or a money purchase pension or other individual account plan that is subject to the funding standards of section 302 of ERISA is amended to provide for a significant reduction in the rate of future benefit accrual. It requires the plan administrator to give written notice of the amendment to participants in the plan, to alternate payees, and to employee organizations representing participants in the plan (or to a person designated, in writing, to receive the notice on behalf of a participant, alternate payee, or employee organization). The notice must set forth the plan amendment and its effective date and must be provided after adoption of the amendment and not less than 15 days before the effective date of the amendment.

A plan amendment that is subject to the notice requirements of section 204(h) may also be subject to additional reporting and disclosure requirements under title I of ERISA, such as the requirement to provide a summary of material modifications. See sections 102(a) and 104(a) of ERISA, 29 U.S.C. 1022 and 1024, and the regulations thereunder for guidance on when a summary of material modifications must be provided. Section 204(h) notice must be provided at least 15 days before the effective date of an amendment significantly reducing the rate of future benefit accrual, even though a summary of material modifications describing the amendment is provided at a later date.

Summary of Comments

Commentators generally supported the basic rules in the proposed and temporary regulations, and the final regulations are substantially similar to the proposed and temporary regulations. However, a number of clarifications have been made in response to comments.

For example, changes have been made in the rules for cases in which there has been a failure to notify all affected participants in accordance with section 204(h). The proposed and temporary regulations provided in Q&A-12 that if a plan administrator fails to notify more than a de minimis percentage of affected participants, the plan administrator is considered to have complied with section 204(h) only with respect to those participants who were provided with section 204(h) notice. In response to comments, the final regulations have added a requirement that the plan administrator have acted in good faith in order for this relief to apply. Thus, where there is an intentional failure to give section 204(h) notice, the amendment will not be effective as to any participant.

In addition, the final regulations provide that the basic rule in Q&A-13 of the final regulations (that the amendment will not be effective with respect to participants or alternate payees who did not receive section 204(h) notice) applies unless the number of participants who were not provided with section 204(h) notice is *de minimis* and certain other conditions (described in Q&A-14 of the final regulations) are satisfied. Thus, the regulations clarify that, except for the limited circumstances set forth in Q&A-14 of the final regulations relating to certain *de minimis* failures to notify, the amendment will not be effective with respect to participants or alternate payees who did not receive notice in accordance with section 204(h).

At the suggestion of commentators, the final regulations also address the application of section 204(h) to a sale of a business, as well as its application to plan mergers and transfers of plan assets and liabilities. The final regulations add examples that apply the general principles established under the regulations to typical sales and merger transactions. In response to one commentator, an example has been added to illustrate that a plan merger can require notice under section 204(h).

In response to requests by commentators for additional guidance on the mechanics of providing section 204(h) notice, Q&A-11 has been added providing rules that can be relied on to calculate the 15-day notice period. These rules provide that when section 204(h) notice is delivered by first class mail, the notice is considered given as of the date of the United States postmark stamped on the cover in which the document is mailed.

Commentators also suggested that the rules under the temporary regulations concerning plan terminations needed to be expanded. The final regulations contain an example illustrating the application of section 204(h) to certain specific situations that arise when a defined benefit plan cannot be terminated on a proposed termination date because there is a failure to satisfy all of the requirements of title IV of ERISA for terminating the plan. The example provides, in part, that if all of the requirements of title IV are not satisfied accruals will still cease if an amendment has been adopted that ceases accruals as of a specified date and section 204(h) notice of that amendment, including a statement of its effective date, is given. Apart from this clarification, the rule under the temporary regulations concerning terminations under title IV remains unchanged.

The final regulations, like the proposed and temporary regulations, interpret section 204(h) as applying with respect to changes that affect the annual benefit commencing at normal retirement age. The statutory phrase "rate of future benefit accrual" implies, on its face, that section 204(h) is limited to changes in the accrued benefit. Nonetheless, one commentator suggested that the temporary regulations be changed to require section 204(h) notice when defined benefit plans are amended to significantly reduce or eliminate early retirement subsidies or optional forms of benefit. Most commentators, however, generally supported the basic standard of the regulations under which a reduction in the rate of future benefit accrual depends on whether the amendment affects the annual benefit commencing at normal retirement age. Some commentators also noted that the approach in the proposed and temporary regulations would ease plan administration. Accordingly, the final regulations retain the rule of the proposed and temporary regulations that, for purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age.

The final regulations clarify that the term "annual benefit commencing at normal retirement age" refers, in a defined benefit plan, to the benefit payable in the form in which the terms of the plan express the accrued benefit. In the case of a defined benefit plan that does not express the accrued benefit as an annual benefit, the final regulations provide that the term "annual benefit commencing at normal retirement age" refers to the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan under the principles of section 411(c)(3) (relating to actuarial adjustments to determine an employee's accrued benefit).

Some commentators also suggested that certain bright-line standards be established for some of the rules, including how to determine whether an amendment results in a significant reduction and what constitutes a *de minimis* percentage of participants for purposes of the rules relating to failure to provide notice to all participants and alternate payees. Because the wide variety of potential facts and circumstances make it difficult to adopt clear standards that are appropriate in all circumstances, the final regulations do not include such bright-line standards.

Effective Dates

The final regulations apply to amendments adopted on or after December 12, 1998. The final regulations provide that the rules set forth in the temporary regulations apply to determine whether section 204(h) and the final regulations are satisfied with respect to an amendment that is adopted before the effective date of the final regulations (and on or after the effective date of the temporary regulations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Christine L. Keller. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by removing the entry for §1.411(d)–6T and by adding an entry in numerical order to read as follows:

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

Section 1.411(d)–6 is issued under Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt. * * *

§1.411(d)–6T [Removed]

Par. 2. Section 1.411(d)–6T is removed.

Par. 3. Section 1.411(d)–6 is added to read as follows:

§1.411(d)–6 Section 204(h) notice.

Q-1: What are the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)(29 U.S.C 1054(h))?

A-1: (a) *Requirements of section 204(h).* Section 204(h) of ERISA ("section 204(h)") generally requires written notice of an amendment to certain plans that provides for a significant reduction in the rate of future benefit accrual. Section 204(h) generally requires the notice to be provided to plan participants, alternate payees, and employee organizations. The plan administrator must provide the notice after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment.

(b) *Other notice requirements.* Other provisions of law may require that certain parties be notified of a plan amendment. See, for example, sections 102 and 104 of ERISA, and the regulations thereunder, for requirements relating to summary plan descriptions and summaries of material modifications.

Q-2: To which plans does section 204(h) apply?

A-2: Section 204(h) applies to defined benefit plans that are subject to part 2 of subtitle B of title I of ERISA and to individual account plans that are subject to both such part 2 and the funding standards of section 302 of ERISA. Accordingly, individual account plans that are not subject to the funding standards of section 302, such as profit-sharing and stock bonus plans, are not subject to section 204(h).

Q-3: What is "section 204(h) notice"?

A-3: "Section 204(h) notice" is notice that complies with section 204(h)and the rules in this section.

Q-4: For which amendments is section 204(h) notice required?

A-4: (a) *In general.* Section 204(h) notice is required for an amendment to a plan described in Q&A-2 of this section that provides for a significant reduction in the rate of future benefit accrual.

(b) *Delegation of authority to Commissioner.* The Commissioner of Internal Revenue may provide through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see §601.601(d)(2) of this chapter) that section 204(h) notice need not be provided for plan amendments otherwise described in paragraph (a) of this Q&A-4 that the Commissioner determines to be necessary or appropriate, as a result of changes in the law, to maintain compliance with the requirements of the Internal Revenue Code of 1986, as amended (Code) (including requirements for tax qualification), ERISA, or other applicable federal law.

Q-5: What is an amendment that affects the rate of future benefit accrual for purposes of section 204(h)?

A-5: (a) *In general*—(1) *Defined benefit plans.* For purposes of section 204(h), an amendment to a defined benefit plan affects the rate of future benefit accrual only if it is reasonably expected to change the amount of the future annual benefit commencing at normal retirement age. For this purpose, the annual benefit commencing at normal retirement age is the benefit payable in the form in which the terms of the plan express the accrued benefit (or, in the case of a plan in which the accrued benefit is not expressed in the form of an annual benefit commencing at normal retirement age, the benefit payable in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan, as determined in accordance with the principles of section 411(c)(3) of the Code).

(2) *Individual account plans.* For purposes of section 204(h), an amendment to an individual account plan affects the rate of future benefit accrual only if it is reasonably expected to change the amounts allocated in the future to participants' accounts. Changes in the investments or investment options under an individual account plan are not taken into account for this purpose.

(b) *Determination of rate of future benefit accrual.* In accordance with paragraph (a) of this Q&A-5, the rate of future benefit accrual is determined without regard to optional forms of benefit (other than the annual benefit described in paragraph (a) of this Q&A-5), early retirement benefits, or retirement-type subsidies, within the meaning of such terms as used in section 411(d)(6) of the Code (section 204(g) of ERISA). The rate of future benefit accrual is also determined without regard to ancillary benefits and other rights or features as defined in §1.401(a)-(4)-4(e).

(c) *Examples.* These examples illustrate the rules in this Q&A-5:

Example 1. A plan is amended with respect to future benefit accruals to eliminate a right to commencement of a benefit prior to normal retirement age. Because the amendment does not change the annual benefit commencing at normal retirement age, it does not reduce the rate of future benefit accrual for purposes of section 204(h).

Example 2. A plan is amended to modify the actuarial factors used in converting an annuity form of distribution to a single sum form of distribution. The use of these modified assumptions results in a lower single sum. Because the amendment does not affect the annual benefit commencing at normal retirement age, it does not change the rate of future benefit accrual for purposes of section 204(h).

Q-6: What plan provisions are taken into account in determining whether there has been a reduction in the rate of future benefit accrual?

A-6: (a) *Plan provisions taken into account.* All plan provisions that may affect the rate of future benefit accrual of participants or alternate payees must be taken into account in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual. Such provisions include, for example, the dollar amount or percentage of compensation on which benefit accruals are based; in the case of a plan using permitted disparity under section 401(l) of the Code, the amount of disparity between the excess benefit percentage or excess contribution percentage and the base benefit percentage or base contribution percentage (all as defined in section 401(l)); the definition of service or compensation taken into account in determining an employee's benefit accrual; the method of determining average compensation for calculating benefit accruals; the definition of normal retirement age in a defined benefit plan; the exclusion of current participants from future participation; benefit offset provisions; minimum benefit provisions; the formula for determining the amount of contributions and forfeitures allocated to participants' accounts in an individual account plan; and the actuarial assumptions used to determine contributions under a target benefit plan (as defined in §1.401(a)(4)–8(b)(3)(i)).

(b) *Plan provisions not taken into account.* Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. For example, provisions such as vesting schedules or optional forms of benefit (other than the annual benefit described in Q&A-5(a) of this section) are not taken into account.

(c) *Examples.* The following example illustrates the rules in this Q&A-6:

Example. A defined benefit plan provides a normal retirement benefit equal to 50% of final average compensation times a fraction (not in excess of one), the numerator of which equals the number of years of participation in the plan and the denominator of which is 20. A plan amendment that changes the numerator or denominator of that fraction must be taken into account in determining whether there has been a reduction in the rate of future benefit accrual.

Q-7: What is the basic principle used in determining whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h)?

A-7: Whether an amendment provides for a significant reduction in the rate of future benefit accrual for purposes of section 204(h) is determined based on reasonable expectations taking into account the relevant facts and circumstances at the time the amendment is adopted. For a defined benefit plan this is done by comparing the amount of the annual benefit commencing at normal retirement age as determined under Q&A-5(a)(1) under the terms of the plan as amended, with the amount of the annual benefit commencing at normal retirement age as determined under Q&A-5(a)(1) under the terms of the plan prior to amendment. For an individual account plan, this is done in accordance with Q&A-5(a)(2) by comparing the amounts to be allocated in the future to participants' accounts under the terms of the plan as amended, with the amounts to be allocated in the future to participants' accounts under the terms of the plan prior to amendment.

Q-8: Are employees who have not yet become participants in a plan at the time an amendment to the plan is adopted taken into account in applying section 204(h) with respect to the amendment?

A-8: No. Employees who have not yet become participants in a plan at the time an amendment to the plan is adopted are not taken into account in applying section 204(h) with respect to the amendment. Thus, if section 204(h) notice is required with respect to an amendment, the plan administrator need not provide section 204(h) notice to such employees.

Q-9: If section 204(h) notice is required with respect to an amendment, must such notice be provided to participants or alternate payees whose rate of future benefit accrual is not reduced by the amendment?

A-9: (a) *In general.* A plan administrator need not provide section 204(h) notice to any participant whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to any alternate payee under an applicable qualified domestic relations order whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment. A plan administrator need not provide section 204(h) notice to an employee organization unless the employee organization represents a participant to whom section 204(h) notice is required to be provided.

(b) *Facts and circumstances test.* Whether a participant or alternate payee is described in paragraph (a) of this Q&A-9 is determined based on all relevant facts and circumstances at the time the amendment is adopted.

(c) *Examples.* The following examples illustrate the rules in this Q&A-9:

Example 1. Plan A is amended to reduce significantly the rate of future benefit accrual of all current employees who are participants in the plan. It is reasonable to expect based on the facts and circumstances that the amendment will not reduce the rate of future benefit accrual of former employees who are currently receiving benefits or that of former employees who are entitled to vested benefits. Accordingly, the plan administrator is not required to provide section 204(h) notice to such former employees.

Example 2. The facts are the same as in *Example 1* except that Plan A also covers two groups of alternate payees. The alternate payees in the first group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit is determined at the time the former spouse begins receiving retirement benefits under the plan. The alternate payees in the second group are entitled to a certain percentage or portion of the former spouse's accrued benefit, and for this purpose the accrued benefit was determined at the time the qualified domestic relations order was issued by the court. It is reasonable to expect that the benefits to be received by the second group of alternate payees will not be affected by any reduction in a former spouse's rate of future benefit accrual. Accordingly, the plan administrator is not required to provide section 204(h) notice to the alternate payees in the second group.

Example 3. Plan B covers hourly employees and salaried employees. Plan B provides the same rate of benefit accrual for both groups. The employer amends Plan B to reduce significantly the rate of future benefit accrual of the salaried employees only. At that time, it is reasonable to expect that only a small percentage of hourly employees will become salaried in the future. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are currently hourly employees.

Example 4. Plan C covers employees in Division M and employees in Division N. Plan C provides the same rate of benefit accrual for both groups. The employer amends Plan C to reduce significantly the rate of future benefit accrual of employees in Division M. At that time, it is reasonable to expect that in the future only a small percentage of employees in Division N will be transferred to Division M. Accordingly, the plan administrator is not required to provide section 204(h) notice to the participants who are employees in Division N.

Example 5. The facts are the same facts as in *Example 4,* except that at the time the amendment is adopted, it is expected that soon thereafter Division N will be merged into Division M in connection with a corporate reorganization (and the employees in Division N will become subject to the plan's amended benefit formula applicable to the employees in Division M). In this instance, the plan administrator must provide section 204(h) notice to the participants who are employees in Division M and to the participants who are employees in Division N.

Q-10: Does a notice fail to comply with section 204(h) if it contains a summary of the amendment and the effective date, without the text of the amendment itself?

A-10: No, the notice does not fail to comply with section 204(h) merely because the notice contains a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Q-11: How may section 204(h) notice be provided?

A-11: A plan administrator (including a person acting on behalf of the plan administrator such as the employer or plan trustee) may use any method reasonably calculated to ensure actual receipt of the section 204(h) notice. First class mail to the last known address of the party is an acceptable delivery method. Likewise, hand delivery is acceptable. Section 204(h) notice may be enclosed with or combined with other notice provided by the employer or plan administrator. For example, a notice of intent to terminate under title IV of ERISA or a notice to interested parties of the application for a determination letter may also serve as section 204(h) notice if it otherwise meets the requirements of this section.

Q-12: How may the 15-day notice requirement be satisfied?

A-12: (a) Generally. A section 204(h) notice is deemed to have been provided at least 15 days before the effective date of the amendment if it has been provided by the end of the 15th day before the effective date. When notice is delivered by first class mail, the notice is considered provided as of the date of the United States postmark stamped on the cover in which the document is mailed.

(b) *Example.* The following example illustrates the provisions of this Q&A-12:

Example. Plan A is amended to reduce significantly the rate of future benefit accruals effective December 1, 1999. The plan administrator causes section 204(h) notice to be mailed to all affected participants. The mailing is postmarked November 16, 1999. Accordingly, the section 204(h) notice is considered to be given not less than 15 days before the effective date of the plan amendment.

Q-13: If a plan administrator fails to provide section 204(h) notice to some participants or alternate payees, will the plan administrator be considered to have complied with section 204(h) with respect to participants and alternate payees who were provided with section 204(h) notice?

A-13: The plan administrator will be considered to have complied with section 204(h) with respect to a participant to whom section 204(h) notice is required to be provided if the participant and any employee organization representing the participant were provided with section 204(h) notice, and if the plan administrator has made a good faith effort to comply with the requirements of section 204(h). The plan administrator will be considered to have complied with section 204(h) with respect to an alternate payee to whom section 204(h) notice is required to be provided if the alternate payee was provided with section 204(h) notice, and if the plan administrator made a good faith effort to comply with the requirements of section 204(h). If these conditions are satisfied the amendment will become effective in accordance with its terms with respect to the participants and alternate payees to whom section 204(h) notice was provided. Except to the extent provided in Q&A-14, the amendment will not become effective with respect to those participants and alternate payees who were not provided with section 204(h) notice.

Q-14: Will a plan be considered to have complied with section 204(h) if the plan administrator provides section 204(h) notice to all but a de minimis percentage of participants and alternate payees to whom section 204(h) notice must be provided?

A-14: The plan will be considered to have complied with section 204(h) and the amendment will become effective in accordance with its terms with respect to all parties to whom section 204(h) notice was required to be provided (including those who did not receive notice prior to discovery of the omission), if the plan administrator—

(a) Has made a good faith effort to comply with the requirements of section 204(h);

(b) Has provided section 204(h) notice to each employee organization that represents any participant to whom section 204(h) notice is required to be provided;

(c) Has failed to provide section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom section 204(h) notice is required to be provided; and

(d) Provides section 204(h) notice to those participants and alternate payees promptly upon discovering the oversight.

Q-15: How does section 204(h) apply to the sale of a business?

A-15: (a) *Generally.* Whether section 204(h) notice is required in connection with the sale of a business depends on whether a plan amendment is adopted that significantly reduces the rate of future benefit accrual.

(b) *Examples.* The following examples illustrate the rules of this Q&A-15:

Example 1. Corporation Q maintains Plan A, a defined benefit plan that covers all employees of Corporation Q, including employees in its Division M. Plan A provides that participating employees cease to accrue benefits when they cease to be employees of Corporation Q. On January 1, 2000, Corporation Q sells all of the assets of Division M to Corporation R. Corporation R maintains Plan B, which covers all of the employees of Corporation R. Under the sale agreement, employees of Division M become employees of Corporation R on the date of the sale (and cease to be employees of Corporation Q), Corporation Q continues to maintain Plan A following the sale, and the employees of Division M become participants in Plan B. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. The employees of Division M who become employees of Corporation R ceased to accrue benefits under Plan A because their employment with Corporation Q terminated.

Example 2. Subsidiary Y is a wholly owned subsidiary of Corporation S. Subsidiary Y maintains Plan C, a defined benefit plan that covers employees of Subsidiary Y. Corporation S sells all of the stock of Subsidiary Y to Corporation T. At the effective date of the sale of the stock of Subsidiary Y, in accordance with the sale agreement between Corporation S and Corporation T, Subsidiary Y amends Plan C so that all benefit accruals cease. In this Example, section 204(h) notice is required to be provided because Subsidiary Y adopted a plan amendment that significantly reduced the rate of future benefit accrual in Plan C.

Example 3. Corporation U maintains two plans: Plan D covers employees of Division N and Plan E covers the rest of the employees of Corporation U. Plan E provides a significantly lower rate of future benefit accrual than Plan D. Plan D is merged with Plan E, and all of the employees of Corporation U will accrue benefits under the merged plan in accordance with the benefit formula of former Plan E. In this Example, section 204(h) notice is required.

Example 4. Corporation V maintains several plans, including Plan F, which covers employees of Division P. Plan F provides that participating employees cease to accrue further benefits under the plan when they cease to be employees of Corporation V. Corporation V sells all of the assets of Division P to Corporation W, which maintains Plan G for its employees. Plan G provides a significantly lower rate of future benefit accrual than Plan F. Plan F is merged with Plan G as part of the sale, and employees of Division P who become employees of Corporation W will accrue benefits under the merged plan in accordance with the benefit formula of former Plan G. In this Example, no section 204(h) notice is required because no plan amendment was adopted that reduced the rate of future benefit accrual. Under the terms of Plan F as in effect prior to the merger, employees of Division P cease to accrue any further benefits under Plan F after the date of the sale because their employment with Corporation V terminated.

Q-16: How are amendments to cease accruals and terminate a plan treated under section 204(h)?

A-16: (a) *General rule*—(1) *Rule.* An amendment providing for the cessation of benefit accruals on a specified future date and for the termination of a plan is subject to section 204(h).

(2) *Example.* The following example illustrates the rule of paragraph (a)(1) of this Q&A-16:

Example. (i) An employer adopts an amendment that provides for the cessation of benefit accruals under a defined benefit plan on December 31, 2001, and for the termination of the plan pursuant to title IV of ERISA as of a proposed termination date that is also December 31, 2001. As part of the notice of intent to terminate required under title IV in order to terminate the plan, the plan administrator gives section 204(h) notice of the amendment ceasing accruals, which states that benefit accruals will cease "on December 31, 2001." However, because all the requirements of title IV for a plan termination are not satisfied, the plan cannot be terminated until a date that is later than December 31, 2001.

(ii) Nonetheless, because section 204(h) notice was given stating that the plan was amended to cease accruals on December 31, 2001, section 204(h) does not prevent the amendment to cease accruals from being effective on December 31, 2001. The result would be the same had the section 204(h) notice informed the participants that the plan was amended to provide for a proposed termination date of December 31, 2001, and to provide that "benefit accruals will cease on the proposed termination date whether or not the plan is terminated on that date." However, the cessation of accruals would not be effective on December 31, 2001, had the section 204(h) notice merely stated that benefit accruals would cease "on the termination date" or "on the proposed termination date."

(b) *Terminations in accordance with title IV of ERISA.* A plan that is terminated in accordance with title IV of ERISA is deemed to have satisfied section 204(h) not later than the termination date (or date of termination, as applicable) established under section 4048 of ERISA. Accordingly, section 204(h) would in no event require that any additional benefits accrue after the effective date of the termination.

(c) *Amendment effective before termination date of a plan subject to title IV of ERISA.* To the extent that an amendment providing for a significant reduction in the rate of future benefit accrual has an effective date that is earlier than the termination date (or date of termination, as applicable) established under section 4048 of ERISA, that amendment is subject to section 204(h). Accordingly, the plan administrator must provide section 204(h) notice (either separately or with or as part of the notice of intent to terminate) with respect to such an amendment.

Q-17: When does section 204(h) become effective?

A-17: (a) *Statutory effective date.* With respect to defined benefit plans, section 204(h) generally applies to plan amendments adopted on or after January 1, 1986. With respect to individual account plans, section 204(h) applies to plan amendments adopted on or after October 22, 1986.

(b) *Regulatory effective date*—(1) *General regulatory effective date.* This section is applicable for amendments adopted on or after December 12, 1998.

(2) *Special rule for amendments adopted under the temporary regulations.* Whether an amendment that is adopted on or after December 15, 1995 and before December 12, 1998 complies with section 204(h) is determined under the rules of section 1.411(d)-6T in effect prior to **December 14, 1998** (See §1.411(d)- 6T in 26 CFR Part 1 revised as of April 1, 1998).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, the table in paragraph (c) is amended by removing the entry for 1.411(d)6–T and by adding an entry in numerical order to read as follows:

§602.101 OMB Control numbers.

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(c)* * *

CFR part or section where identified and described	Current OMB control No.
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1.411(d)–6	1545–1447
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Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 4, 1998.

Jonathan Talisman,
Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 11, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 14, 1998, 63 F.R. 68678)

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

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

LIFO; price indexes; department stores. The December 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, December 31, 1998.

Rev. Rul. 99–9

The following Department Store Inventory Price Indexes for December 1998 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, December 31, 1998.

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

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

Groups	Dec 1997	Dec 1998	Percent Change from Dec.1997 to Dec 1998[1]
1. Piece Goods	522.7	546.8	4.6
2. Domestics and Draperies	620.8	631.2	1.7
3. Women's and Children's Shoes	661.6	660.9	–0.1
4. Men's Shoes	894.5	905.3	1.2
5. Infants' Wear	620.2	628.7	1.4
6. Women's Underwear	548.7	559.6	2.0
7. Women's Hosiery	297.0	304.1	2.4
8. Women's and Girls' Accessories	541.1	536.4	–0.9
9. Women's Outerwear and Girls' Wear	406.4	401.0	–1.3
10. Men's Clothing	606.0	603.3	–0.4
11. Men's Furnishings	598.6	591.9	–1.1
12. Boys' Clothing and Furnishings	505.4	493.7	–2.3

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

Groups	Dec 1997	Dec 1998	Percent Change from Dec.1997 to Dec 1998[1]
13. Jewelry	948.3	953.0	0.5
14. Notions	797.8	771.9	–3.2
15. Toilet Articles and Drugs	922.4	939.4	1.8
16. Furniture and Bedding	662.6	691.1	4.3
17. Floor Coverings	581.1	602.5	3.7
18. Housewares	806.6	806.5	0.0
19. Major Appliances	241.7	236.0	–2.4
20. Radio and Television	73.9	69.6	–5.8
21. Recreation and Education[2]	108.6	101.6	–6.4
22. Home Improvements[2]	133.4	130.6	–2.1
23. Auto Accessories[2]	108.0	107.7	–0.3
Groups 1 – 15: Soft Goods	594.5	595.0	0.1
Groups 16 – 20: Durable Goods	460.9	458.0	–0.6
Groups 21 – 23: Misc. Goods[2]	111.7	106.6	–4.6
Store Total[3]	548.2	544.8	–0.6

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

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

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

DRAFTING INFORMATION

The principal author of this revenue ruling is Richard C. Farley, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Farley on (202) 622-4970 (not a toll-free call).

Section 832.—Insurance Company Taxable Income

26 CFR 1.832–4: Gross income.

The salvage discount factors are set forth for the 1998 accident year. These factors will be used for computing estimated salvage recoverable for purposes of section 832 of the Code. See Rev. Proc. 99–16, page 50.

Section 846.—Discounted Unpaid Losses Defined

26 CFR 1.846–1: Application of discount factors.

The loss payment patterns and discount factors are set forth for the 1998 accident year. These factors will be used for computing discounted unpaid losses under section 846 of the Code. See Rev. Proc. 99–15, page 42.

26 CFR 1.846–1: Application of discount factors.

The salvage discount factors are set forth for the 1998 accident year. These factors will be used for computing estimated salvage recoverable for purposes of section 832 of the Code. See Rev. Proc. 99–16, page 50.

Section 6311.—Payment of Tax by Commercially Acceptable Means

26 CFR 301.6311–2T: Payment by credit card and debit card (temporary).

T.D. 8793

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Payment by Credit Card and Debit Card

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that authorize the Secretary of the Treasury to accept payment of internal revenue taxes by credit card or debit card. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, and will affect all persons who pay their tax liabilities by credit card or debit card pursuant to guidance prescribed by the Secretary. The text of the temporary regulations also serves as the text of the proposed regulations set forth in REG–111435–98, page 55 in this Bulletin.

DATES: *Effective Date:* These temporary regulations are effective January 1, 1999.

Applicability Date: For dates of applicability, see §301.6311–2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mitchel S. Hyman, (202) 622-3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 6103 and 6311 of the Internal Revenue Code. The regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788, 995)(1997 Act) and section 4003(k) of the Tax and Trade Relief Extension Act of 1998 (Public Law 105-277, 112 Stat. 2681).

As amended by the 1997 Act, section 6311(a) provides that it shall be lawful for the Secretary to receive payment for internal revenue taxes by any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary. The legislative history accompanying the Act explains that commercially acceptable means includes "electronic funds transfers, including those arising from credit cards, debit cards, and charge cards." H. Conf. Rep. 220, 105th Cong., 1st Sess. 652 (1997). The current regulations under Treas. Reg. §301.6311–1 permit payment of taxes by checks, drafts drawn on financial institutions, or money orders. The temporary regulations add payments by credit cards (which includes charge cards) and debit cards to the acceptable methods of payment under section 6311.

Methods of payment by electronic funds transfer other than by credit card or debit card are currently authorized by section 6302 of the Internal Revenue Code and its implementing regulations. For example, Treas. Reg. § 1.6302–4 permits individuals to voluntarily remit payments of income taxes by electronic funds transfer. Thus, the temporary regulations only address payments by credit card and debit card. Section 6302 and its regulations will remain the authority for forms of payment by electronic funds transfer other than payments by credit card and debit card.

Section 6103(a) of the Code prohibits disclosure of returns and return information except as expressly provided in the Code. Section 1205(c)(1) of the 1997 Act (as amended by section 6012(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206) added section 6103(k)(9) to the Code. Section 6103(k)(9) authorizes the IRS to disclose returns and return information to financial institutions and others to the extent necessary for the administration of section 6311. Section 6103(k)(9) further provides that disclosures of information for purposes other than to accept payments by check or money order (for example, by credit card, or debit card) shall be made only to the extent authorized by written procedures promulgated by the Secretary. Section 6311(e) provides that no person shall use or disclose any information obtained pursuant to section 6103(k)(9) related to credit card or debit card transactions except to the extent authorized by written procedures promulgated by the Secretary.

Any person who uses or discloses information in violation of section 6311(e) is subject to civil liability for damages. See I.R.C. section 7431(h), added by section 1205(c)(2) of the 1997 Act (as amended by Public Law 105-206, section 6012(b)(3)).

Explanation of Provisions

The temporary regulations provide that internal revenue taxes may be paid by credit card or debit card. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Secretary. Thus, payments by credit card or debit card may be limited to certain designated cards, to payments made through certain service providers, or to payments of specific types of taxes. It is anticipated that the Secretary will be entering into contracts with specific card issuers or other persons such as third parties who will process the credit and debit card transactions, to facilitate payments by credit cards and debit cards, subject to the requirement that the Secretary may not pay any fee or provide any other monetary consideration under such contracts.

Under the temporary regulations, a payment by credit card or debit card received by the Secretary will be deemed made when the credit card or debit card transaction is authorized by the card issuer, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned due to correction of errors relating to the credit card or debit card account.

The temporary regulations provide, as required by section 6311(d)(3), that payments of taxes by credit card or debit card are subject to the error resolution procedures of section 161 of the Truth in Lending Act, 15 U.S.C. section 1666, section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, only for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes, or adjustments relating to the underlying tax liability. These provisions ensure that any disputes concerning the merits of the tax liability will be resolved in the traditional administrative and judicial forums (e.g., filing a petition in Tax Court, paying the disputed tax and filing a claim for refund), and will not be raised in any dispute with the card issuer, financial institution, or other person participating in the credit card or debit card transaction.

As authorized by section 6311(d)(3)(E), the temporary regulations permit the Secretary to return funds erroneously received due to errors relating to the credit card or debit card account by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or other appropriate financial institution or person. Returns of funds through credit card or debit card credits, however, are only available to correct errors relating to the credit card and debit card account, and not to refund overpayments of taxes.

The temporary regulations also provide that the Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. The regulations provide that the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction are not prohibited. The Internal Revenue Service may not receive any part of any fees that may be charged.

The temporary regulations also provide the procedures required under sections 6103(k)(9) and 6311(e) with respect to use and disclosure of information relating to payment of taxes by credit card and debit card. IRS personnel are authorized to disclose to card issuers, financial institutions, and other persons information necessary to process the tax payment or to bill or collect the amount charged or debited (for example, to resolve billing errors). Pursuant to section 6311(e), information received by any person in connection with payment of tax by credit card or debit card shall be treated as confidential by all persons who receive such information, whether such information is received from the Secretary or from any other person including the taxpayer.

The temporary regulations set forth the limited purposes and activities for which such information may be used or disclosed by card issuers, financial institutions, and other persons. The permitted purposes and activities principally involve credit card and debit card processing, billing, collection, account servicing, account transfers, internal business records, legal compliance, and legal proceedings. The temporary regulations expressly prohibit selling the information, sharing it with credit bureaus, or using it for any marketing purpose, for example, marketing tax-related products or any marketing that targets those who have used a credit card or debit card to pay taxes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that these regulations must be effective by January 1, 1999, to permit taxpayers the opportunity to pay taxes by credit card for the 1999 filing season, and, therefore, it has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. It has also been determined that because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Mitchel S. Hyman of the Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(k)(9)–1T is added to read as follows:

§301.6103(k)(9)–1T Disclosure of returns and return information relating to payment of tax by credit card and debit card (temporary).

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions or other persons such return information as the Secretary deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by §301.6311–2T. Officers and employees of the Service may disclose such return information to such persons as the Secretary deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in §301.6311–2T(d).

Par. 3. Section 301.6311–2T is added to read as follows:

§301.6311–2T Payment by credit card and debit card (temporary).

(a) *Authority to receive*—(1) *Payments by credit card and debit card.* Internal revenue taxes may be paid by credit card or debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Secretary. All references in this section to "tax" also include interest, penalties and additions to tax.

(2) *Payments by electronic funds transfer other than payments by credit card and debit card.* Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 6302 and the Treasury Regulations promulgated pursuant to section 6302.

(3) *Definitions*—(i) *Credit card* means any credit card as defined in section 103(k) of the Truth in Lending Act, 15 U.S.C. section 1602(k), including any credit card, charge card or other credit device issued for the purpose of obtaining money, property, labor or services on credit.

(ii) *Debit card* means any accepted card or other means of access as defined in section 903(1) of the Electronic Funds Transfer Act, 15 U.S.C. 1693a(1), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money, property, labor or services.

(b) *When payment is deemed made.* A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned pursuant to paragraph (d)(3) of this section.

(c) *Payment not made*—(1) *Continuing liability of taxpayer.* A taxpayer who tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the Secretary and is not required to be returned pursuant to paragraph (d)(3) of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or financial institution pursuant to paragraph (c)(2) of this section.

(2) *Liability of financial institutions.* If a taxpayer has tendered a payment of internal revenue taxes by credit card or debit card, and the credit card or debit card transaction has been guaranteed expressly by a financial institution, and the United States is not duly paid, the United States shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution.

(d) *Resolution of errors relating to the credit card or debit card account*—(1) *In general.* Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act, 15 U.S.C. 1666, or section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(2) *Matters covered by error resolution procedures.* (i) The error resolution procedures of paragraph (d)(1) of this section apply to the following types of errors:

(A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake.

(B) An amount posted to the wrong taxpayer's account.

(C) A transaction posted to the taxpayer's account without the taxpayer's authorization.

(D) Similar types of errors that would be subject to resolution under these procedures in ordinary commercial transactions.

(ii) An error described in paragraphs (d)(2)(i)(A) through (D) of this section may only be resolved through the procedures referred to in paragraph (d)(1) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Secretary.

(3) *Return of funds pursuant to error resolution procedures.* Notwithstanding section 6402 of the Internal Revenue Code, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (d)(1) of this section, the Secretary may, in the Secretary's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(4) *Matters not subject to error resolution procedures.* The error resolution procedures of paragraph (d)(1) of this section do not apply to any error, question or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters shall be resolved through administrative and judicial procedures established pursuant to the Internal Revenue Code and the rules and regulations thereunder.

(5) Payments of taxes by credit card or debit card are not subject to section 170 of the Truth in Lending Act, 15 U.S.C. 1666i, or to any similar provision of state law.

(e) *Fees or charges.* The Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Internal Revenue Service may not receive any part of any fees that may be charged.

(f) *Authority to enter into contracts. The Secretary may enter into contracts re*lated to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the Government. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the Government's investment or interest. The Secretary may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments.

(g) *Use and disclosure of information relating to payment of taxes by credit card and debit card.* Information obtained by any person other than the taxpayer in connection with payment of taxes by a credit card or debit card shall be treated as confidential, whether such information is received from the Secretary or from any other person (including the taxpayer). No person other than the taxpayer shall use or disclose such information except as follows:

(1) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with paragraph (d) of this section. This authority includes the following:

(i) Processing of the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the United States Treasury.

(ii) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability.

(iii) Collection of the amount charged or debited with respect to payment of the tax liability.

(iv) Returning funds to the taxpayer in accordance with paragraph (d)(3) of this section.

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities:

(i) Assessment of statistical risk and profitability.

(ii) Transfer of receivables or accounts or any interest therein.

(iii) Audit of account information.

(iv) Compliance with Federal, State, or local law.

(v) Cooperation in properly authorized civil, criminal, or regulatory investigations by Federal, State, or local authorities.

(3) Notwithstanding the foregoing, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized:

(i) Sale or exchange of such information separate from the underlying receivable or account.

(ii) Marketing for any purpose, for example, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes.

(iii) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(4) Use and disclosure of information other than as authorized by this paragraph (g) may result in civil liability under section 7431(h) of the Internal Revenue Code.

(h) *Effective date.* This section applies to payments of taxes made on and after January 1, 1999, and through January 1, 2002.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 1, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 14, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 15, 1998, 63 F.R. 68995)

Section 6320.—Notice and Opportunity for Hearing Upon Filing of Notice of Lien

26 CFR 301.6320–1T: Notice and opportunity for hearing upon filing of notice of Federal tax lien (temporary).

T.D. 8810

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property and rights to property the IRS files a NFTL. The text of these regulations also serves as the text of the proposed regulations in REG–116824–98, page 57 in this Bulletin.

DATES: These regulations are effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6320 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

These temporary regulations implement the provisions of section 6320 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of the filing of a NFTL on or after January 19, 1999, the right to a hearing before the IRS Office of Appeals (Appeals) with respect to the filing of a NFTL, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6320 within the 30-day period that commences the day after the five business day notification period. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide guidance to taxpayers for purposes of section 6320. Pursuant to section 6320, for NFTLs filed on or after January 19, 1999, the IRS must provide written notification of the filing of the NFTL to the taxpayer named in the NFTL. The notification under section 6320 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail to the taxpayer's last known address not more than five business days after the day the NFTL is filed. The notification must state the amount of unpaid tax, inform the taxpayer of the right to request a hearing during the 30-day period that commences the day after the end of the five business day notification period, inform the taxpayer of the administrative appeals available with respect to such lien and the procedures related to such appeals, and inform the taxpayer of the provisions and procedures relating to the release of liens. Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a hearing, Appeals will hold one collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the CDP hearing notice (CDP Notice). The taxpayer is entitled to have a CDP hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. The taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. If a taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecutions, and relating to suits are suspended. If the taxpayer has a hearing with Appeals, the suspension of the applicable periods of limitation continues until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court. If the taxpayer has withdrawn the request for a hearing with Appeals, the suspension of the applicable periods of limitation ends as a result of that withdrawal.

The temporary regulations discuss the procedures for CDP hearings under section 6320, including the requirement that the Appeals officer obtain verification that all legal and administrative requirements for the filing of the NFTL have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the CDP hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous CDP hearing under section 6330 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provide rules and procedures with respect to the administrative hearing (referred to as an "equivalent hearing") the IRS will provide to taxpayers who do not timely request a hearing under section 6320.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register. Pursuant to section 7805 (f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6320–1T is added under the undesignated centerheading "Lien for Taxes" to read as follows:

§301.6320–1T Notice and opportunity for hearing upon filing of notice of Federal tax lien (temporary).

(a) *Notification*–(1) *In general.* For a notice of federal tax lien (NFTL) filed on or after January 19, 1999, district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under this section must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the "person" entitled to notice under section 6320?

A-A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is only required to be given to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q-A2. When will the IRS provide the notice required under section 6320?

A-A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q-A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A-A3. Yes. Under section 6323(f), a NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each tax and tax period listed in the NFTL.

Q-A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A-A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A-A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods, at any location.

Q-A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A-A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or filing the NFTL, an administrative hearing before Appeals, or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or person holding property of, the taxpayer of the filing of the NFTL?

A-A7. No. Such person is not the person described in section 6321 and is, therefore, not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b) of this section.

Q-A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A-A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q-A9. How will notification under section 6320 be accomplished?

A-A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q-A10. What must a CDP Notice given under section 6320 include?

A-A10. These notices must include, in simple and nontechnical terms:

(i) The amount of unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five-day period described in section 6320(a)(2).

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q-A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A-A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q-A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A-A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and an opportunity to request a CDP hearing.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a Collection Due Process (CDP hearing)*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the amount of unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a tax and tax period previously subject to a CDP Notice in a different location?

A-B1. No. Although the taxpayer will receive notice of each filing of the NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to an amount of unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an amount of unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination as to the NFTL. Under such circumstances, a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q-B2. Is the taxpayer entitled to a CDP hearing where a NFTL for a tax and tax period is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed in another recording office prior to that date?

A-B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an amount of unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same tax and tax period or periods.

Q-B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is he entitled to a CDP hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a second section 6320 CDP hearing?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6320 for a tax and tax period set forth in a NFTL with respect to the first filing of a NFTL that occurs on or after January 19, 1999.

Q-B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A-B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review. Such person may also avail himself of the administrative procedure included in section 6325(b)(4) of the Internal Revenue Code or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. It will give D notification of the NFTL filed in County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6320, such a hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information: the taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN); the type of tax involved; the tax period at issue; a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL; and the reason or reasons why the taxpayer disagrees with the filing of the NFTL. Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1-800-829-3676.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A-C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the

30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period taxpayers are allowed for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must request a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules under section 7502 and the regulations under that section and section 7503 and the regulations under that section will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q-C6. Where should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q-C7. What will happen if the taxpayer does not request a section 6320 CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the tax and tax period or periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

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

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in (i), individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing for a tax and tax period set forth in a NFTL under section 6320 with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a hearing with respect to one tax period shown on the NFTL will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the NFTL.

Q-D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A-D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period or periods shown on the NFTL.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determinaton, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q-E5. What collection alternatives are available to the taxpayer?

A-E5. Collection alternatives would include, for example, withdrawal of the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E6. What issues may a taxpayer raise in a CDP hearing under section 6320 if he previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the tax liability.

Q-E7. How will Appeals issue its determination?

A-E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless as a result of these discussions, the taxpayer agrees to withdraw in writing the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A-E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q-E9. Why is the Notice of Determination and its date important?

A-E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the taxable year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the opportunity for a conference at which the taxpayer would have the opportunity to dispute the liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing in writing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015(b) or (c), but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals's denial of relief under section 6015(b) or (c), the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015(b) or (c) claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability specified in the CDP Notice arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United

States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q-I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) *Effective date*. This section is applicable with respect to any filing of a NFTL on or after January 19, 1999, and before January 22, 2002.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved January 13, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 19, 1999, 10:56 a.m., and published in the issue of the Federal Register for January 22, 1999, 64 F.R. 3398)

Section 6330.—Notice and Opportunity for Hearing Before Levy

26 CFR 301.6330–1T: Notice and opportunity for hearing prior to levy (temporary).

T.D. 8809

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property the IRS intends to levy. The text of these regulations also serves as the text of the proposed regulations set forth in REG–117620–98, page 59 in this Bulletin.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6330 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

Prior to January 1, 1983, the IRS was only required to notify a taxpayer of its intention to levy in the case of proposed levies on salary or wages. Section 6331(d) was amended as a part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The TEFRA amendment required the IRS to give a taxpayer a notice of its intention to levy, in non-jeopardy situations, before any levy was made upon the salary, wages, or other property of the taxpayer. The legislative history of the TEFRA amendment recognized that, although a single notice of intent to levy relating to all property would be sufficient, the IRS was not precluded from sending multiple notices of intention to levy.

Under section 6331(a), the IRS may levy upon a taxpayer's property and rights to property if a taxpayer fails to pay a tax liability. Exemptions from levy are provided for certain property under section 6334(a). The first step toward levy generally occurs when the IRS provides a taxpayer with a written notice and demand for payment. Under section 6303, a notice and demand is a notice which states that the tax has been assessed and demands that payment be made. If, in non-jeopardy situations, the taxpayer fails to pay the tax within 10 days after notice and demand, the IRS may seize a taxpayer's property or rights to property 30 days after sending the taxpayer a notice required under section 6331(d), called a Notice of Intent to Levy. Although the notice and demand and the Notice of Intent to Levy may be combined and sent at the same time under Treas. Reg. §301.6331–2(a)(1), under current practice these two notices are usually sent separately. Generally, the notice and demand is sent first and, as the second step in the levy process, the Notice of Intent to Levy is sent at a later time. The IRS is permitted to proceed with immediate seizure of a taxpayer's property or rights to property without regard to the 10-day waiting period if it determines that the collection of the tax is in jeopardy.

Under section 6331(d), the Notice of Intent to Levy must contain a brief statement, in simple, nontechnical terms, that sets forth (A) the statutory provisions relating to the levy and sale of property, (B) the procedures applicable to the levy and sale of property, (C) the administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals, (D) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), (E) the statutory provisions relating to redemption of property and the release of liens on property, and (F) the procedures applicable to the redemption of property and the release of a lien on property. The Notice of Intent to Levy must be given in person, left at the taxpayer's dwelling or usual place of business, or sent by registered or certified mail to the taxpayer's last known address.

Prior to January 19, 1999, the IRS generally complied with the requirements of section 6331(d) by giving the taxpayer a Final Notice of Intent to Levy, and enclosing certain IRS publications which explain the law, IRS levy and redemption procedures, administrative appeal processes and procedures, and various collection alternatives.

Section 6330 provides that, except when the Secretary finds that collection of the tax is in jeopardy or a levy is issued to collect State tax refunds due to the taxpayer, no levy may be made on or after January 19, 1999, unless the Secretary notifies the taxpayer in writing of a right to a hearing before the IRS Office of Appeals (Appeals) with respect to the unpaid tax for the tax period. When the Secretary has found jeopardy exists and in cases where a levy is made on a State tax refund, the taxpayer will be given notice of a right to, and the opportunity for, a hearing within a reasonable time after the levy action has actually occurred.

Except when it determines that collection of the tax is in jeopardy or it levies on State tax refunds, the IRS is prohibited from levying upon the taxpayer's property or rights to property until 30 days after providing the taxpayer with the notice of a right to a hearing before Appeals. If the taxpayer requests such a hearing, the IRS is, in the absence of jeopardy, prohibited from levying upon the taxpayer's property until the determination reached by Appeals becomes final.

In order to implement the provisions of section 6330, the IRS is going to modify the procedures it follows leading up to the issuance of a levy. In the absence of a determination that collection of the taxes is in jeopardy, the IRS will continue to provide a number of notices to a taxpayer before levying upon the taxpayer's property.

Under the procedures the IRS is adopting to implement section 6330, the levy process will continue to begin with issuance to the taxpayer of a written notice and demand for payment. Absent a jeopardy determination, a taxpayer who fails to pay the tax specified in the notice and demand within 10 days after notice and demand may, in addition to other notices such as the annual notice of tax delinquency required under section 7524, be sent an Urgent Notice. The Urgent Notice will inform the taxpayer that the IRS may levy upon a taxpayer's State tax refund after 30 days from the date of that notice. This Urgent Notice will include all information required under section 6331(d) and will constitute the notice required under that section. Accordingly, the Urgent Notice will also begin the ten-day period leading to an increase in the failure to pay penalty prescribed by section 6651(d).

These temporary regulations implement the provisions of section 6330 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of a right to a hearing before Appeals, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6330 within the 30-day period following the date of notification. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide that, except in the case of jeopardy levies or levies on State tax refunds, the IRS must notify the taxpayer of its intention to levy prior to issuing a levy. The notification under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail, return receipt requested, to the taxpayer's last known address at least 30 days prior to the first proposed levy action with respect to the amount of the unpaid tax for the tax period. The temporary regulations also provide procedures to be followed in the event the notification, if mailed, is not mailed to the taxpayer's last known address. In jeopardy situations and in cases where a levy is made on a State tax refund, notification to the taxpayer of a right to a hearing is not required to be given until the levy action has actually occurred. The temporary regulations set forth the procedures to be followed for making the required pre-levy and post-levy notifications.

Both such notifications must (A) set forth the amount of unpaid tax, (B) notify the taxpayer of the right to request a hearing within the 30-day period that commences the day after the date of notification, (C) indicate, as appropriate, that the IRS has levied or plans to levy, and (D) describe the rights of the taxpayer with respect to such action, including a brief statement which explains (1) the provisions of the Internal Revenue Code (Code) relating to levy and sale of property, (2) the procedures applicable to the levy and sale of property under the Code, (3) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals, (4) the alternatives available to taxpayers which might forestall future levies on property (including installment agreements under section 6159), and (5) the provisions of the Code and procedures relating to redemption of property and release of liens on property.

Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a collection due process hearing, Appeals will hold one section 6330 collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the collection due process notice (CDP Notice). The taxpayer is entitled to have a hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. A taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing.

Hearings with respect to levies may be held in conjunction with hearings under section 6320, involving liens.

If the taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecution, and relating to suits are suspended until the suspension ends as a result of the taxpayer's withdrawal of the request for a CDP hearing or until the determination reached at the CDP hearing becomes final by the expiration of the time for seeking review or reconsideration before the appropriate court. Prior to issuance of the Appeals determination, the Appeals officer must verify that all legal and administrative requirements pertaining to the proposed levy have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous hearing under section 6320 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provides rules and procedures with respect to the administrative hearing (referred to as an "equivalent hearing") the IRS will provide to taxpayers who do not timely request a hearing under section 6330.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Anayses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.** Pursuant to section 7805 (f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6330–1T is added under the undesignated centerheading "Seizure of Property for Collection of Taxes" to read as follows:

§301.6330–1T Notice and opportunity for hearing prior to levy (temporary).

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to provide persons upon whose property or rights to property the IRS intends to levy on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process hearing (CDP hearing) with the Internal Revenue Service Office of Appeals (Appeals). This Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail, return receipt requested, to such person's last known address.

(2) *Exceptions*—(i) *State tax refunds.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect State tax refunds owing to the taxpayer. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to give notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to the tax liability for the tax period for which the levy on the State tax refund was made on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a State tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to levy when there has been a determination that collection of the tax is in jeopardy. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy is also referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the "person" to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is only required to be given to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a State tax refund or in the case of a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a). Pursuant to section 6331(a), notice is to be given to the person liable to pay the tax due after notice and demand who refuses or neglects to pay (hereinafter referred to as the taxpayer).

Q-A2. Will the IRS notify a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to the taxpayer of its intention to issue a levy?

A-A2. No. Such a person is not the person described in section 6331(a), but such persons have other remedies. See A-B5 of this paragraph (a)(3).

Q-A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A-A3. Yes. The notification of intent to levy or of the issuance of a jeopardy or State tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q-A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A-A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q-A5. When will the IRS provide this notice?

A-A5. Pursuant to section 6330(a)(1), beginning January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of its intent to levy on property or rights to property, other than State tax refunds and in jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a State tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q-A6. What must the pre-levy CDP Notice include?

A-A6. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q-A7. What must the post-levy CDP Notice include?

A-A7. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS has levied upon the taxpayer's State tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q-A8. How will this pre-levy or post-levy notification be accomplished?

A-A8. (i) The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with that Notice. The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q-A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A-A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q-A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A-A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing.

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

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1,* except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the pre-levy or post-levy CDP Notice provided the taxpayer. The taxpayer must request such a hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is the taxpayer entitled to a CDP hearing where a levy for State tax refunds is served on or after January 19, 1999, even though the IRS had previously served other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A-B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the tax and tax period set forth in such a levy issued on or after January 19, 1999.

Q-B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice with respect to a tax period, provides subsequent notice to that taxpayer that it intends to levy on property or rights to property of the taxpayer for the same tax and tax period shown on the CDP Notice?

A-B2. No. Under section 6330, only the first pre-levy or post-levy Notice with respect to liabilities for a tax and tax period constitutes a CDP Notice. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination with respect to collection activity relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q-B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6330 CDP Notice was previously sent, is the taxpayer entitled to a second section 6330 CDP hearing?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q-B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A-B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6330, such a hearing must be requested during the 30-day period that commences that day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(ii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the

CDP Notice or by calling, toll free, 1-800-829-3676.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A-C3. A taxpayer must submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6330 within the 30-day period commencing the day after the date of the CDP Notice. This period is slightly different from the period allowed taxpayers to submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules under section 7502 and the regulations thereunder and section 7503 and the regulations thereunder will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C6. Where should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q-C7. What will happen if the taxpayer does not request a section 6330 CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice?

A-C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. In addition, the IRS will be free to pursue collection action at the conclusion of the 30-day period following the date of the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(d) *Conduct of CDP hearing*—(1) *In general*. If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A-D1. The taxpayer may receive more

than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the CDP Notice.

Q-D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A-D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods?

A-D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q-E5. What collection alternatives are available to the taxpayer?

A-E5. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E6. What issues may a taxpayer raise in a CDP hearing under section 6330 if he previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period shown in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E7. How will Appeals issue its determination?

A-E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions:

(A) It will state whether the IRS met the requirements of any applicable law or administrative procedure.

(B) It will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax.

(C) It will include a decision on any appropriate spousal defenses raised by the taxpayer.

(D) It will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action.

(E) It will respond to any offers by the taxpayer for collection alternatives.

(F) It will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

(ii) The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(iii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A-E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q-E9. Why is the Notice of Determination and its date important?

A-E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1,* except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal Appeals's determination to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015(b) or (c), but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only wants Tax Court review of Appeals's denial of relief under section 6015(b) or (c), the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015(b) or (c) claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking its review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods to which the unpaid tax relates. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a subsequent hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q-I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999, and before January 22, 2002.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved January 13, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 19, 1999, 10:56 a.m., and published in the issue of the Federal Register for January 22, 1999, 64 F.R. 3405)

Section 7702B.—Treatment of Qualified Long-Term Care Insurance

26 CFR 1.7702N–1: Consumer protection provisions.

T.D. 8792

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Qualified Long-Term Care Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997. Changes to the applicable law were made by the Health Insurance Portability and Accountability Act of 1996. The regulations affect issuers of long-term care insurance contracts and individuals entitled to receive payments under these contracts. The regulations are necessary to provide these taxpayers with guidance needed to comply with these changes.

DATES: *Effective date.* These regulations are effective December 10, 1998.

Applicability date. Section 1.7702B–1 (concerning consumer protection provisions) of the regulations applies with respect to contracts issued after December 10, 1999. Section 1.7702B–2 (concerning special rules for pre-1997 contracts) of the regulations is applicable January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky, (202) 622-3477 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide rules relating to consumer protection with respect to qualified long-term care insurance contracts and relating to events that will result in the loss of grandfathered status for long-term care insurance contracts issued prior to January 1, 1997.

A notice of proposed rulemaking (REG–109333–97, 1998–9 I.R.B. 9) under section 7702B of the Code was published in the **Federal Register** on January 2, 1998 (63 F.R. 35). Written comments were received from the public, and a public hearing was held on May 13, 1998. After consideration of all the comments, the regulations proposed by REG–109333–97 are adopted as revised by this Treasury decision.

Explanation of Statutory Provisions

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936, 2054 and 2063)(HIPAA) added section 7702B to the Internal Revenue Code of 1986 (the Code). Section 7702B establishes the tax treatment for qualified long-term care insurance contracts. Section 7702B(a)(1) and (3) of the Code provide that a qualified long-term care insurance contract is treated as an accident and health insurance contract and that any employer plan providing coverage under a qualified long-term care insurance contract is treated as an accident or health plan with respect to that coverage.

Section 7702B(a)(2) of the Code provides that amounts (other than policyholder dividends and premium refunds) received under a qualified long-term care insurance contract are generally excludable from gross income as amounts received for personal injuries and sickness.

Section 213(d)(1)(D) of the Code was amended by section 322 of HIPAA to provide that eligible long-term care insurance premiums, as defined in section 213(d)(10) of the Code, are medical care expenses.

Under section 7702B(b)(1)(F) of the Code, a qualified long-term care insurance contract must meet the consumer protection provisions of section 7702B(g) of the Code. In addition, section 4980C of the Code imposes an excise tax on issuers of qualified long-term care insurance contracts that do not provide further consumer protections.

Section 7702B of the Code applies to contracts issued after December 31, 1996. Section 321(f)(2) of HIPAA treats a contract issued before January 1, 1997, as a qualified long-term care insurance contract under section 7702B(b) of the Code, and services provided or reimbursed under such a contract as qualified long-term care services under section 7702B(c) of the Code, provided the contract met the long-term care insurance requirements of the State in which the contract was sitused at the time the contract was issued. Section 321(f)(2) of HIPAA also provides that in the case of an individual covered on December 31, 1996, by a State long-term care plan under section 7702B(f) of the Code, the terms of the plan on that date are treated as a contract meeting the long-term care insurance requirements of that State.

Section 321(f)(4) of HIPAA provides that for purposes of applying sections 101(f), 7702, and 7702A of the Code, neither the issuance of a rider that is treated as a qualified long-term care insurance contract nor the addition of any provision required to conform any other long-term care rider to the requirements applicable to a qualified long-term care insurance contract is treated as a modification or material change of the contract.

Explanation of Provisions

The final regulations provide guidance concerning

- the consumer protection requirements that apply to qualified long-term care insurance contracts under sections 7702B(g), 7702B(b)(1)(F), and 4980C of the Code; and
- the grandfather provisions of section 321(f)(2) of HIPAA under which pre-1997 contracts are treated as qualified long-term care insurance contracts if certain conditions are met.

The standards in the final regulations are based on safe harbors that were originally set forth in Notice 97–31 (1997-1 C.B. 417), and in the regulations proposed in REG–109333–97.

Notice 97–31

Notice 97–31 was issued to provide interim standards for taxpayers to use in interpreting the new long-term care provisions and to facilitate operation of the insurance market by avoiding the need to amend contracts. For example, Notice 97–31 includes interim guidance on the determination of whether an individual is a chronically ill individual, including safe harbor definitions of the terms *substantial assistance, hands-on assistance, standby assistance, severe cognitive impairment, and substantial supervision.* The standards contained in Notice 97–31 include interim guidance on both the consumer protection provisions and the scope of the statutory grandfather provisions that apply to long-term care insurance contracts issued before 1997.

Consumer Protection Requirements

Under sections 7702B(b)(1)(F), 7702B(g), and 4980C of the Code, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC) for long-term care insurance as of January 1993. The requirements relate to guaranteed renewability, unintentional lapse, disclosure, prohibitions against post-claims underwriting, inflation protection, and prohibitions against pre-existing conditions exclusions and probationary periods. Section 4980C imposes an excise tax on an issuer of a qualified long-term care insurance contract if, after 1996, the issuer fails to satisfy certain requirements, including requirements relating to application forms, reporting, marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, and incontestability. Most of these requirements are based on the NAIC Model Act and Regulation.

The final regulations reflect the standards that were set forth in Notice 97–31 and in the regulations proposed in REG–109333–97. For example, the consumer protection requirements will be considered satisfied if a contract complies with State law in a State that has adopted the related NAIC model or a more stringent version of the model.

Commentators generally approved of the consumer protection provisions of the proposed regulations. Some commentators suggested that the provisions should be applied on a prospective basis, such as for long-term care insurance contracts issued more than one year after publication of the final regulations. Consistent with this suggestion, the final regulations apply to contracts issued after December 10, 1999.

Commentators suggested that if any State has adopted a Model Act or Model Regulation requirement, such State's interpretation of that requirement should be considered probative but not controlling of the meaning of the analogous requirements for purposes of applying sections 7702B(g) and 4980C of the Code to a contract sitused in another State. This suggestion was not adopted. If a particular State has adopted a Model Act or Model Regulation requirement, that State's interpretation should apply to determine whether the contract meets that State's requirement. If a State has not adopted a particular requirement, the determination of what interpretation should apply for purposes of section 7702B(g) and 4980C of the Code is more appropriately made on a case-by-case basis.

Pre-1997 Long-Term Care Insurance Contracts

Section 321(f)(2) of HIPAA provides that a contract issued before January 1, 1997, is treated as a qualified long-term care insurance contract if the contract met the "long-term care insurance requirements of the State" in which the contract was sitused at the time it was issued. Under the final regulations, the date on which a long-term care insurance contract other than a group long-term care insurance contract is issued is generally the date assigned to the contract by the insurance company. In no event is the issue date earlier than the date on which the policyholder submitted a signed application for coverage to the insurance company. In addition, if the period between the date of application and the date on which the long-term care insurance contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is generally the date the contract becomes effective. For purposes of applying the grandfather rule of section 321(f)(2) of HIPAA to a group long-term care insurance contract, the issue date of the contract is the date the group contract was issued. As a result, coverage for an individual who joins a grandfathered group long-term care insurance contract on or after January 1, 1997, is accorded the same treatment under section 321(f)(2) as is accorded coverage for those who joined the group before that date.

Notice 97–31 and the proposed regulations use the term *material change* to identify those changes to pre-1997 long-term care insurance contracts that are treated as the issuance of a new contract and, therefore, result in the loss of grandfathered status under section 7702B. The use of the term *material* may have caused some confusion in light of the bright line standards that the regulations are generally intended to provide. For this reason, the final regulations do not use the term *material* in this context. No substantive change is intended by this modification.

The final regulations generally adopt the standards set forth in the proposed regulations for purposes of determining whether a change to a pre-1997 long-term care insurance contract is considered the issuance of a new contract.[1] For example, the final regulations provide that the exercise of any right provided to a policyholder or the addition of any right that is required by State law to be provided to the policyholder will not be treated as the issuance of a new contract. Thus, as illustrated in an example in the regulations, the exercise of a right set forth in a pre-1997 contract, without underwriting, does not result in the loss of grandfathered status.

The final regulations also provide that the following practices will not be treated as the issuance of a new contract for purposes of the grandfathering provision of section 321(f)(2) of HIPAA: (1) a change in the mode of premium payment, such as a change from paying premiums monthly to quarterly; (2) a classwide increase or decrease in premiums for contracts that have been issued on a guaranteed renewable basis; (3) a reduction in premiums due to the purchase of a long-term care insurance policy by a member of the policyholder's family; (4) a reduction in coverage (with correspondingly lower premiums) made at the request of a policyholder; (5) a reduction in premiums that occurs because the policyholder becomes entitled to a discount under the issuer's pre-1997 premium rate structure (such as when a policyholder becomes a member of a group entitled to a group discount, or changes from smoker to nonsmoker status); (6) the addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder; (7) the addition of a rider to increase benefits under a pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were a separate contract; (8) the deletion of a rider or provision of a contract (called an HHS (Health and Human Services) rider) that prohibited coordination of benefits with Medicare; (9) the effectuation of a continuation or conversion of coverage right under a group contract following an individual's ineligibility for continued coverage under the group contract; and (10) the substitution of one insurer for another in an assumption reinsurance transaction. These exceptions are generally similar to those listed in the proposed regulations. In response to comments, however, the exceptions have been broadened to permit certain premium reductions and to clarify that a change in insurer pursuant to an assumption reinsurance transaction is not treated as the issuance of a new contract (assuming that the contract would not otherwise be treated as newly issued, such as by reason of a change in the amount or timing of benefits or premiums).

Some commentators suggested that the regulations include a parenthetical to the effect that some changes in the amount or timing of items (such as de minimis changes in premiums) are not treated as the issuance of a new contract, even if no specific exception applies under the regulation. An important purpose of these regulations is to provide certainty as to the qualification of pre-1997 long-term care insurance contracts, and the exceptions enumerated in the proposed regulations provide broad relief from treatment as the issuance of a new contract resulting in the loss of grandfathered status. Accordingly, the final regulations do not contain this additional parenthetical.

Some commentators identified additional circumstances under which expansion of coverage under a group long-term care insurance contract should not be treated as the issuance of a new contract. For example, some requested that the addition of a spouse, dependent children, or others should not be treated as the issuance of a new contract. Other commentators suggested that no loss of grandfathering should result from the expansion of coverage under a group contract by reason of a corporate merger or acquisition, or the extension of coverage to collectively bargained employees, or the addition of former employees. The final regulations clarify that such expansion is not treated as the issuance of a new contract, provided that the addition is without underwriting and is pursuant to the terms of the contract and the plan under which the contract was issued as in effect on December 31, 1996. Thus, the addition of a business's assets and related employees by a company with a pre-1997 group contract is not treated as the issuance of a new contract if, as of December 31, 1996, the contract and the plan under which it was issued provided that new employees automatically are eligible to participate in the group contract. If, however, a new subsidiary is acquired by the company and the company's pre-1997 group contract or plan requires that a subsidiary be designated by the company in order for its employees to be eligible to participate, then the designation of the new subsidiary would be a change in the terms of the contract or in the plan relating to eligibility. Although the final regulations were not modified to accommodate further expansion, a new qualified long-term care insurance contract could be entered into to expand coverage under these circumstances. Alternatively, the final regulations permit coverage under the pre-1997

[1] These standards are different from those that apply for purposes of determining the grandfathered status of other types of insurance contracts under the Code (including sections 7702, 7702A, 101(f), and 264). Those other provisions limit the tax benefits associated with the purchase of insurance products that, unlike pre-1997 long-term care insurance contracts, have a substantial investment orientation.

contract to be expanded by a rider to the pre-1997 contract if the rider would constitute a qualified long-term care insurance contract if it were issued as a separate contract.[2]

Finally, it was suggested that the grandfather provisions of the final regulations should be effective immediately. The final regulations with respect to contracts issued before 1997 are effective January 1, 1999.

Standards before the Effective Date of the Final Regulations

The consumer protection provisions in the final regulations apply with respect to contracts issued after December 10, 1999. Taxpayers may continue to rely on Notice 97–31 with respect to contracts issued on or before that date. In addition, a contract issued on or before December 10, 1999. will not be treated as failing to satisfy the consumer protection requirements of section 7702B(g) or 4980C of the Code if the contract satisfies the requirements of the final regulations. Taxpayers may not rely on Notice 97–31 with respect to contracts issued after December 10, 1999.

The final regulations are effective January 1, 1999, with respect to pre-1997 long-term care insurance contracts. Taxpayers may continue to rely on Notice 97–31 for the purpose of determining whether a change made before January 1, 1999, to a pre-1997 contract is treated as the issuance of a new contract. In addition, a change made before that date to a pre-1997 contract will not be treated as the issuance of a new contract if the change is not treated as the issuance of a new contract under the final regulations. Taxpayers may not rely on Notice 97–31 with respect to changes made on or after January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Katherine A. Hossofsky, Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Sections 1.7702B–1 and 1.7702B–2 are added to read as follows:

§1.7702B–1 Consumer protection provisions.

(a) *In general.* Under sections 7702B(b)(1)(F), 7702B(g), and 4980C, qualified long-term care insurance contracts and issuers of those contracts are required to satisfy certain provisions of the Long-Term Care Insurance Model Act (Model Act) and Long-Term Care Insurance Model Regulation (Model Regulation) promulgated by the National Association of Insurance Commissioners (NAIC), as adopted as of January 1993. The requirements for qualified long-term care insurance contracts under section 7702B(b)(1)(F) and (g) relate to guaranteed renewal or noncancellability, prohibitions on limitations and exclusions, extension of benefits, continuation or conversion of coverage, discontinuance and replacement of policies, unintentional lapse, disclosure, prohibitions against post-claims underwriting, minimum standards, inflation protection, prohibitions against pre-existing conditions exclusions and probationary periods, and prior hospitalization. The requirements for qualified long-term care insurance contracts under section 4980C relate to application forms and replacement coverage, reporting requirements, filing requirements for marketing, standards for marketing, appropriateness of recommended purchase, standard format outline of coverage, delivery of a shopper's guide, right to return, outline of coverage, certificates under group plans, policy summary, monthly reports on accelerated death benefits, and incontestability period.

(b) *Coordination with State requirements*—(1) *Contracts issued in a State that imposes more stringent requirements.* If a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C, then, under section 4980C(f), compliance with the more stringent requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C. The principles of paragraph (b)(3) of this section apply to any case in which a State imposes a requirement that is more stringent than the analogous requirement imposed by section 7702B(g) or 4980C (as described in this paragraph (b)(1)), but in which there has been a failure to comply with that State requirement.

(2) *Contracts issued in a State that has adopted the model provisions.* If a State imposes a requirement that is the same as the parallel requirement imposed by section 7702B(g) or 4980C, compliance with that requirement of State law is considered compliance with the parallel requirement of section 7702B(g) or 4980C, and failure to comply with that requirement of State law is considered failure to comply with the parallel requirement of section 7702B(g) or 4980C.

(3) *Contracts issued in a State that has not adopted the model provisions or more stringent requirements.* If a State has not adopted the Model Act, the Model Regulation, or a requirement that is the same as or more stringent than the analogous re-

[2] As was indicated in the preamble to the proposed regulations, certain of the consumer protection requirements would not apply to such a rider. Specifically, sections 7702B(g)(2)(A)(i)(III), 7702B(g)(2)(A)(i)(V), 7702B(g)(2)(A)(i)(VII) (other than section 9B of the NAIC Model regulation), 7702B(g)(2)(A)(i)(X), 7702B(g)(3), 7702B(g)(4), 4980C(c)(1)(A)(I), and 4980C(c)(2) of the Internal Revenue Code would apply only the first time a contract is purchased, and would not apply to the purchase of a rider.

quirement imposed by section 7702B(g) or 4980C, then the language, caption, format, and content requirements imposed by sections 7702B(g) and 4980C with respect to contracts, applications, outlines of coverage, policy summaries, and notices will be considered satisfied for a contract subject to the law of that State if the language, caption, format, and content are substantially similar to those required under the parallel provision of the Model Act or Model Regulation. Only nonsubstantive deviations are permitted in order for language, caption, format, and content to be considered substantially similar to the requirements of the Model Act or Model Regulation.

(c) *Effective date.* This section applies with respect to contracts issued after December 10, 1999.

§1.7702B–2 Special rules for pre-1997 long-term care insurance contracts.

(a) *Scope.* The definitions and special provisions of this section apply solely for purposes of determining whether an insurance contract (other than a qualified long-term care insurance contract described in section 7702B(b) and any regulations issued thereunder) is treated as a qualified long-term care insurance contract for purposes of the Internal Revenue Code under section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

(b) *Pre-1997 long-term care insurance contracts*—(1) *In general.* A pre-1997 long-term care insurance contract is treated as a qualified long-term care insurance contract, regardless of whether the contract satisfies section 7702B(b) and any regulations issued thereunder.

(2) *Pre-1997 long-term care insurance contract defined.* A pre-1997 long-term care insurance contract is any insurance contract with an issue date before January 1, 1997, that met the long-term care insurance requirements of the State in which the contract was sitused on the issue date. For this purpose, the long-term care insurance requirements of the State are the State laws (including statutory and administrative law) that are intended to regulate insurance coverage that constitutes "long-term care insurance" (as defined in section 4 of the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act, as in effect on August 21, 1996), regardless of the terminology used by the State in describing the insurance coverage.

(3) *Issue date of a contract*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the issue date of a contract is the issue date assigned to the contract by the insurance company. In no event is the issue date earlier than the date the policyholder submitted a signed application for coverage to the insurance company. If the period between the date the signed application is submitted to the insurance company and the date coverage under the contract actually becomes effective is substantially longer than under the insurance company's usual business practice, then the issue date is the later of the date coverage under the contract becomes effective or the issue date assigned to the contract by the insurance company. A policyholder's right to return a contract within a free-look period following delivery for a full refund of any premiums paid is not taken into account in determining the contract's issue date.

(ii) *Special rule for group contracts.* The issue date of a group contract (including any certificate issued thereunder) is the date on which coverage under the group contract becomes effective.

(iii) *Exchange of contract or certain changes in a contract treated as a new issuance.* For purposes of this paragraph (b)(3)—

(A) A contract issued in exchange for an existing contract after December 31, 1996, is considered a contract issued after that date;

(B) Any change described in paragraph (b)(4) of this section is treated as the issuance of a new contract with an issue date no earlier than the date the change goes into effect; and

(C) If a change described in paragraph (b)(4) of this section occurs with regard to one or more, but fewer than all, of the certificates evidencing coverage under a group contract, then the insurance coverage under the changed certificates is treated as coverage under a newly issued group contract (and the insurance coverage provided by any unchanged certificate continues to be treated as coverage under the original group contract).

(4) *Changes treated as the issuance of a new contract*—(i) *In general.* For purposes of paragraph (b)(3) of this section, except as provided in paragraph (b)(4)(ii) of this section, the following changes are treated as the issuance of a new contract—

(A) A change in the terms of a contract that alters the amount or timing of an item payable by either the policyholder (or certificate holder), the insured, or the insurance company;

(B) A substitution of the insured under an individual contract; or

(C) A change (other than an immaterial change) in the contractual terms, or in the plan under which the contract was issued, relating to eligibility for membership in the group covered under a group contract.

(ii) *Exceptions.* For purposes of this paragraph (b)(4), the following changes are not treated as the issuance of a new contract—

(A) A policyholder's exercise of any right provided under the terms of the contract as in effect on December 31, 1996, or a right required by applicable State law to be provided to the policyholder;

(B) A change in the mode of premium payment (for example, a change from monthly to quarterly premiums);

(C) In the case of a policy that is guaranteed renewable or noncancellable, a classwide increase or decrease in premiums;

(D) A reduction in premiums due to the purchase of a long-term care insurance contract by a family member of the policyholder;

(E) A reduction in coverage (with a corresponding reduction in premiums) made at the request of a policyholder;

(F) A reduction in premiums as a result of extending to an individual policyholder a discount applicable to similar categories of individuals pursuant to a premium rate structure that was in effect on December 31, 1996, for the issuer's pre-1997 long-term care insurance contracts of the same type;

(G) The addition, without an increase in premiums, of alternative forms of benefits that may be selected by the policyholder;

(H) The addition of a rider (including any similarly identifiable amendment) to a pre-1997 long-term care insurance contract in any case in which the rider, if issued as a separate contract of insurance, would itself be a qualified long-term care insurance contract under section 7702B and any regulations issued thereunder (including the consumer protection provisions in section 7702B(g) to the extent applicable to the addition of a rider);

(I) The deletion of a rider or provision of a contract that prohibited coordination of benefits with Medicare (often referred to as an HHS (Health and Human Services) rider);

(J) The effectuation of a continuation or conversion of coverage right that is provided under a pre-1997 group contract and that, in accordance with the terms of the contract as in effect on December 31, 1996, provides for coverage under an individual contract following an individual's ineligibility for continued coverage under the group contract; and

(K) The substitution of one insurer for another insurer in an assumption reinsurance transaction.

(5) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. (i) On December 3, 1996, A, an individual, submits a signed application to an insurance company to purchase a nursing home contract that meets the long-term care insurance requirements of the State in which the contract is sitused. The insurance company decides on December 20, 1996, that it will issue the contract, and assigns December 20, 1996, as the issue date for the contract. Under the terms of the contract, A's insurance coverage becomes effective on January 1, 1997. The company delivers the contract to A on January 3, 1997. A has the right to return the contract within 15 days following delivery for a refund of all premiums paid.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is December 20, 1996. Thus, the contract is a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

Example 2. (i) The facts are the same as in *Example 1,* except that the insurance coverage under the contract does not become effective until March 1, 1997. Under the insurance company's usual business practice, the period between the date of the application and the date the contract becomes effective is 30 days or less.

(ii) Under paragraph (b)(3)(i) of this section, the issue date of the contract is March 1, 1997. Thus, the contract is not a pre-1997 long-term care insurance contract, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder to be a qualified long-term care insurance contract.

Example 3. (i) B, an individual, is the policyholder under a long-term care insurance contract purchased in 1995. On June 15, 2000, the insurance coverage and premiums under the contract are increased by agreement between B and the insurance company.

(ii) Under paragraph (b)(4)(i)(A) of this section, a change in the terms of a contract that alters the amount or timing of an item payable by the policyholder or the insurance company is treated as the issuance of a new contract. Thus, B's coverage is treated as coverage under a contract issued on June 15, 2000, and, accordingly, the contract must meet the requirements of section 7702B(b) and any regulations issued thereunder in order to be a qualified long-term care insurance contract.

Example 4. (i) C, an individual, is the policyholder under a long-term care insurance contract purchased in 1994. At that time and through December 31, 1996, the contract met the long-term care insurance requirements of the State in which the contract was sitused. In 1996, the policy was amended to add a provision requiring the policyholder to be offered the right to increase dollar limits for inflation every three years (without the policyholder being required to pass a physical or satisfy any other underwriting requirements). During 2002, C elects to increase the amount of insurance coverage (with a resulting premium increase) pursuant to the inflation provision.

(ii) Under paragraph (b)(4)(ii)(A) of this section, an increase in the amount of insurance coverage at the election of the policyholder (without the insurance company's consent and without underwriting or other limitations on the policyholder's rights) pursuant to a pre-1997 inflation provision is not treated as the issuance of a new contract. Thus, C's contract continues to be a pre-1997 long-term care insurance contract that is treated as a qualified long-term care insurance contract.

(c) *Effective date.* This section is effective January 1, 1999.

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

Approved November 24, 1998.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on December 9, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 10, 1998, 63 F.R. 68184)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, sections 846; 1.846–1.)

Rev. Proc. 99–15

SECTION 1. PURPOSE

This revenue procedure prescribes the loss payment patterns and discount factors for the 1998 accident year. These factors will be used for computing discounted unpaid losses under § 846 of the Internal Revenue Code. See Rev. Proc. 98–11, 1998–4 I.R.B. 9, for background concerning the loss payment patterns and application of the discount factors.

SEC. 2. SCOPE

This revenue procedure applies to any taxpayer that is required to discount its unpaid losses under § 846 for a line of business using discount factors published by the Secretary.

SEC. 3. TABLES OF DISCOUNT FACTORS

.01 The following tables present separately for each line of business the discount factors under § 846 for accident year 1998. All the discount factors presented in this section were determined using the applicable interest rate under § 846(c) for 1998, which is 6.31 percent, and by assuming all loss payments occur in the middle of the calendar year.

.02 If the groupings of individual lines of business on the annual statement changes, taxpayers must discount the unpaid losses on the resulting lines of business in accordance with the discounting patterns that would have applied to those unpaid losses based on their classification on the 1995 annual statement. In addition, section V of Notice 88-100, 1988-2 C.B. 439, provides rules concerning the determination of losses for accident years not separately reported on the annual statement.

.03 Tables

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

Discount factor for all years equals 96.9869 percent.

Auto Physical Damage

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	89.9430	89.9430	10.0570	9.7016	96.4662
AY+ 1	99.3814	9.4384	0.6186	0.5822	94.1086
AY+ 2	N/A	0.3093	0.3093	0.3000	96.9869
AY+ 3	N/A	0.3093	0.0000	0.0000	***

Commercial Auto/Truck Liability/Medical

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	25.8075	25.8075	74.1925	64.9208	87.5031
AY+ 1	49.8793	24.0718	50.1207	44.1976	88.1823
AY+ 2	67.6592	17.7799	32.3408	28.6542	88.6007
AY+ 3	79.7711	12.1119	20.2289	17.9741	88.8535
AY+ 4	88.2132	8.4421	11.7868	10.4038	88.2671
AY+ 5	93.1778	4.9646	6.8222	5.9415	87.0908
AY+ 6	95.9623	2.7845	4.0377	3.4454	85.3310
AY+ 7	97.0091	1.0468	2.9909	2.5835	86.3785
AY+ 8	97.5719	0.5628	2.4281	2.1662	89.2148
AY+ 9	98.2191	0.6471	1.7809	1.6357	91.8421
AY+10	N/A	0.6471	1.1338	1.0717	94.5157
AY+11	N/A	0.6471	0.4867	0.4721	96.9869
AY+12	N/A	0.4867	0.0000	0.0000	***

Composite Discount Factors

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	35.4611	35.4611	64.5389	55.1909	85.5157
AY+ 1	59.1449	23.6838	40.8551	34.2539	83.8423
AY+ 2	70.8220	11.6771	29.1780	24.3754	83.5404
AY+ 3	81.9019	11.0799	18.0981	14.4894	80.0603
AY+ 4	86.3688	4.4669	13.6312	10.7980	79.2152
AY+ 5	90.0497	3.6809	9.9503	7.6841	77.2246
AY+ 6	92.7488	2.6991	7.2512	5.3860	74.2771
AY+ 7	93.8259	1.0771	6.1741	4.6153	74.7524
AY+ 8	94.2415	0.4156	5.7585	4.4780	77.7634
AY+ 9	94.8568	0.6153	5.1432	4.1261	80.2252
AY+10	N/A	0.6153	4.5279	3.7520	82.8658
AY+11	N/A	0.6153	3.9125	3.3543	85.7336
AY+12	N/A	0.6153	3.2972	2.9316	88.9107
AY+13	N/A	0.6153	2.6819	2.4821	92.5511
AY+14	N/A	0.6153	2.0665	2.0043	96.9869
AY+15	N/A	2.0665	0.0000	0.0000	***

Fidelity/Surety

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	24.1540	24.1540	75.8460	70.0985	92.4222
AY+ 1	59.0961	34.9421	40.9039	38.4941	94.1086
AY+ 2	N/A	20.4520	20.4520	19.8357	96.9869
AY+ 3	N/A	20.4520	0.0000	0.0000	***

Financial Guaranty/Mortgage Guaranty

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	9.2513	9.2513	90.7487	83.8302	92.3762
AY+ 1	50.5659	41.3146	49.4341	46.5217	94.1086
AY+ 2	N/A	24.7171	24.7171	23.9723	96.9869
AY+ 3	N/A	24.7171	0.0000	0.0000	***

International (Composite)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	35.4611	35.4611	64.5389	55.1909	85.5157
AY+ 1	59.1449	23.6838	40.8551	34.2539	83.8423
AY+ 2	70.8220	11.6771	29.1780	24.3754	83.5404
AY+ 3	81.9019	11.0799	18.0981	14.4894	80.0603
AY+ 4	86.3688	4.4669	13.6312	10.7980	79.2152
AY+ 5	90.0497	3.6809	9.9503	7.6841	77.2246
AY+ 6	92.7488	2.6991	7.2512	5.3860	74.2771
AY+ 7	93.8259	1.0771	6.1741	4.6153	74.7524
AY+ 8	94.2415	0.4156	5.7585	4.4780	77.7634
AY+ 9	94.8568	0.6153	5.1432	4.1261	80.2252
AY+10	N/A	0.6153	4.5279	3.7520	82.8658
AY+11	N/A	0.6153	3.9125	3.3543	85.7336
AY+12	N/A	0.6153	3.2972	2.9316	88.9107
AY+13	N/A	0.6153	2.6819	2.4821	92.5511
AY+14	N/A	0.6153	2.0665	2.0043	96.9869
AY+15	N/A	2.0665	0.0000	0.0000	***

Medical Malpractice — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	6.3899	6.3899	93.6101	76.7454	81.9841
AY+ 1	24.0011	17.6112	75.9989	63.4297	83.4614
AY+ 2	42.6970	18.6959	57.3030	48.1554	84.0365
AY+ 3	58.0610	15.3640	41.9390	35.3527	84.2955
AY+ 4	69.6653	11.6043	30.3347	25.6187	84.4533
AY+ 5	75.6033	5.9380	24.3967	21.1127	86.5391
AY+ 6	81.8786	6.2753	18.1214	15.9746	88.1535
AY+ 7	87.8539	5.9753	12.1461	10.8217	89.0962
AY+ 8	89.5207	1.6668	10.4793	9.7859	93.3839
AY+ 9	94.3025	4.7818	5.6975	5.4731	96.0616
AY+10	N/A	4.7818	0.9157	0.8881	96.9869
AY+11	N/A	0.9157	0.0000	0.0000	***

Medical Malpractice — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	2.1239	2.1239	97.8761	71.4127	72.9623
AY+ 1	6.4831	4.3592	93.5169	71.4242	76.3757
AY+ 2	15.5987	9.1156	84.4013	66.5322	78.8284
AY+ 3	31.9062	16.3075	68.0938	53.9163	79.1794
AY+ 4	45.0931	13.1868	54.9069	43.7218	79.6290
AY+ 5	50.0751	4.9821	49.9249	41.3439	82.8121
AY+ 6	60.9728	10.8976	39.0272	32.7165	83.8298
AY+ 7	69.2138	8.2411	30.7862	26.2837	85.3752
AY+ 8	72.8658	3.6519	27.1342	24.1769	89.1010
AY+ 9	80.0005	7.1347	19.9995	18.3460	91.7325
AY+10	N/A	7.1347	12.8648	12.1473	94.4228
AY+11	N/A	7.1347	5.7300	5.5574	96.9869
AY+12	N/A	5.7300	0.0000	0.0000	***

Miscellaneous Casualty

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	77.6669	77.6669	22.3331	21.1580	94.7384
AY+ 1	94.0673	16.4004	5.9327	5.5832	94.1086
AY+ 2	N/A	2.9664	2.9664	2.8770	96.9869
AY+ 3	N/A	2.9664	0.0000	0.0000	***

Multiple Peril Lines
(Homeowners/Farmowners Multiple Peril, Commercial Multiple Peril,
and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	55.9587	55.9587	44.0413	39.0450	88.6553
AY+ 1	77.8939	21.9352	22.1061	18.8920	85.4607
AY+ 2	84.0083	6.1144	15.9917	13.7797	86.1681
AY+ 3	91.3188	7.3105	8.6812	7.1116	81.9199
AY+ 4	92.1670	0.8482	7.8330	6.6858	85.3545
AY+ 5	94.3838	2.2168	5.6162	4.8220	85.8592
AY+ 6	96.4959	2.1121	3.5041	2.9486	84.1467
AY+ 7	97.3670	0.8712	2.6330	2.2365	84.9399
AY+ 8	98.0034	0.6364	1.9966	1.7214	86.2176
AY+ 9	98.4059	0.4025	1.5941	1.4151	88.7674
AY+10	N/A	0.4025	1.1916	1.0894	91.4173
AY+11	N/A	0.4025	0.7892	0.7431	94.1661
AY+12	N/A	0.4025	0.3867	0.3750	96.9869
AY+13	N/A	0.3867	0.0000	0.0000	***

Other (Including Credit)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	66.7418	66.7418	33.2582	31.3484	94.2575
AY+ 1	89.2755	22.5337	10.7245	10.0927	94.1086
AY+ 2	N/A	5.3622	5.3622	5.2007	96.9869
AY+ 3	N/A	5.3622	0.0000	0.0000	***

Other Liability — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	10.2440	10.2440	89.7560	73.7589	82.1771
AY+ 1	29.3763	19.1323	70.6237	58.6864	83.0973
AY+ 2	44.4111	15.0349	55.5889	46.8875	84.3470
AY+ 3	67.8197	23.4086	32.1803	25.7103	79.8946
AY+ 4	73.4753	5.6555	26.5247	21.5014	81.0617
AY+ 5	78.8604	5.3852	21.1396	17.3057	81.8638
AY+ 6	83.5027	4.6422	16.4973	13.6112	82.5054
AY+ 7	84.0676	0.5649	15.9324	13.8876	87.1656
AY+ 8	85.2129	1.1453	14.7871	13.5830	91.8570
AY+ 9	90.5992	5.3863	9.4008	8.8865	94.5285
AY+10	N/A	5.3863	4.0145	3.8936	96.9869
AY+11	N/A	4.0145	0.0000	0.0000	***

Other Liability — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	13.5751	13.5751	86.4249	67.7139	78.3500
AY+ 1	26.3964	12.8213	73.6036	58.7671	79.8426
AY+ 2	40.2725	13.8761	59.7275	48.1680	80.6464
AY+ 3	55.4566	15.1841	44.5434	35.5516	79.8134
AY+ 4	65.3309	9.8742	34.6691	27.6139	79.6498
AY+ 5	74.0647	8.7339	25.9353	20.3511	78.4690
AY+ 6	80.9090	6.8442	19.0910	14.5784	76.3627
AY+ 7	84.3622	3.4532	15.6378	11.9378	76.3395
AY+ 8	84.6163	0.2542	15.3837	12.4290	80.7938
AY+ 9	86.7311	2.1147	13.2689	11.0329	83.1483
AY+10	N/A	2.1147	11.1542	9.5486	85.6057
AY+11	N/A	2.1147	9.0395	7.9707	88.1769
AY+12	N/A	2.1147	6.9247	6.2932	90.8806
AY+13	N/A	2.1147	4.8100	4.5099	93.7612
AY+14	N/A	2.1147	2.6953	2.6140	96.9869
AY+15	N/A	2.6953	0.0000	0.0000	***

Private Passenger Auto Liability/Medical

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	37.9339	37.9339	62.0661	56.2567	90.6400
AY+ 1	67.7044	29.7705	32.2956	29.1111	90.1396
AY+ 2	81.5316	13.8272	18.4684	16.6913	90.3774
AY+ 3	89.8898	8.3583	10.1102	9.1266	90.2713
AY+ 4	94.6531	4.7633	5.3469	4.7912	89.6074
AY+ 5	97.1265	2.4734	2.8735	2.5433	88.5087
AY+ 6	98.4587	1.3322	1.5413	1.3302	86.3036
AY+ 7	98.9811	0.5224	1.0189	0.8755	85.9258
AY+ 8	99.2330	0.2519	0.7670	0.6710	87.4859
AY+ 9	99.4067	0.1737	0.5933	0.5343	90.0498
AY+10	N/A	0.1737	0.4196	0.3889	92.6798
AY+11	N/A	0.1737	0.2460	0.2344	95.2948
AY+12	N/A	0.1737	0.0723	0.0701	96.9869
AY+13	N/A	0.0723	0.0000	0.0000	***

Products Liability — Claims-Made

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	4.9750	4.9750	95.0250	75.3503	79.2952
AY+ 1	15.1072	10.1322	84.8928	69.6580	82.0540
AY+ 2	30.9560	15.8488	69.0440	57.7122	83.5875
AY+ 3	38.2420	7.2860	61.7580	53.8414	87.1813
AY+ 4	68.6101	30.3681	31.3899	25.9272	82.5975
AY+ 5	78.5966	9.9865	21.4034	17.2665	80.6719
AY+ 6	88.3971	9.8005	11.6029	8.2511	71.1122
AY+ 7	93.2957	4.8986	6.7043	3.7210	55.5008
AY+ 8	88.3815	-4.9142	11.6185	9.0226	77.6571
AY+ 9	89.6105	1.2290	10.3895	8.3247	80.1263
AY+10	N/A	1.2290	9.1604	7.5828	82.7774
AY+11	N/A	1.2290	7.9314	6.7940	85.6598
AY+12	N/A	1.2290	6.7024	5.9555	88.8568
AY+13	N/A	1.2290	5.4733	5.0641	92.5229
AY+14	N/A	1.2290	4.2443	4.1164	96.9869
AY+15	N/A	4.2443	0.0000	0.0000	***

Products Liability — Occurrence

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	9.0653	9.0653	90.9347	68.5447	75.3780
AY+ 1	14.9035	5.8382	85.0965	66.8503	78.5583
AY+ 2	29.2591	14.3555	70.7409	56.2670	79.5396
AY+ 3	45.6462	16.3871	54.3538	42.9213	78.9665
AY+ 4	57.5945	11.9483	42.4055	33.3101	78.5514
AY+ 5	63.8634	6.2689	36.1366	28.9483	80.1080
AY+ 6	75.2266	11.3632	24.7734	19.0587	76.9322
AY+ 7	78.2679	3.0413	21.7321	17.1256	78.8030
AY+ 8	78.1898	-0.0781	21.8102	18.2867	83.8447
AY+ 9	81.8722	3.6825	18.1278	15.6437	86.2972
AY+10	N/A	3.6825	14.4453	12.8340	88.8455
AY+11	N/A	3.6825	10.7628	9.8469	91.4903
AY+12	N/A	3.6825	7.0803	6.6714	94.2243
AY+13	N/A	3.6825	3.3979	3.2955	96.9869
AY+14	N/A	3.3979	0.0000	0.0000	***

Reinsurance A (Nonproportional Property)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	27.1668	27.1668	72.8332	64.6044	88.7020
AY+ 1	68.7008	41.5340	31.2992	25.8566	82.6112
AY+ 2	70.0362	1.3354	29.9638	26.1113	87.1429
AY+ 3	87.5338	17.4976	12.4662	9.7178	77.9528
AY+ 4	90.2132	2.6794	9.7868	7.5683	77.3318
AY+ 5	91.3751	1.1619	8.6249	6.8479	79.3965
AY+ 6	94.3845	3.0095	5.6155	4.1770	74.3844
AY+ 7	93.3293	-1.0552	6.6707	5.5286	82.8791
AY+ 8	N/A	1.0387	5.6320	4.8065	85.3426
AY+ 9	N/A	1.0387	4.5932	4.0387	87.9283
AY+10	N/A	1.0387	3.5545	3.2226	90.6623
AY+11	N/A	1.0387	2.5158	2.3549	93.6071
AY+12	N/A	1.0387	1.4771	1.4325	96.9869
AY+13	N/A	1.4771	0.0000	0.0000	***

Reinsurance B (Nonproportional Liability)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	6.6962	6.6962	93.3038	68.4920	73.4075
AY+ 1	22.3944	15.6982	77.6056	56.6279	72.9689
AY+ 2	32.6486	10.2542	67.3514	49.6284	73.6858
AY+ 3	50.2234	17.5748	49.7766	34.6391	69.5892
AY+ 4	53.5839	3.3605	46.4161	33.3600	71.8715
AY+ 5	55.6838	2.0999	44.3162	33.2998	75.1415
AY+ 6	63.6144	7.9306	36.3856	27.2240	74.8210
AY+ 7	66.4211	2.8066	33.5789	26.0480	77.5726
AY+ 8	N/A	2.8066	30.7723	24.7978	80.5850
AY+ 9	N/A	2.8066	27.9656	23.4687	83.9199
AY+10	N/A	2.8066	25.1590	22.0558	87.6656
AY+11	N/A	2.8066	22.3524	20.5537	91.9531
AY+12	N/A	2.8066	19.5457	18.9568	96.9869
AY+13	N/A	19.5457	0.0000	0.0000	***

Reinsurance C (Financial Lines)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	11.4622	11.4622	88.5378	76.8712	86.8230
AY+ 1	44.5791	33.1169	55.4209	47.5760	85.8449
AY+ 2	63.9134	19.3343	36.0866	30.6431	84.9154
AY+ 3	65.6185	1.7051	34.3815	30.8186	89.6372
AY+ 4	79.9778	14.3593	20.0222	17.9578	89.6897
AY+ 5	88.9152	8.9374	11.0848	9.8759	89.0943
AY+ 6	91.2490	2.3338	8.7510	8.0928	92.4785
AY+ 7	94.7645	3.5155	5.2355	4.9788	95.0957
AY+ 8	N/A	3.5155	1.7200	1.6682	96.9869
AY+ 9	N/A	1.7200	0.0000	0.0000	***

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Glass, Burglary and Theft)

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	57.4895	57.4895	42.5105	40.4271	95.0992
AY+ 1	90.5193	33.0297	9.4807	8.9222	94.1086
AY+ 2	N/A	4.7404	4.7404	4.5975	96.9869
AY+ 3	N/A	4.7404	0.0000	0.0000	***

Workers' Compensation

Tax Year	Cumulative Losses Paid (%)	Estimated Losses Paid Each Year (%)	Unpaid Losses at Year End (%)	Discounted Unpaid Losses at Year End (%)	Discount Factors (%)
AY+ 0	23.6461	23.6461	76.3539	62.1882	81.4474
AY+ 1	44.8166	21.1705	55.1834	44.2841	80.2490
AY+ 2	57.9652	13.1486	42.0348	33.5213	79.7466
AY+ 3	72.0542	14.0889	27.9458	21.1099	75.5385
AY+ 4	80.5542	8.5000	19.4458	13.6778	70.3380
AY+ 5	84.8876	4.3334	15.1124	10.0728	66.6527
AY+ 6	87.1173	2.2297	12.8827	8.4094	65.2770
AY+ 7	88.2647	1.1473	11.7353	7.7571	66.1001
AY+ 8	88.5404	0.2757	11.4596	7.9622	69.4810
AY+ 9	88.8062	0.2658	11.1938	8.1906	73.1708
AY+10	N/A	0.2658	10.9279	8.4333	77.1719
AY+11	N/A	0.2658	10.6621	8.6913	81.5163
AY+12	N/A	0.2658	10.3963	8.9657	86.2394
AY+13	N/A	0.2658	10.1304	9.2573	91.3813
AY+14	N/A	0.2658	9.8646	9.5674	96.9869
AY+15	N/A	9.8646	0.0000	0.0000	***

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Ms. Hossofsky on (202) 622-3477 (not a toll-free number).

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26 CFR 601.201: Rulings and determination letters. (Also Part I, sections 832, 846; 1.832–4, 1.846–1.)

Rev. Proc. 99-16

SECTION 1. PURPOSE

This revenue procedure prescribes the salvage discount factors for the 1998 accident year. These factors will be used for computing discounted estimated salvage recoverable under § 832 of the Internal Revenue Code.

SEC. 2. BACKGROUND

Section 832(b)(5)(A) requires that all estimated salvage recoverable (including that which cannot be treated as an asset for state accounting purposes) be taken into account in computing the deduction for losses incurred. Under § 832(b)(5)(A), paid losses are to be reduced by salvage and reinsurance recovered during the taxable year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. An adjustment is then made to reflect any changes in discounted estimated salvage recoverable and in reinsurance recoverable.

Pursuant to § 832(b), the amount of estimated salvage is determined on a discounted basis in accordance with procedures established by the Secretary.

SEC. 3. SCOPE

This revenue procedure applies to any taxpayer that is required to discount estimated salvage recoverable under § 832.

SEC. 4. APPLICATION

.01 The following tables present separately for each line of business the discount factors under § 832 for the 1998 accident year. All the discount factors presented in this section were determined using the applicable interest rate under § 846(c) for 1998, which is 6.31 percent, and by assuming all estimated salvage is recovered in the middle of each calendar year. *See* Rev. Proc. 98–12, 1998–4 I.R.B. 18, for background regarding the tables.

.02 These tables must be used by taxpayers irrespective of whether they elected to discount unpaid losses using their own historical experience under § 846.

.03 Section V of Notice 88–100, 1988–2 C. B. 439, provides guidance concerning the determination of discount factors for unpaid losses for accident years not separately reported on the annual statement.

.04 Tables.

Accident and Health (Other Than Disability Income or Credit Disability Insurance)

Discount factor for all years equals 96.9869 percent.

Auto Physical Damage

Tax Year	Discount Factors (%)
AY+ 0	95.5629
AY+ 1	94.1086
AY+ 2	96.9869

Commercial Auto/Truck Liability/Medical

Tax Year	Discount Factors (%)
AY+ 0	88.0877
AY+ 1	87.2343
AY+ 2	88.9748
AY+ 3	88.2461
AY+ 4	88.0707
AY+ 5	90.4769
AY+ 6	85.7129
AY+ 7	91.4059
AY+ 8	89.8209
AY+ 9	92.4441
AY+10	95.0624
AY+11	96.9869

Composite Discount Factors

Tax Year	Discount Factors (%)
AY+ 0	85.5905
AY+ 1	83.9679
AY+ 2	83.5415
AY+ 3	83.4312
AY+ 4	84.1790
AY+ 5	84.7621
AY+ 6	84.8152
AY+ 7	84.9063
AY+ 8	87.7812
AY+ 9	90.3602
AY+10	93.0073
AY+11	95.6372
AY+12	96.9869

Fidelity/Surety

Tax Year	Discount Factors (%)
AY+ 0	92.7722
AY+ 1	94.1086
AY+ 2	96.9869

Financial Guaranty/Mortgage Guaranty

Tax Year	Discount Factors (%)
AY+ 0	94.6276
AY+ 1	94.1086
AY+ 2	96.9869

International (Composite)

Tax Year	Discount Factors (%)
AY+ 0	85.5905
AY+ 1	83.9679
AY+ 2	83.5415
AY+ 3	83.4312
AY+ 4	84.1790
AY+ 5	84.7621
AY+ 6	84.8152
AY+ 7	84.9063
AY+ 8	87.7812
AY+ 9	90.3602
AY+10	93.0073
AY+11	95.6372
AY+12	96.9869

Medical Malpractice — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	69.8162
AY+ 1	72.5074
AY+ 2	71.0313
AY+ 3	70.3729
AY+ 4	73.9549
AY+ 5	72.2896
AY+ 6	82.1032
AY+ 7	91.3723
AY+ 8	96.2843
AY+ 9	96.9869

Medical Malpractice — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	63.5702
AY+ 1	66.9550
AY+ 2	71.5334
AY+ 3	75.3549
AY+ 4	72.1156
AY+ 5	78.2176
AY+ 6	83.2218
AY+ 7	86.3771
AY+ 8	90.9036
AY+ 9	93.6031
AY+10	96.3255
AY+11	96.9869

Miscellaneous Casualty

Tax Year	Discount Factors (%)
AY+ 0	94.9654
AY+ 1	94.1086
AY+ 2	96.9869

Multiple Peril Lines (Homeowners/Farmowners Multiple Peril, Commercial Multiple Peril, and Special Liability (Ocean Marine, Aircraft (All Perils), Boiler and Machinery))

Tax Year	Discount Factors (%)
AY+ 0	88.1763
AY+ 1	87.1178
AY+ 2	87.8952
AY+ 3	87.5458
AY+ 4	88.6854
AY+ 5	90.1534
AY+ 6	90.1474
AY+ 7	89.0852
AY+ 8	91.5249
AY+ 9	94.2521
AY+10	96.9869

Other (Including Credit)

Tax Year	Discount Factors (%)
AY+ 0	96.0279
AY+ 1	94.1086
AY+ 2	96.9869

Other Liability — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	77.2493
AY+ 1	82.7956
AY+ 2	81.7927
AY+ 3	79.4299
AY+ 4	82.4531
AY+ 5	87.1799
AY+ 6	85.6712
AY+ 7	91.4105
AY+ 8	93.5648
AY+ 9	96.2785
AY+10	96.9869

Other Liability — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	78.2359
AY+ 1	78.9690
AY+ 2	81.3835
AY+ 3	83.3811
AY+ 4	84.6518
AY+ 5	82.1857
AY+ 6	86.3353
AY+ 7	88.3258
AY+ 8	92.5005
AY+ 9	95.1170
AY+10	96.9869

Private Passenger Auto Liability/Medical

Tax Year	Discount Factors (%)
AY+ 0	91.4498
AY+ 1	90.8941
AY+ 2	89.9496
AY+ 3	89.5590
AY+ 4	89.0875
AY+ 5	89.5493
AY+ 6	88.3238
AY+ 7	89.0595
AY+ 8	89.7588
AY+ 9	92.3809
AY+10	95.0019
AY+11	96.9869

Products Liability — Claims-Made

Tax Year	Discount Factors (%)
AY+ 0	78.6781
AY+ 1	80.7444
AY+ 2	85.2984
AY+ 3	85.2066
AY+ 4	80.7335
AY+ 5	87.8419
AY+ 6	80.4105
AY+ 7	87.9957
AY+ 8	96.7091
AY+ 9	96.9869

Products Liability — Occurrence

Tax Year	Discount Factors (%)
AY+ 0	75.1746
AY+ 1	77.8160
AY+ 2	76.1658
AY+ 3	77.4849
AY+ 4	79.2679
AY+ 5	78.6033
AY+ 6	79.9964
AY+ 7	71.9945
AY+ 8	77.5374
AY+ 9	80.0152
AY+10	82.6784
AY+11	85.5776
AY+12	88.7971
AY+13	92.4919
AY+14	96.9869

Reinsurance A (Nonproportional Property)

Tax Year	Discount Factors (%)
AY+ 0	86.3003
AY+ 1	89.5400
AY+ 2	92.3143
AY+ 3	91.6614
AY+ 4	78.5610
AY+ 5	94.6950
AY+ 6	93.2835
AY+ 7	95.9451
AY+ 8	96.9869

Reinsurance B (Nonproportional Liability)

Tax Year	Discount Factors (%)
AY+ 0	74.2486
AY+ 1	76.5505
AY+ 2	77.2843
AY+ 3	76.6711
AY+ 4	79.2080
AY+ 5	74.1857
AY+ 6	75.9657
AY+ 7	83.5910
AY+ 8	86.0435
AY+ 9	88.5976
AY+10	91.2603
AY+11	94.0436
AY+12	96.9869

Reinsurance C (Financial Lines)

Tax Year	Discount Factors (%)
AY+ 0	80.7281
AY+ 1	83.1505
AY+ 2	86.4803
AY+ 3	92.4729
AY+ 4	91.0172
AY+ 5	92.9369
AY+ 6	89.3800
AY+ 7	96.8709
AY+ 8	96.9869

Special Property (Fire, Allied Lines, Inland Marine, Earthquake, Glass, Burglary and Theft)

Tax Year	Discount Factors (%)
AY+ 0	92.0841
AY+ 1	94.1086
AY+ 2	96.9869

Workers' Compensation

Tax Year	Discount Factors (%)
AY+ 0	78.0767
AY+ 1	80.5418
AY+ 2	82.4774
AY+ 3	84.0695
AY+ 4	84.1826
AY+ 5	84.3480
AY+ 6	85.5457
AY+ 7	86.3059
AY+ 8	88.7588
AY+ 9	91.4094
AY+10	94.1598
AY+11	96.9869

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Ms. Hossofsky on (202) 622-3477 (not a toll-free number).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, sections 446, 475; 1.446–1.)

Rev. Proc. 99–17

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedure for dealers in commodities and traders in securities or commodities to make an election to use the mark-to-market method of accounting under § 475(e) or (f) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 Section 475(e) allows a dealer in commodities to elect mark-to-market accounting for commodities. Mark-to-market accounting under the election, however, does not apply to commodities that meet certain criteria and are identified under § 475(b)(2) and (e). Such an identification is ineffective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into. Section 475(f) grants similar treatment to traders in securities and commodities.

.02 The legislative history to § 475(e) and (f) states that the mark-to-market election will be made in the time and manner prescribed by the Secretary and will be effective for the taxable year for which it is made and all subsequent taxable years, unless revoked with the consent of the Secretary. H.R. Rep. No. 148, 105th Cong., 1st Sess. 446 (1997).

.03 Use of mark-to-market accounting under § 475(e) or (f) is a method of accounting. Generally, a taxpayer must obtain the consent of the Commissioner to change a method of accounting for federal income tax purposes. To obtain this consent, a Form 3115, Application for Change in Accounting Method, generally must be filed during the taxable year in which the taxpayer desires to make the change in method of accounting. The Commissioner, however, is authorized to prescribe administrative procedures setting forth the limitations, terms, and conditions the Commissioner deems necessary to obtain consent. See § 446(e) and the regulations thereunder.

.04 In computing taxable income, § 481(a) requires a taxpayer to take into account those adjustments necessary to prevent amounts from being duplicated or omitted when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding taxable year.

.05 For a taxpayer who elects under § 475(e) or (f) to change its method of accounting for the taxable year that includes August 5, 1997, § 1001(d)(4) of the Taxpayer Relief Act of 1997 (the Act), Pub. L. No. 105–34, 111 Stat. 788 (August 5, 1997), provides: (1) that any identification required with respect to securities and commodities held on August 5, 1997, is treated as timely made if made on or before September 4, 1997; and (2) that the net amount of the adjustments required to be taken into account by the taxpayer under § 481 is taken into account ratably over the 4-taxable-year period beginning with the taxable year that includes August 5, 1997. The Conference Report to the Act states that any elections made for a year after the taxable year that includes August 5, 1997, will be governed by rules and procedures established by the Secretary. H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 516 (1997).

SECTION 3. SCOPE

This revenue procedure applies to commodities dealers, securities traders, and commodities traders that want to make an election to use the mark-to-market method of accounting under § 475(e) or (f).

SECTION 4. EFFECT OF ELECTION

An election under § 475(e) or (f) determines the method of accounting that an electing taxpayer is required to use for federal income tax purposes for securities or commodities subject to the election. Thus, beginning with the first taxable year for which the election is effective (the election year) and continuing for all subsequent taxable years (unless the election is revoked with the consent of the Commissioner), a method of accounting for securities or commodities subject to the election is impermissible for an electing taxpayer unless the method is in accordance with § 475 and the regulations thereunder. If a taxpayer described in section 3 of this revenue procedure makes an election under section 5 of this revenue procedure, and the taxpayer's method of accounting for its taxable year immediately preceding the election year is inconsistent with § 475, the taxpayer is required to change its method of accounting to comply with its election. Section 6 of this revenue procedure contains procedures for effecting this change. A taxpayer that makes a § 475(e) or (f) election but fails to change its method of accounting to comply with that election is using an impermissible method.

SECTION 5. PROCEDURES FOR MAKING THE MARK-TO-MARKET ELECTIONS

.01 *Elections effective for taxable years for which the original federal income tax return was filed before March 18, 1999.* For a taxpayer to make a § 475(e) or (f) election that is effective for a taxable year for which the original federal income tax return was filed before March 18, 1999, the taxpayer must either:

(1) have properly reflected the application of § 475 (including any required § 481(a) adjustment) in the calculation of the taxpayer's tax liability on its original federal income tax return for the election year; or

(2) have failed to properly reflect the application of § 475 (including any required § 481(a) adjustment) in the calculation of the taxpayer's tax liability on its original federal income tax return for the election year, but clearly demonstrated on that return its intent to make the election for that year (for example, by a statement on, or attachment to, the return), and file an amended return for the election year on or before June 16, 1999, that properly reflects the application of § 475 (including any required § 481(a) adjustment).

.02 *Elections effective for other taxable years beginning before January 1, 1999.* For a taxpayer to make a § 475(e) or (f) election that is effective for a taxable year which begins before January 1, 1999, and for which the original federal income tax return is filed on or after March 18, 1999, the taxpayer must make the election by attaching a statement that satisfies the requirements in section 5.04 of this revenue procedure to an original federal income tax return for the election year that is timely filed (including extensions).

.03 *Elections effective for a taxable year beginning on or after January 1, 1999.*

(1) *General procedure.* Except as provided in section 5.03(2) of this revenue procedure, for a taxpayer to make a § 475(e) or (f) election that is effective for a taxable year beginning on or after January 1, 1999, the taxpayer must file a statement that satisfies the requirements in section 5.04 of this revenue procedure. The statement must be filed not later than the due

date (without regard to extensions) of the original federal income tax return for the taxable year immediately preceding the election year and must be attached either to that return or, if applicable, to a request for an extension of time to file that return.

(2) *New taxpayers.* A new taxpayer is a taxpayer for which no federal income tax return was required to be filed for the taxable year immediately preceding the election year. A new taxpayer makes the election by placing in its books and records no later than 2 months and 15 days after the first day of the election year a statement that satisfies the requirements in section 5.04 of this revenue procedure. To notify the Service that the election was made, the new taxpayer must attach a copy of the statement to its original federal income tax return for the election year.

.04 *Required statement.* The statement must describe the election being made, the first taxable year for which the election is effective, and, in the case of an election under § 475(f), the trade or business for which the election is made.

SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *Consent.* A change in a taxpayer's method of accounting to mark-to-market accounting is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply. The Commissioner hereby grants consent for a taxpayer to change its method of accounting for securities or commodities, as appropriate, if the following conditions are satisfied:

(1) the taxpayer is described in section 3 of this revenue procedure;

(2) the taxpayer complies with the election requirements set forth in section 5 of this revenue procedure;

(3) the method of accounting to which the taxpayer is changing is in accordance with its election under § 475;

(4) the year of change is the election year; and

(5) the taxpayer complies with the applicable requirements of this section 6.

.02 *Filing requirements.*

(1) *Taxpayers electing under section 5.01.* A taxpayer described in sections 3 and 5.01(1) of this revenue procedure that changed its method of accounting to properly reflect the application of § 475 on its original federal income tax return for the election year has satisfied the filing requirements of this section 6.02. A taxpayer described in section 3 that is required to change its method of accounting to comply with its election under section 5.01(2) must comply with the requirements of section 6.02(2) of this revenue procedure (substituting the amended return required by section 5.01(2) for the original return referred to in section 6.02(2)).

(2) *Taxpayers electing under section 5.02 or 5.03(1).* A taxpayer described in section 3 of this revenue procedure that makes an election under section 5.02 or 5.03(1) of this revenue procedure and is required to change its method of accounting must complete and file a Form 3115 for the year of change pursuant to the filing requirements in section 6.02 of Rev. Proc. 98–60, 1998–51 I.R.B. 16. Thus, the original Form 3115 must be attached to the taxpayer's timely filed (including extensions) original federal income tax return for the year of change, and a copy of the Form 3115 must be filed with the national office no later than when the original Form 3115 is filed with the federal income tax return for the year of change. The label described in section 6.02(3) of Rev. Proc. 98–60, however, should refer to this revenue procedure rather than to the APPENDIX of Rev. Proc. 98–60. Further, in the additional statement described in section 6.02(5) of Rev. Proc. 98–60, the taxpayer must agree to all the terms and conditions in this revenue procedure rather than those in Rev. Proc. 98–60.

.03 *Section 481(a) adjustment.* If a taxpayer changes its method of accounting under section 6.01 of this revenue procedure, the taxpayer must take into account the net amount of the § 481(a) adjustment in the manner provided in section 5.04 of Rev. Proc. 98–60. Thus, the § 481(a) adjustment generally is taken into account ratably over four taxable years beginning with the year of change. For purposes of § 481, a change in method of accounting made under this revenue procedure is a change in method of accounting initiated by the taxpayer.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective February 8, 1999, the date this revenue procedure was made available to the public.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545-1641.

The collections of information in this revenue procedure are in sections 5 and 6 of this revenue procedure. This information is required by the IRS to facilitate monitoring taxpayers that make the elections under § 475(e) or (f). This information will be used if a taxpayer making the election is audited. The likely recordkeepers and respondents are businesses or other for-profit institutions.

The reporting burden for the collection of information in section 6.02 of this revenue procedure is reflected in the burden of Form 3115. The burden of the requirement to file amended returns in section 5.01 of this revenue procedure is reflected in the burden of Forms 1120X and 1040X. The estimated total annual reporting and/or recordkeeping burden for the collection of information described in section 5.01–5.04 of this revenue procedure is 500 hours.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 1 hour, depending on individual circumstances, with an estimated average of 30 minutes. The estimated number of respondents and/or recordkeepers is 1,000.

The estimated annual frequency of responses is once in the existence of each respondent.

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

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Ms. Ricks on (202) 622–3920 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Payment by Check or Money Order; Payment by Credit Card and Debit Card

REG–111435–98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8793, page 15 in this Bulletin, the IRS is issuing temporary regulations relating to payment of internal revenue taxes by credit card or debit card. The text of the temporary regulations also serves as the text of these proposed regulations. This document also contains proposed regulations that provide that payments of tax by check or money order should be made payable to the United States Treasury, in order to implement changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These proposed regulations will affect all persons who pay taxes by check or money order.

DATES: Written or electronically generated comments and requests for a hearing must be received by March 15, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–111435–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–111435–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mitchel S. Hyman, (202) 622-3620; concerning submissions, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed amendment to the Procedure and Administration Regulations (26 CFR Part 301) amending §301.6311–1 to reflect the enactment of section 3703 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685)(1998 Act). Section 301.6311–1 currently states that checks or money orders should be made payable to the Internal Revenue Service. Section 3703 of the 1998 Act states that the Secretary of the Treasury shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order to be made payable to the United States Treasury. The amendment accordingly provides that checks and money orders should be made payable to the United States Treasury. However, checks and money orders made payable to the Internal Revenue Service pursuant to the current regulation and prior instructions will continue to be accepted.

Additionally, the temporary regulations in T.D. 8793 amend the Procedure and Administration Regulations (26 CFR part 301) to add new §§301.6103(k)(9)-1T and 301.6311–2T, providing for payment of internal revenue taxes by credit card or debit card. The temporary regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788, 995) and section 4003(k) of the Tax and Trade Relief Extension Act of 1998 (Public Law 105-277, 112 Stat. 2681). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Mitchel S. Hyman, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(k)(9)–1 is added to read as follows:

§301.6103(k)(9)–1 Disclosure of returns and return information relating to payment of tax by credit card and debit card.

[The text of this proposed section is the same as the text of §301.6103(k)(9)–1T published in T.D. 8793.]

§301.6311–1 [Amended]

Par. 3. Section 301.6311–1(a)(1)(i) is amended by removing the language "Internal Revenue Service" from the third sentence and adding the language "United States Treasury" in its place.

Par. 4. Section 301.6311–2 is added to read as follows:

§301.6311–2 Payment by credit card and debit card.

[The text of this proposed section is the same as the text of §301.6311–2T published in T.D. 8793.]

Michael P. Dolan,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 14, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 15, 1998, 63 F.R. 69031)

Notice of Proposed Rulemaking and Notice of Public Hearing

Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1)

REG–113694–98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8794, page 4 in this Bulletin, the IRS is issuing temporary regulations providing guidance relating to the increase from $3,500 to $5,000 of the limit on distributions from qualified retirement plans that can be made without participant consent. This increase is contained in the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as a portion of the text of these proposed regulations. In addition, these proposed regulations propose the elimination, for all distributions, of the "lookback rule" pursuant to which the qualified plan benefits of certain participants are deemed to exceed this limit on mandatory distributions. These proposed regulations affect sponsors and administrators of qualified retirement plans, and participants in those plans. The text of those temporary regulations also serves as a portion of the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by March 22, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–113694–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–113694–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs/ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael J. Karlan, (202) 622-6030 (not a toll-free call); concerning submissions, Michael Slaughter, (202) 622-7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8794, amend the Income Tax Regulations (26 CFR part 1) relating to the increase from $3,500 to $5,000 of the "cash-out limit" described in sections 411(a)(7), 411(a)(11), and 417(e)(1) of the Internal Revenue Code, as amended by section 1071 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788 (1997).

The text of the temporary regulations also serves as a portion of the text of the proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

As also discussed in the preamble to the temporary regulations, §1.411(a)–11(c)(3), interpreting the law prior to the enactment of TRA '97, provides that the written consent of a participant is required before the commencement of the distribution of any portion of the participant's accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than $3,500. If the present value does not exceed $3,500, the consent requirements are deemed satisfied, and the plan may distribute that portion to the participant as a single sum. The regulation further provides that, if the present value determined at the time of a distribution to the participant exceeds $3,500, then the present value at any subsequent time shall be deemed to exceed $3,500; this is commonly referred to as the "lookback rule." Section 1.417(e)–1(b)(2)(i) includes a parallel lookback rule.

The temporary regulations remove the lookback rule under section 411(a)(11) for most distributions, but preserve the rule for distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution is still payable.

These proposed regulations remove the lookback rule under §§1.411(a)–11(c)(3) and 1.417(e)–1(b)(2)(i). In accordance with section 417(e)(1), these proposed regulations also provide that, in the case of plans subject to sections 401(a)(11) and 417, consent is required after the annuity starting date for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of that present value. Where only a portion of an accrued benefit is being distributed, this provision applies only to that portion (and not to the portion with respect to which no distributions are being made).

Under this removal of the lookback rule, the present value of a participant's nonforfeitable accrued benefit could be distributed without consent if the present value does not exceed $5,000, even if the present value of the participant's nonforfeitable accrued benefit exceeded $5,000 at the time of a previous distribution. Thus, if the present value of a participant's nonforfeitable accrued benefit previously had been $6,000, but is presently $4,000, these proposed regulations would permit the plan to be amended to permit the present value of that participant's nonforfeitable accrued benefit to be distributed without consent (provided that the distribution would not fail to satisfy section 417(e)(1)). The complete removal of the lookback rule described in these proposed regulations would become effective 90 days after the publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

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

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

§1.411(a)–7 also issued under 26 U.S.C. 411(a)(7)(B)(i). * * *

Par. 2. Section 1.411(a)–7 is amended by revising paragraphs (d)(4)(i) and (d)(4)(vi) to read as follows:

§1.411(a)–7 Definitions and special rules.

* * * * *

(d) *Rules relating to certain distributions and cash-outs of accrued benefits.* * * *

(4) *Certain cash-outs of accrued benefits.* (i) and (vi) [The text of proposed paragraphs (d)(4)(i) and (vi) is the same as the text of §1.411(a)–7T(d)(4)(i) and (vi) published in T.D. 8794.]

* * * * *

Par. 3. Section 1.411(a)–11 is amended by revising paragraph (c)(3) to read as follows:

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

* * * * *

(c) * * *

(3) *Cash-out limit.* (i) Written consent of the participant is required before the commencement of the distribution of any portion of an accrued benefit if the present value of the nonforfeitable total accrued benefit is greater than the cash-out limit in effect under paragraph (c)(3)(ii) of this section on the date the distribution commences. The consent requirements are deemed satisfied if such value does not exceed the cash-out limit, and the plan may distribute such portion to the participant as a single sum. Present value for this purpose must be determined in the same manner as under section 417(e); see §1.417(e)–1(d).

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of §1.411(a)–11T(c)(3)(ii) published in T.D. 8794.]

* * * * *

Par. 4. Section 1.417(e)–1 is amended by revising the last sentence of paragraph (b)(2)(i) to read as follows:

§1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(2) * * * (i) * * * After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity regardless of the amount of such present value.

* * * * *

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 21, 1998, 63 F.R. 70356)

Notice of Proposed Rulemaking and Notice of Public Hearing

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

REG–116824–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8810, page 19 of this Bulletin, the IRS is issuing temporary regulations relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116824–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116824–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622-7180; concerning the regulations, Jerome D. Sekula (202) 622-3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8810 provide rules relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, t 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 22, 1999, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

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

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6320–1 is added to read as follows:

§301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

[The text of this proposed section is the same as the text of §301.6320–1T published in T.D. 8810.]

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 19, 1999, 10:56 a.m., and published in the issue of the Federal Register for January 22, 1999, 64 F.R. 3461)

Notice of Proposed Rulemaking and Notice of Public Hearing

Notice and Opportunity for Hearing Before Levy

REG–117620–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8809, page 27 in this Bulletin, the IRS is issuing temporary regulations relating to notice to taxpayers of a right to a hearing before levy. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117620–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–117620–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622-7180; concerning the regulations, Jerome D. Sekula (202) 622-3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8809 provide rules relating to notice to taxpayers of a right to a hearing before levy. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, at 10 a.m. 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. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 22, 1999, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

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

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6330–1 is added to read as follows:

§301.6330–1 Notice and opportunity for hearing prior to levy.

[The text of this proposed section is the same as the text of §301.6330–1T published in T.D. 8809.]

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 19, 1999, 10:56 a.m., and published in the issue of the Federal Register for January 22, 1999, 64 F.R. 3405)

Conduit Arrangement Regulations; Correction

Announcement 99–14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (T.D. 8611, 1995–2 C.B. 286), which were published in the **Federal Register** on Friday, August 11, 1995 (60 F.R. 40997) relating to conduit financing arrangements.

DATES: This correcting amendment is effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Phyllis Marcus, (202) 622-3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 7701(l) of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 8611) contain an error which may prove to be misleading and are in need of clarification.

* * * * *

Correcting Amendment to Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

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 * * *

§1.881–3 [Corrected]

Par. 2. In §1.881–3, paragraph (a)(2)(ii)(B)(3) is redesignated as paragraph (a)(3).

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

(Filed by the Office of the Federal Register on December 7, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 8, 1998, 63 F.R. 67577)

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. Proc..—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 1998–1 through 1998–52 will be found in Internal Revenue Bulletin 1999–1, dated January 4, 1999.

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[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1998–1 through 1998–52 will be found in Internal Revenue Bulletin 1999–1, dated January 4, 1999.

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