Internal Revenue
bulletin

Bulletin No. 2000–3
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2000–3, page 297.

LIFO; price indexes; department stores. The November 1999 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, November 30, 1999.

T.D. 8856, page 298.

This document contains changes delaying the effective date for final regulations (T.D. 8734, 1997–2 C.B. 109) under sections 1441, 1442, and 1443 of the Code relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

Notice 2000–4, page 313.

Like-kind exchange and involuntary conversion of MACRS property. Guidance is provided about the depreciation of property subject to section 168 of the Code (MACRS property) that is acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033. The Service and the Department of the Treasury intend to issue regulations under section 168 that will address these transactions. Taxpayers should follow this notice until these regulations are issued. Public comments to aid in development of the regulations are requested by March 31, 2000. Rev. Proc. 99–49 modified and amplified.

ESTATE TAX

Rev. Rul. 2000–2, page 305.

Qualified terminable interest property (QTIP) elections. This ruling holds that an executor may elect under section 2056(b)(7) of the Code to treat an individual retirement account and a testamentary trust as QTIP under certain conditions. Rev. Rul. 89–89 obsoleted.

ADMINISTRATIVE

T.D. 8854, page 306.
REG–116704–99, page 325.

Temporary and proposed regulations under section 6103 of the Code authorize the Service to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture.

REG–101492–98, page 326.

Proposed regulations under sections 7508 and 7508A of the Code relate to relief for service in a combat zone and for presidentially declared disasters.

Rev. Proc. 2000–11, page 309.

Changes in accounting periods; automatic consent. This procedure provides procedures by which certain corporations may obtain automatic approval to change their

(Continued on the page following the Introduction)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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ADMINISTRATIVE—continued

annual accounting periods under section 442 of the Code. Rev. Procs. 92–13, 92–13A, and 94–12 modified, amplified, and superseded.

Announcement 2000–4, page 317.

Arbitration. Pursuant to section 7123(b)(2) of the Code, Appeals is conducting a 2-year test of a binding arbitration procedure. This announcement contains procedures that taxpayers may use to request binding arbitration for factual issues that are already in the Appeals administrative process and which are not docketed in any court. A public hearing is scheduled for April 5, 2000.

Notice 2000–5, page 314.

Estimated taxes; penalties. Penalty relief is available for certain corporate taxpayers whose December 15, 1999, estimated tax installment was affected by section 571 of the Tax Relief Extension Act of 1999.

Notice 2000–6, page 315.

Information reporting; barter exchanges. Pending the issuance of new regulations, a barter exchange is not required under section 6045 of the Code to report exchanges involving property or services with a fair market value of less than $1.00. Public comment is also invited on information reporting issues under section 6045 relating to barter exchanges in connection with the regulations.

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

Section 167.—Depreciation

26 CFR 1.167(e)-1: Change in method.

Is a change in the method of computing depreciation for property subject to section 168 of the Code (MACRS property) that is acquired in a section 1031 like-kind exchange or section 1033 involuntary conversion a change in method of accounting? See Notice 2000–4, page 313.

Section 442.—Change of Annual Accounting Period

26 CFR 1.442–1: Change of annual accounting period.

What procedures apply for certain corporations to obtain automatic approval to change their annual accounting periods under section 442 of the Code? See Rev. Proc. 2000–11, page 309.

Section 446.—General Rule for Methods of Accounting

26 CFR 1.446–1: General rule for methods of accounting.

Is a change in the method of computing depreciation for property subject to section 168 of the Code (MACRS property) that is acquired in a section 1031 like-kind exchange or section 1033 involuntary conversion a change in method of accounting? See Notice 2000–4, page 313.

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

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

LIFO; price indexes; department stores. The November 1999 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, November 30, 1999.

Rev. Rul. 2000–3

The following Department Store Inventory Price Indexes for November 1999 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under section 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, November 30, 1999.

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	Nov. 1998	Nov. 1999	Percent Change from Nov. 1998 to Nov. 1999[1]
1.	Piece Goods	544.5	514.3	-5.5
2.	Domestics and Draperies	635.9	622.0	-2.2
3.	Women's and Children's Shoes	685.8	651.4	-5.0
4.	Men's Shoes	916.9	875.1	-4.6
5.	Infants' Wear	638.3	647.6	1.5
6.	Women's Underwear	570.4	571.9	0.3
7.	Women's Hosiery	308.4	328.9	6.6
8.	Women's and Girls' Accessories	546.5	539.6	-1.3
9.	Women's Outerwear and Girls' Wear	417.0	410.3	-1.6
10.	Men's Clothing	619.5	617.4	-0.3
11.	Men's Furnishings	608.4	627.6	3.2
12.	Boys' Clothing and Furnishings	519.0	510.2	-1.7
13.	Jewelry	977.1	950.5	-2.7
14.	Notions	766.3	764.6	-0.2
15.	Toilet Articles and Drugs	945.3	983.6	4.1
16.	Furniture and Bedding	686.8	689.7	0.4
17.	Floor Coverings	602.2	602.1	0.0
18.	Housewares	811.3	789.3	-2.7
19.	Major Appliances	238.9	235.5	-1.4
20.	Radio and Television	70.1	63.5	-9.4
21.	Recreation and Education[2]	102.2	96.1	-6.0
22.	Home Improvements[2]	129.6	129.2	-0.3
23.	Auto Accessories[2]	107.9	107.6	-0.3

Groups 1 - 15: Soft Goods -	610.0	606.9	-0.5
Groups 16 - 20: Durable Goods -	460.4	446.9	-2.9
Groups 21 - 23: Misc. Goods[2] -	106.9	102.7	-3.9
Store Total[3] -	554.9	547.2	-1.4

[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 Alan J. Tomsic of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Tomsic on (202) 622-4970 (not a toll-free call).

Section 706.—Taxable Year of Partner and Partnership

26 CFR 1.706–1T: Taxable years of certain partnerships.

What procedures apply for certain corporations to obtain automatic approval to change their annual accounting periods under section 442 of the Code? See Rev. Proc. 2000–11, page 309.

Section 898.—Taxable Year of Certain Foreign Corporations

What procedures apply for certain corporations to obtain automatic approval to change their annual accounting periods under section 442 of the Code? See Rev. Proc. 2000–11, page 309.

Section 1031.—Exchange of Property Held for Productive Use or Investment

26 CFR 1.1031(a)–1: Property held for productive use in trade or business or for investment.

If property subject to section 168 of the Code (MACRS property) is acquired in an exchange of MACRS property for like-kind MACRS property to which section 1031 applies, how is the depreciation allowable determined for the acquired MACRS property? See Notice 2000–4, page 313.

Section 1033.—Involuntary Conversions

26 CFR 1.1033(a)–1: Involuntary conversion; nonrecognition of gain.

If property subject to section 168 of the Code (MACRS property) is acquired in replacement of involuntarily converted MACRS property to which section 1033 applies, how is the depreciation allowable determined for the acquired MACRS property? See Notice 2000–4, page 313.

Section 1441.—Withholding of Tax on Nonresident Aliens and Foreign Corporations

26 CFR 1.1441–1: Requirement for withholding of tax on nonresident aliens, foreign partnerships, and foreign corporations.

T.D. 8856

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602.

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This document contains changes delaying the effective date to final regulations (TD 8734, 1997–2 C.B. 109), which were published in the **Federal Register** of October 14, 1997, relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to delay the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As extended by this document, the final withholding regulations will apply to payments made after December 31, 2000.

DATES: *Effective Dates*: The amendments in this final rule are effective January 1, 2001. As of December 31, 1999, the effective date of the final regulations published at 62 FR 53387 (TD 8734), October 14, 1997, and delayed by TD 8804 (63 FR 72183, December 31, 1998), is delayed from January 1, 2000, until January 1, 2001; however, the effective date of the addition of §§31.9999–0 and 35a.9999–0 and the removal of §35a.9999–0T remains October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 29, 1999, in Notice 99–25

(1999–20 I.R.B. 1), the IRS and Treasury announced their decision to extend the effective date of the final regulations. When originally published in the **Federal Register** on October 14, 1997 (62 FR 53387), the final regulations were applicable to payments made after December 31, 1998 and, generally, granted withholding agents until after December 31, 1999, to obtain the new withholding certificates (Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY) and statements required under those regulations. On April 13, 1998, in Notice 98–16 (1998–15 I.R.B. 12), the IRS and Treasury announced the decision to extend the effective date of the final regulations to January 1, 2000 and to provide correlative extensions to the transition rules for obtaining new withholding certificates and statements. Those extensions were published on December 31, 1998 at 63 FR 72183 as TD 8804. This amendment serves to make the final regulations applicable to payments made after December 31, 2000 and to require mandatory use of the new withholding certificates and statements for payments made after that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory 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. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small Business Administration for comment on its impact on small business.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, and 301 are amended by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

Par. 2. In §1.871–14, paragraph (h) is revised to read as follows:

§1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Effective date*—(1) *In general*. This section shall apply to payments of interest made after December 31, 2000.

(2) *Transition rule*. For purposes of this section, the validity of a Form W-8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8 that is valid on or after January 1, 1999 remains valid until its validity expires under the regualtions in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W-8 that expired solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 3. In §1.1441–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (f) is revised to read as follows:

§1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(f) *Effective date*—(1) *In general*. This section applies to payments made after December 31, 2000.

(2) *Transition rules*—(i) *Special rules for existing documentation*. For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, the validity of a withholding certificate (namely, Form W–8, 8233, 1001, 4224, or 1078 , or a statement described in §1.1441–5 in effect prior to January 1, 2001 (see §1.1441–5 as contained in 26 CFR part 1, revised April 1, 1999)) that was valid on January 1, 1998 under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such withholding certificate remain valid after December 31, 2001. The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2)(i), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regula-

tions in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in paragraph (e)(4)(ii) of this section, regardless of when the certificate is obtained.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

Par. 4. In §1.1441–4, as amended at 62 FR 53424 (TD 8734) and at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules*. The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event will such form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8223 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2) , a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 5. In §1.1441–5, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate that was valid onJanuary 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2) , a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 6. In §1.1441–6, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Effective date*—(1) *General rule*. This section applies to payments made after December 31, 2000.

(2) *Transition rules*. For purposes of this section, the validity of a Form 1001 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 1001 or 8233 is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 1001 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under §1.894–1T(d). Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001

(see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 7. In §1.1441–8 as redesignated and amended at 62 FR 53464 and amended at 63 FR 72138 (TD 8804), paragraph (f) is revised to read as follows:

§1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form 8709 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 8709 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event shall such a form remain valid after December 31, 2000. The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a Form 8709 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 8. In §1.1441–9, paragraph (d) is revised to read as follows:

§1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

* * * * *

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form W-8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W-8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such form or statement remain valid after December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W-8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 9. In §1.1443–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183), paragraph (c) is revised to read as follows:

§1.1443–1 Foreign tax-exempt organizations.

* * * * *

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 2001 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1999) is extended until December 31, 2000. However, a withholding agent may chose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 10. In §1.6042–3, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (b)(5) is revised to read as follows:

§1.6042–3 Dividends subject to reporting.

* * * * *

(b) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect

prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such withholding certificate remain valid after December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

*****

Par. 11. In §1.6045–1, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g)(5) is revised to read as follows:

§1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(g) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

*****

Par. 12. In §1.6049–5, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this section apply to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate (namely, Form W-8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Parts 1, 31, and 301 [Amended]

Par. 13. In the list below, for each section indicated in the left column (which was added, revised, or amended at 62 FR 53387 (TD 8734) and further amended at 63 FR 72138 (TD 8804), remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.871–14(c)(3)(ii), *Example*, first and sixth sentences	October 12, 2000	October 12, 2001
1.871–14(c)(3)(ii), *Example*, sixth sentence	December 31, 2000	December 31, 2001
1.871–14(c)(3)(ii), *Example*, sixth sentence	June 15, 2004	June 15, 2005
1.871–14(c)(3)(ii), *Example*, seventh sentence	June 15, 2004	June 15, 2005
1.1441–1(b)(4)(xix)	January 1, 2000	January 1, 2001
1.1441–1(b)(4)(xix)	April 1, 1998	April 1, 1999
1.1441–1(b)(7)(v), *Example 1*, first, fourth, and eighth sentences	June 15, 2000	June 15, 2001
1.1441–1(b)(7)(v), *Example 1*, third and ninth sentences	September 30, 2002	September 30, 2003
1.1441–1(b)(7)(v), *Example 1*, ninth sentence	March 15, 2001	March 15, 2002
1.1441–1(b)(7)(v), *Example 2*, first, fourth, and seventh sentences	June 15, 2000	June 15, 2001
1.1441–1(b)(7)(v), *Example 2*, third and seventh sentences	September 30, 2002	September 30, 2003
1.1441–1(b)(7)(v), *Example 2*, seventh and ninth sentences	March 15, 2001	March 15, 2002
1.1441–1(c)(6)(ii)(B)	January 1, 2000	January 1, 2001
1.1441–1(c)(6)(ii)(B)	April 1, 1998	April 1, 1999
1.1441–1(e)(4)(ii)(A)	September 30, 2000	September 30, 2001
1.1441–1(e)(4)(ii)(A)	December 31, 2003	December 31, 2004
1.1441–2(b)(3)(iv)	December 31, 1999	December 31, 2000
1.1441–2(f)	December 31, 1999	December 31, 2000
1.1441–3(h)	December 31, 1999	December 31, 2000
1.1441–7(g)	December 31, 1999	December 31, 2000
1.1461–1(i)	December 31, 1999	December 31, 2000
1.1461–2(a)(4), *Example 1*(i), second sentence	December 2000	December 2001
1.1461–2(a)(4), *Example 1*(i), third sentence	February 10, 2001	February 10, 2002
1.1461–2(a)(4), *Example 1*(ii), first, second, and last sentences	2000	2001

Section	Remove	Add
1.1461–2(a)(4), *Example 1*(ii), first sentence	March 15, 2001	March 15, 2002
1.1461–2(a)(4), *Example 1*(ii), third sentence	2001	2002
1.1461–2(a)(4), *Example 2*, second and last sentences	2001	2002
1.1461–2(a)(4), *Example 2*, second sentence	June 2001	June 2002
1.1461–2(a)(4), *Example 2*, third sentence	July 15, 2001	July 15, 2002
1.1461–2(a)(4), *Example 2*, third sentence	2000	2001
1.1461–2(a)(4), *Example 2*, last sentence	March 15, 2002	March 15, 2003
1.1461–2(a)(4), *Example 3*, last sentence	February 15, 2001	February 15, 2002
1.1461–2(a)(4), *Example 3*, last sentence	March 15, 2001	March 15, 2002
1.1461–2(d)	December 31, 1999	December 31, 2000
1.1462–1(c)	December 31, 1999	December 31, 2000
1.1463–1(b)	December 31, 1999	December 31, 2000
1.6041–4(d)	December 31, 1999	December 31, 2000
1.6041A–1(d)(3)(v)	December 31, 1999	December 31, 2000
1.6045–1(d)(6)(ii)(B)	December 31, 1999	December 31, 2000
1.6049–4(d)(3)(ii)(B)	December 31, 1999	December 31, 2000
1.6049–5(c)(4)(v)	January 1, 2000	January 1, 2001
1.6050N–1(e), last sentence	December 31, 1999	December 31, 2000
31.3401(a)(6)–1(e), paragraph heading	*January 1, 2000*	*January 1, 2001*
31.3401(a)(6)–1(e), first sentence	January 1, 2000	January 1, 2001
31.3401(a)(6)–1(f), paragraph heading	*December 31, 1999*	*December 31, 2000*
31.3401(a)(6)–1(f), first sentence	December 31, 1999	December 31, 2000
31.3406(g)–1(e), first sentence	December 31, 1999	December 31, 2000
31.3406(h)–2(d), penultimate sentence	December 31, 1999	December 31, 2000
31.9999–0	January 1, 2000	January 1, 2001
301.6114–1(b)(4)(ii)(C), introductory text	December 31, 1999	December 31, 2000

Section	Remove	Add
301.6114–1(b)(4)(ii)(D)	December 31, 1999	December 31, 2000
301.6724–1(g)(2) Q–11	January 1, 2000	January 1, 2001
301.6724–1(g)(2) Q–11	April 1, 1998	April 1, 1999
301.6724–1(g)(2) A–11	January 1, 2000	January 1, 2001
301.6724–1(g)(2) A–11	April 1, 1998	April 1, 1999
301.6724–1(g)(3), first sentence	December 31, 1999	December 31, 2000
301.6724–1(g)(3), last sentence	January 1, 2000	January 1, 2001
301.6724–1(g)(3), last sentence	April 1, 1998	April 1, 1999

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 21, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury Tax Policy.

(Filed by the Office of the Federal Register on December 29, 1999, 8:45 a.m., and published in the issue of the Federal Register for December 30, 1999, 64 F.R. 73408)

Section 1502.—Regulations

26 CFR 1.1502–76: Taxable year of members of group.

What procedures apply for certain corporations to obtain automatic approval to change their annual accounting periods under section 442 of the Code? See Rev. Proc. 2000–11, page 309.

Section 2056.— Bequests, Etc., to Surviving Spouse

26 CFR 20.2056(a)–1: Qualified terminable interest property elections.

Qualified terminable interest property (QTIP) elections. This ruling holds that an executor may elect under section 2056(b)(7) of the Code to treat an individual retirement account and a testamentary trust as QTIP under certain conditions. Rev. Rul. 89–89 obsoleted.

Rev. Rul. 2000–2

ISSUE

May an executor elect under § 2056(b)(7) of the Internal Revenue Code to treat an individual retirement account (IRA) and a trust as qualified terminable interest property (QTIP) if the trustee of the trust is the named beneficiary of decedent's IRA and the surviving spouse can compel the trustee to withdraw from the IRA an amount equal to all the income earned on the IRA assets at least annually and to distribute that amount to the spouse?

FACTS

A died in 1999 at the age of 55, survived by spouse, *B*, who was 50 years old. Prior to death, *A* established an IRA described in § 408(a). The IRA is invested only in productive assets. *A* named the trustee of a testamentary trust established under *A*'s will as the beneficiary of all amounts payable from the IRA after *A*'s death. A copy of the testamentary trust and a list of the trust beneficiaries were provided to the custodian of *A*'s IRA within nine months after *A*'s death. As of the date of *A*'s death, the testamentary trust was irrevocable and was a valid trust under the laws of the state of *A*'s domicile. The IRA was includible in *A*'s gross estate under § 2039.

Under the terms of the testatmentary trust, all trust income is payable annually to *B*, and no one has the power to appoint trust principal to any person other than *B*. *A*'s children, who are all younger than *B*, are the sole remainder beneficiaries of the trust. No other person has a beneficial interest in the trust. Under the terms of the trust, *B* has the power, exercisable annually, to compel the trustee to withdraw from the IRA an amount equal to the income earned on the assets held by the IRA during the year and to distribute that amount through the trust to *B*. The IRA document contains no prohibition on withdrawal from the IRA of amounts in excess of the annual minimum required distributions under § 408(a)(6).

In accordance with the terms of the IRA instrument, the trustee of the testamentary trust elects, in order to satisfy § 408(a)(6), to receive annual minimum required distributions using the exception to the five year rule in § 401(a)(9)(B)(iii) for distributions over a distribution period equal to a designated beneficiary's life expectancy. Because *B*'s life expectancy is the shortest of all the potential beneficiaries of the testamentary trust's interest in the IRA (including remainder beneficiaries), the distribution period for purposes of § 401(a)(9)(B)(iii) is *B*'s life expectancy. Because *B* is not the sole beneficiary of the testamentary trust's interest in the IRA, the trustee elected to have the annual minimum required distributions from the IRA to the testamentary trust begin no later than December 31 of the year immediately following the year of *A*'s death. The amount of the annual minimum required distribution for each year is calculated by dividing the account balance of the IRA as of the December 31 immediately preceding the year by the remaining distribution period. On *B*'s death, any undistributed balance of the IRA will be distributed to the testamentary trust over the remaining distribution period.

LAW AND ANALYSIS

Section 2056(a) provides that the value of the taxable estate is, except as limited by § 2056(b), determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes from the decedent to the surviving spouse.

Under § 2056(b)(1), if an interest passing to the surviving spouse will terminate, no deduction is allowed with respect to the interest if, after termination of the spouse's interest, an interest in the property passes or has passed from the decedent to any person other than the surviving spouse (or the estate of the spouse).

Section 2056(b)(7) provides that QTIP, for purposes of § 2056(a), is treated as passing to the surviving spouse and no part of the property shall be treated as passing to any person other than the surviving spouse. Section 2056(b)(7)(B)(i) defines QTIP as property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election applies. Under § 2056(b)(7)(B)(ii), the surviving spouse has a qualifying income interest for life if (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 20.2056(b)–7(d)(2) of the Estate Tax Regulations provides that the principles of § 20.2056(b)–5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest, apply in determining whether the surviving spouse is entitled for life to all of the income from the property for QTIP purposes.

Section 20.2056(b)–5(f)(1) provides that, if an interest is transferred in trust, the surviving spouse is entitled for life to all of the income from the entire interest, if the effect of the trust is to give the surviving spouse substantially that degree of beneficial enjoyment of the trust property during the surviving spouse's life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust.

Section 20.2056(b)–5(f)(8) provides that the terms "entitled for life" and "payable annually or at more frequent intervals" require that under the terms of the trust the income referred to must be currently (at least annually) distributable to the spouse or that the spouse must have such command over the income so that it is virtually the spouse's. Thus, the surviving spouse will be entitled for life to all of the income from the interest, payable annually, if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to the spouse of the trust income, and otherwise the trust income is to be accumulated and added to corpus.

In the present situation, the IRA is payable to a trust the terms of which entitle *B* to receive all trust income, payable annually. In addition, no one has a power to appoint any part of the property in the trust or the IRA to any person other than *B*. Therefore, whether *A*'s executor can elect to treat the trust and the IRA as QTIP depends on whether *B* is entitled to all the income for life from the IRA, payable annually.

Under the terms of the testamentary trust, *B* is given the power, exercisable annually, to compel the trustee to withdraw from the IRA an amount equal to all the income earned on the assets held in the IRA and pay that amount to *B*. If *B* exercises this power, the trustee must withdraw from the IRA the greater of the amount of income earned on the IRA assets during the year or the annual minimum required distribution. Nothing in the IRA instrument prohibits the trustee from withdrawing such amount from the IRA. If *B* does not exercise this power, the trustee must withdraw from the IRA only the annual minimum required distribution.

B's power to compel the trustee's action meets the standard set forth in § 20.2056(b)–5(f)(8) for the surviving spouse to be entitled to all the income for life payable annually. Thus, *B* has a qualifying income interest for life within the meaning of § 2056(b)(7) in both the IRA and the testamentary trust. Furthermore, B has a qualifying income interest for life in the IRA and the testamentary trust for purposes of §§ 2519 and 2044. Because the trust is a conduit for payments equal to income from the IRA to *B*, *A*'s executor needs to make the QTIP election under § 2056(b)(7) for both the IRA and the testamentary trust.

The result would be the same if the terms of the testamentary trust require the trustee to withdraw from the IRA annually an amount equal to all the income earned on the IRA assets and pay that amount to the surviving spouse.

HOLDING

An executor may elect under § 2056(b)(7) to treat an IRA and a trust as QTIP when the trustee of the trust is the named beneficiary of the decedent's IRA, the surviving spouse can compel the trustee to withdraw from the IRA an amount equal to all the income earned on the IRA assets at least annually and to distribute that amount to the spouse, and no person has a power to appoint any part of the trust property to any person other than the spouse.

EFFECT ON OTHER REVENUE RULING(S)

Rev. Rul. 89–89, 1989–2 C.B. 231, is obsoleted.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna L. Mucha of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Donna L. Mucha on (202) 622-3120 (not a toll-free call).

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

26 CFR 301.6103(j)(5)–1T: Disclosures of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities (temporary).

T.D. 8854

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document provides a temporary regulation relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities. The temporary regulation would permit the IRS to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture. The text of this temporary regulation also serves as the text of the proposed regulation REG–116704–99 published on page 325.

DATES: This regulation is effective January 4, 2000.

Applicability Date: For dates of applicability of this regulation, see, §301.6103(j)(5)– 1T(d).

FOR FURTHER INFORMATION CONTACT: Jennifer S. McGinty, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103(j) of the Internal Revenue Code (Code) provides for the disclosure of tax information for statistical purposes. Prior to the Census of Agriculture Act of 1997 (Public Law 105-113), the Bureau of Census had responsibility for preparing the Census of Agriculture. Section 6103(j)(1) authorized the Bureau of Census to receive tax information as prescribed in the regulations in structuring censuses. Treasury regulations implemented such authority with respect to the Census of Agriculture. The Census of Agriculture Act transferred responsibility for that Census from the Bureau of Census to the Department of Agriculture. In 1998, the Tax and Trade Relief Extension Act of 1998 (Public Law 105-277) added section 6103(j)(5) to provide disclosure authority for the Department of Agriculture to receive tax information to structure, prepare, and conduct the Census of Agriculture. By letter dated May 21, 1999, the Secretary of Agriculture requested that the regulations be amended so that the Department of Agriculture can begin to receive return information for purposes of the Census of Agriculture. This document contains a temporary regulation which authorizes the IRS to disclose return information to the Department of Agriculture for purposes of the Census of Agriculture.

Explanation of Provisions

This temporary regulation will allow the IRS to disclose return information to the Department of Agriculture for purposes of the Census of Agriculture.

The disclosure of the specific items of return information identified in this regulation is necessary in order for the Department of Agriculture to accurately identify, locate, and classify, as well as properly process, information from agricultural businesses to be surveyed for the statutorily mandated Census of Agriculture.

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 in this issue of the (**Federal Register**). Pursuant to section 7805(f) of the 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 businesses.

Drafting Information

The principal author of this regulation is Jennifer S. McGinty, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in its development.

* * * * *

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 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(j)(5)–1T also issued under 26 U.S.C. 6103(j)(5);* * *

Par. 2. Section 301.6103(j)(5)–1T is added to read as follows:

§301.6103(j)(5)–1T Disclosures of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities (temporary).

(a) *General rule.* Pursuant to the provisions of section 6103(j)(5) of the Internal Revenue Code (Code) and subject to the requirements of paragraph (c) of this section, officers or employees of the Internal Revenue Service (IRS) will disclose return information to officers and employees of the Department of Agriculture to the extent, and for such purposes as may be, provided by paragraph (b) of this section.

(b) *Disclosure of return information to officers and employees of the Department of Agriculture*

(1) Officers or employees of the IRS will disclose the following return information for individuals, partnerships, and corporations with agricultural activity, as determined generally by industry code classification or the filing of returns for such activity, to officers and employees of the Department of Agriculture for purposes of, but only to the extent necessary in, structuring, preparing, and conducting, as authorized by chapter 55 of title 7, United States Code, the Census of Agriculture.

(2) From Form 1040/Schedule F—

(i) Taxpayer Identity Information (as defined in section 6103(b)(6) of the Code);
(ii) Spouse's SSN;
(iii) Annual Accounting Period;
(iv) Principal Business Activity (PBA) Code;
(v) Sales of livestock and produce raised;
(vi) Taxable cooperative distributions;
(vii) Income from custom hire and machine work;
(viii) Gross income;
(ix) Master File Tax (MFT) Code;
(x) Document Locator Number (DLN);
(xi) Cycle Posted;
(xii) Final return indicator; and
(xiii) Part year return indicator.

(3) From Form 943—
(i) Taxpayer Identity Information;
(ii) Annual Accounting Period;
(iii) Total wages subject to Medicare taxes;
(iv) Master File Tax (MFT) Code;
(v) Document Locator Number (DLN);
(vi) Cycle Posted;
(vii) Final return indicator; and
(viii) Part year return indicator.
(4) From Form 1120 series—
(i) Taxpayer Identity Information;
(ii) Annual Accounting Period;
(iii) Gross receipts less returns and allowances;
(iv) PBA code;
(v) Parent corporation Employer Identification Number, and related Name and PBA Code for entities with agricultural activity;
(vi) Master File Tax (MFT) Code;
(vii) Document Locator Number (DLN);
(viii) Cycle posted;
(ix) Final return indicator;
(x) Part year return indicator; and
(xi) Consolidated return indicator.
(5) From Form 851—
(i) Subsidiary Taxpayer Identity Information;
(ii) Annual Accounting Period;
(iii) Subsidiary PBA Code;
(iv) Parent Taxpayer Identity Information;
(v) Parent PBA Code;
(vi) Master File Tax (MFT) Code;
(vii) Document Locator Number (DLN); and
(viii) Cycle Posted.
(6) From Form 1065 series—
(i) Taxpayer Identity Information;
(ii) Annual Accounting Period;
(iii) PBA Code;
(iv) Gross receipts less returns and allowances;
(v) Net farm profit (loss);
(vi) Master File Tax (MFT) Code;
(vii) Document Locator Number (DLN);
(viii) Cycle Posted;
(ix) Final return indicator; and
(x) Part year return indicator.

(c) *Procedures and Restrictions*

(1) Disclosure of return information by officers or employees of the IRS as provided by paragraph (b) of this section will be made only upon written request designating, by name and title, the officers and employees of the Department of Agriculture to whom such disclosure is authorized, to the Commissioner of Internal Revenue by the Secretary of the Department of Agriculture and describing—
(i) The particular return information to be disclosed;
(ii)The taxable period or date to which such return information relates; and
(iii) The particular purpose for which the return information is to be used.

(2) No such officer or employee to whom return information is disclosed pursuant to the provisions of paragraph (b) of this section shall disclose such return information to any person, other than the taxpayer to whom such return information relates or other officers or employees of the Department of Agriculture whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the IRS determines that the Department of Agriculture, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations or published procedures thereunder, the IRS may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information otherwise authorized by section 6103(j)(5) and paragraph (b) of this section, until the IRS determines that such requirements have been or will be satisfied.

(d) *Effective date:* This section is applicable from January 4, 2000 through January 3, 2003.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 13, 1999.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on January 3, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 4, 2000, 65 F.R. 215)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part I, sections 442, 706, 898, 1502; 1.442–1, 1.706–1T, 1.1502–76.)

Rev. Proc. 2000–11

CONTENTS

SECTION 1. PURPOSE

This revenue procedure provides procedures by which certain corporations may obtain automatic approval to change their annual accounting periods under § 442 of the Internal Revenue Code. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 92–13, 1992–1 C.B. 665. A corporation complying with all the applicable provisions of this revenue procedure has obtained the consent of the Commissioner of the Internal Revenue Service to change its annual accounting period under § 442 and the Income Tax Regulations thereunder.

SECTION 2. BACKGROUND

.01 Section 1.442–1(a)(1) of the Income Tax Regulations provides that if a taxpayer wishes to change its annual accounting period (as defined in § 441(c)) and adopt a new taxable year (as defined in § 441(b)), it must obtain prior approval from the Commissioner.

.02 Section 1.442–1(b)(1) provides that in order to secure prior approval of a change of a taxpayer's annual accounting period, the taxpayer must file an application on Form 1128, Application to Adopt, Change, or Retain a Tax Year, with the Commissioner on or before the 15th day of the second calendar month following the close of the short taxable year required to effect the change. Section 1.442–1(b)(1) also provides that approval will not be granted unless the taxpayer and the Commissioner agree to the terms, conditions, and adjustments under which the change will be effected.

.03 Section 1.442–1(c) provides a special rule whereby certain corporations may change their annual accounting periods without the prior approval of the Commissioner. Rev. Proc. 92–13 also provided procedures whereby certain corporations that did not satisfy the conditions of § 1.442–1(c) could obtain expeditious approval of a change of their annual accounting period.

.04 Section 1.443–1(b)(1)(i) provides that if a return is made for a short period resulting from a change of an annual accounting period, the taxable income for the short period must be placed on an annual basis by multiplying the income by 12 and dividing the result by the number of months in the short period. Unless §§ 443(b)(2) and 1.443–1(b)(2) apply, the tax for the short period is the same part of the tax computed on an annual basis as the number of months in the short period is of 12 months.

.05 Sections 1.852–3(e) and 1.857–2(a)(4) provide that the taxable income of a regulated investment company (RIC) and a real estate investment trust (REIT) are computed without regard to § 443(b). Thus, taxable income for a period of less than 12 months is not placed on an annual basis even though such short taxable year results from a change of annual accounting period.

SECTION 3. SIGNIFICANT CHANGES

Significant changes to Rev. Proc. 92–13 made by this revenue procedure include:

.01 Section 4.01(2) provides that this revenue procedure applies to a corporation that wants to change from a 52–53–week taxable year to a taxable year that ends with reference to the same month, and vice versa;

.02 Section 4.01(3) adds a provision whereby a controlled foreign corporation (CFC) may revoke its one-month deferral election under § 898(c)(1)(B) and automatically change its taxable year to the majority United States shareholder year (as defined in § 898(c)(1)(C));

.03 Section 4.02(1) provides certain exceptions to the 6-year waiting period between automatic period changes, such as for changes to or from a 52-53-week taxable year referencing the same month;

.04 Section 4.02(2) adds three exceptions to the scope restrictions applicable to an automatic period change for a corporation that is a member of a partnership or a beneficiary of a trust or estate;

.05 Section 4.02(3) adds two exceptions to the scope restrictions applicable to an automatic period change for a corporation that is a shareholder of a foreign sales corporation (FSC) or an interest charge domestic international sales corporation (IC-DISC);

.06 Section 4.02(6) eliminates the prohibition of an automatic period change for

a corporation making an S corporation election effective for the taxable year immediately following a change in accounting period, provided the corporation is changing to a permitted S corporation taxable year;

.07 Section 4.02(14) modifies the scope restriction for a cooperative association with a loss in the short period required to effect the change to allow an otherwise automatic change if the patrons of the cooperative association remain substantially the same before and after the accounting period change; and

.08 Section 5.06 deletes the requirement that a net operating loss (NOL) in the short period required to effect the change must be deducted ratably over 6 years. Further, section 5.06 increases (from $10,000 to $50,000) the exception to the general rule proscribing a carryback of a short period NOL.

SECTION 4. SCOPE

.01 *Applicability*. (1) *In general*. This revenue procedure applies to a corporation requesting consent to change its annual accounting period. The common parent of a consolidated group may change the group's annual accounting period under this revenue procedure if every member of the consolidated group meets all the requirements and complies with all the conditions of this revenue procedure.

(2) *52-53-week year.* Notwithstanding section 4.02 of this revenue procedure, this revenue procedure applies to a corporation (including a member of a consolidated group) that wants to change from a 52-53-week taxable year to a taxable year that ends with reference to the same month, and vice versa.

(3) *Section 898 election*. Notwithstanding section 4.02 of this revenue procedure, this revenue procedure applies to a CFC (as defined in § 957) that wants to revoke its one-month deferral election under § 898(c)(1)(B) and change its taxable year to the majority U.S. shareholder year (as defined in § 898(c)(1)(C)).

.02 *Inapplicability*. This revenue procedure does not apply to a corporation that:

(1) has changed its annual accounting period at any time within the 6 calendar years ending with the calendar year that includes the beginning of the short period required to effect the change. For this purpose, the following changes will not be considered a change in annual accounting period:

(a) a change in accounting period by a subsidiary to its common parent's taxable year in order to comply with the common taxable year requirement of § 1.1502–76(a)(1). *See* § 1.442–1(d);

(b) any prior change in accounting period by a majority-owned, newly acquired subsidiary that wants to change to the taxable year of its domestic or foreign parent with which it does not file consolidated tax returns in order to file consolidated financial statements, provided the change is made within 12 months of the acquisition. For purposes of this subsection, "majority-owned" means ownership that satisfies the test of § 1504(a)(2), substituting "more than 50 percent" for "at least 80 percent;"

(c) a change from a 52-53-week taxable year to a taxable year that ends with reference to the same month, and vice versa;

(2) is a member of a partnership or a beneficiary of a trust or an estate (collectively referred to as "pass-through entities") as of the end of the short period. However, an interest in a pass-through entity will be disregarded for this purpose if any of the following conditions are met:

(a) the partnership in which the corporation is a majority interest partner (*i.e.,* a partner having an interest in the partnership's profits and capital of more than 50 percent) would be required to change its taxable year pursuant to § 706(b) to the new taxable year of the corporation. *See* section 5.08 of this revenue procedure for a special term and condition related to this exception;

(b) the new taxable year of the corporation would result in no change in or less deferral (as described in § 1.706–1T(a)(2)) from the pass-through entity than the present taxable year of the corporation. If the pass-through entity is a partnership, the corporation should compare the existing deferral period (between the partnership's and the corporation's current taxable years) with the new deferral period (between the taxable year of the partnership that would be required under § 706 and the corporation's new taxable year). *See* section 4.04 of this revenue procedure for an example of this rule; or

(c) for pass-through entities not qualifying for the exceptions in either section 4.02(a) or 4.02(b) of this revenue procedure, the pass-through entity in which the corporation has an interest has been in existence for at least 3 taxable years and the interest is de minimis. For this purpose, an interest in a pass-through entity is de minimis only if:

(i) for each of the prior 3 taxable years of the corporation, the amount of income (including ordinary income or loss, capital gains or losses, rents, royalties, interest, or dividends) from such pass-through entity is less than or equal to (A) 5 percent of the corporation's gross receipts (or, in the case of a member of a consolidated group, the consolidated group's gross receipts) for those taxable years, and (B) $500,000; and

(ii) the amount of income from all such pass-through entities in the aggregate is less than or equal to the amounts described in (A) and (B) above. *See* section 4.04 of this revenue procedure for an example of this rule;

(3) is a shareholder of a FSC or IC-DISC, as of the end of the short period. However, an interest in a FSC or IC-DISC is disregarded if either of the following conditions is met:

(a) the FSC or IC-DISC in which the corporation is the principal shareholder (*i.e.,* the shareholder with the highest percentage of voting power as defined in § 441(h)) would be required to change its taxable year pursuant to §§ 1.921–1T(b)(4) and (b)(6) to the new taxable year of the corporation. *See* section 5.08 of this revenue procedure for a special term and condition related to this exception; or

(b) the new taxable year of the corporation would result in no change in or less deferral of income (as determined under the principles of § 1.706–1T(a)(2)) from the FSC or IC-DISC than the present taxable year of the corporation;

(4) is a FSC or an IC-DISC. *See* § 1.921-1T(b)(4) for rules regarding automatic changes of the annual accounting period of a FSC or IC-DISC to the taxable year of its principal shareholder;

(5) is an S corporation (as defined in § 1361). *See* Rev. Proc. 87–32 for procedures to follow for certain automatic changes in the annual accounting period of an S corporation;

(6) attempts to make an S corporation election for the taxable year immediately following the short period, unless the change is to a permitted S corporation year. For this purpose, a "permitted S corporation year" includes a calendar year, a taxable year permitted under § 444, or an ownership taxable year or natural business year (as defined in Rev. Proc. 87–32, 1987–2 C.B. 396);

(7) is a personal service corporation (as defined in § 441(i)). *See* Rev. Proc. 87–32 for procedures to follow for certain automatic changes in the annual accounting period of a personal service corporation;

(8) is a CFC (as defined in § 957) or a foreign personal holding company (FPHC) (as defined in § 552);

(9) is a shareholder of a CFC or FPHC. However, an interest in a CFC or FPHC is disregarded if the shareholder is the majority U.S. shareholder (*i.e.*, the shareholder that meets the ownership requirement of § 898(b)(2)(A)) and the CFC or FPHC would be required to change its taxable year to the new taxable year of the shareholder. *See* section 5.08 of this revenue procedure for a special term and condition related to this exception;

(10) is a tax-exempt organization, other than an organization exempt from federal income tax under § 521, 526, 527, or 528. *See* Rev. Proc. 85–58, 1985–2 C.B. 740, for procedures to follow in changing an annual accounting period for a tax-exempt organization not meeting the scope of this revenue procedure;

(11) is a direct or indirect shareholder of a passive foreign investment company (PFIC) that is a qualified electing fund (within the meaning of § 1295) with respect to the shareholder;

(12) is a PFIC that U.S. persons (who own directly or indirectly, in the aggregate, 10 percent or more of the company) elected under § 1295 to treat as a qualified electing fund;

(13) is a corporation which has in effect an election under § 936; or

(14) is a cooperative association (within the meaning of § 1381(a)) with a loss in the short period required to effect the change of annual accounting period, unless all the patrons of the cooperative association are substantially the same in the year before the change of annual accounting period, in the short period required to effect the change, and in the year following the change. For purposes of this subsection, "substantially the same" means that ownership of more than 90 percent of the cooperative association's stock is owned by the same members.

.03 *Nonautomatic changes*. Corporations that are unable to use the automatic provisions of this revenue procedure must secure prior approval from the Commissioner for a change in an accounting period pursuant to § 442 and the regulations thereunder.

.04 *Examples.*

(1) *Example 1*. (i) Corporations V, W, X, Y, and Z hold equal 20 percent interests in the capital and profits of partnership ABC. V and W are calendar year taxpayers. X and Y have a taxable year ending June 30, and Z has a taxable year ending September 30. ABC does not have a business purpose for a particular taxable year, and thus, pursuant to § 1.706–1T, ABC is required to use a taxable year ending June 30 because that taxable year results in the least aggregate deferral of income to its partners. Z currently has a 3-month deferral period (the number of months from the end of ABC's taxable year to the end of Z's taxable year). Z wants to change its taxable year to a calendar year.

(ii) If Z changes its taxable year to a calendar year, ABC would be required to change its taxable year under § 706 to its majority interest taxable year, which is the calendar year. As a result of Z's new taxable year and ABC's new taxable year, Z's deferral period would be eliminated. Because Z's new taxable year would reduce Z's deferral, Z may disregard its interest in ABC under section 4.02(2)(b) of this revenue procedure.

(2) *Example 2*. (i) Corporation X, a calendar year taxpayer, wants to change its tax year to a year ending June 30. X has interests in five partnerships, ABC, DEF, GHI, JKL, and MNO. All of the partnerships have been in existence for over three taxable years. X's interests in each of ABC and DEF is greater than 50 percent. X's interest in GHI, JKL, and MNO is 15 percent, 10 percent, and 5 percent, respectively. GHI uses the majority interest taxable year ending May 31 and JKL and MNO each use their respective majority interest taxable year ending December 31. X's distributive share of income/(loss) from JKL for the prior three taxable years is $300,000, $(100,000), and $200,000, respectively, and from MNO is $300,000, $200,000, and $100,000, respectively. X's gross receipts for each of those same taxable years was $15,000,000.

(ii) X's interests in its pass-through entities will be disregarded only if each pass-through entity satisfies one of the exceptions enumerated under section 4.02(2) of this revenue procedure. In the instant case, X's interests in ABC and DEF each meet the exception in section 4.02(2)(a) because X is the majority interest partner in each partnership. X's interest in GHI meets the exception in section 4.02(2)(b) because X's new taxable year would result in less deferral than its old taxable year (the deferral between May 31 and June 30 of 1 month as compared to the deferral between May 31 and December 31 of 7 months). Because X is not the majority interest partner in JKL and MNO and because its new taxable year would not result in less deferral from these partnerships, X's interests in JKL and MNO may be disregarded only if they satisfy the de minimis exception in section 4.02(2)(c). Although the income from JKL and MNO for each of the prior three taxable years is less than 5 percent of X's gross receipts and $500,000, the income for year 1 from JKL and MNO, in the aggregate ($300,000 and $300,000), exceeds the $500,000 amount specified in section 4.02(2)(c)(ii). Consequently, JKL and MNO fail to satisfy the de minimis exception in section 4.02(2)(c). Because X's interests in all of its pass-through entities will not be disregarded, X is not within the scope of this revenue procedure.

SECTION 5. TERMS AND CONDITIONS OF CHANGE

.01 *In general*. A change in annual accounting period filed under this revenue procedure must be made pursuant to the terms and conditions provided in this revenue procedure.

.02 *Short period*. The short period required to effect the change of annual accounting period must begin with the day following the close of the old taxable year and end with the day preceding the first

day of the new taxable year.

.03 *Short period tax return*. The corporation or consolidated group must file a federal income tax return for the short period by the due date of that return, including extensions pursuant to § 1.443–1(a). The corporation's taxable income (or the consolidated group's consolidated taxable income) for the short period must be annualized, except in the case of a RIC or a REIT, and the tax must be computed in accordance with the provisions of §§ 443(b) and 1.443–1(b). However, for changes to or from a 52-53-week taxable year, see special rules in § 1.441–2T(c)(5).

.04 *Subsequent year tax returns*. Returns for subsequent taxable years must be made on the basis of a full 12 months (or on a 52-53-week basis) ending on the last day of the new taxable year, unless the corporation or consolidated group secures the approval of the Commissioner to change its new taxable year.

.05 *Book conformity*. The books of the corporation or consolidated group must be closed as of the last day of the new taxable year. The corporation or consolidated group must compute its income and keep its books and records (including financial statements and reports to creditors) on the basis of the new taxable year.

.06 *Net operating losses*. If the corporation (or consolidated group) has a NOL (or consolidated NOL) in the short period required to effect the change, the NOL may not be carried back but must be carried over in accordance with the provisions of § 172 beginning with the first taxable year after the short period. However, the short period NOL (or consolidated NOL) is carried back or carried over in accordance with § 172 if it is either: (a) $50,000 or less, or (b) results from a short period of 9 months or longer and is less than the NOL (or the consolidated NOL) for a full 12-month period beginning with the first day of the short period.

.07 *General business credits*. If there is an unused general business credit or any other unused credit for the short period, the corporation or consolidated group must carry that unused credit forward. An unused credit from the short period may not be carried back.

.08 *Concurrent change for related entities*. If a corporation's interest in a pass-through entity, FSC, IC-DISC, CFC, or FPHC is disregarded pursuant to sections 4.02(2)(a), 4.02(3)(a), or 4.02(8) of this revenue procedure because the entity is required to change its taxable year to the corporation's new taxable year, the entity must change its taxable year concurrently with the corporation's change in taxable year, notwithstanding the testing date provisions in §§ 706(b)(4)(A)(ii) and 898(c)(1)(C)(ii).

SECTION 6. MANNER OF EFFECTING THE CHANGE

.01 *Consent*. Approval is hereby granted to any corporation or consolidated group within the scope of this revenue procedure to change its annual accounting period, provided the corporation or consolidated group complies with all the applicable provisions of this revenue procedure. Approval is granted beginning with the short period required to effect the change. A corporation or consolidated group granted approval under this revenue procedure to change its annual accounting period is deemed to have established a business purpose for the change to the satisfaction of the Secretary.

.02 *Filing requirements*. (1) *Where to file*. Any corporation (including the common parent of a consolidated group) that decides to change its annual accounting period pursuant to the provisions of this revenue procedure must complete and file a current Form 1128 with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where the corporation or consolidated group files its federal income tax return. No copies of Form 1128 are required to be sent to the National Office.

(2) *When to file*. A Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442–1(b)(1) only if it is filed on or before the time (including extensions) for filing the return for the short period required to effect such change.

(3) *Label*. In order to assist in the processing of the change in annual accounting period, reference to this revenue procedure must be made a part of the Form 1128 by either typing or legibly printing the following statement at the top of page 1 of the Form 1128: "FILED UNDER REV. PROC. 2000–11." For a CFC that is revoking a § 898(c)(1)(B) election under section 4.01(3) of this revenue procedure, the label at the top of page 1 of the Form 1128 should read "REVOCATION OF § 898(c)(1)(B) ELECTION FILED UNDER REV. PROC. 2000–11."

(4) *Signature requirements*. The Form 1128 must be signed on behalf of the corporation requesting the change of annual accounting period by an individual with authority to bind the corporation in such matters. If the corporation is a member of a consolidated group, the Form 1128 must be signed by a duly authorized officer of the common parent. If an agent is authorized to represent the corporation or consolidated group before the Service, to receive the original or a copy of correspondence concerning the application, or to perform any other act(s) regarding the application on behalf of the corporation or consolidated group, a power of attorney reflecting such authorization(s) should be attached to the application. A corporation or consolidated group's representative without a power of attorney to represent the corporation or consolidated group will not be given any information about the application.

(5) *No user fee*. A user fee is not required for an application filed under this revenue procedure and, except as provided in section 7.01 of this revenue procedure, the receipt of an application filed under this revenue procedure may not be acknowledged.

(6) *Consolidated application*. A common parent may file a single application to change the annual accounting period of its consolidated group. The common parent corporation must clearly indicate that the Form 1128 is filed on behalf of the common parent and all its subsidiaries, and the common parent must answer all relevant questions on the Form 1128 for each member of the consolidated group.

SECTION 7. REVIEW OF APPLICATION

.01 *Service Center review*. A Service Center may deny a change of annual accounting period under this revenue procedure only if: (a) the Form 1128 is not filed timely, or (b) the corporation or consolidated group fails to meet the scope or terms and conditions of this revenue procedure. If the change is denied, the Service Center will return the Form 1128

with an explanation for the denial.

.02 *Review of examining officials.* The appropriate examining official may ascertain if the change in annual accounting period was made in compliance with all the applicable provisions of this revenue procedure. Corporations or consolidated groups changing their annual accounting period pursuant to this revenue procedure without complying with or satisfying all the terms and conditions of this revenue procedure ordinarily will be deemed to have initiated the change in annual accounting period without the consent of the Commissioner.

SECTION 8. EFFECTIVE DATE AND TRANSITION RULE

.01 *Effective date.* This revenue procedure generally is effective for all changes in annual accounting periods for which the short period ends on or after January 18, 2000. However, if the time period set forth in section 6.02(2) of this revenue procedure for filing a Form 1128 with respect to a short period has not yet expired, a corporation or consolidated group meeting the scope of this revenue procedure may elect early application of the procedure by providing the notification set forth in section 6.02(3) on the top of page 1 of Form 1128 and by satisfying the other procedural requirements of section 6.

.02 *Transition rule.* If a corporation or consolidated group within the scope of this revenue procedure filed an application with the National Office to make a change in annual accounting period and the application is pending with the National Office on January 18, 2000, the corporation or consolidated group may make the change under this revenue procedure. However, the National Office will process the application in accordance with the authority under which it was filed, unless prior to the later of March 3, 2000, or the issuance of the letter ruling granting or denying consent to the change, the corporation or consolidated group notifies the National Office that it wants to make the change under this revenue procedure. If the corporation or consolidated group timely notifies the National Office that it wants to make the change under this revenue procedure, the National Office will require the corporation or consolidated group to make appropriate modifications to the application to comply with the applicable provisions of this revenue procedure. In addition, any user fee that was submitted with the application will be refunded to the corporation or consolidated group.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 92–13, Rev. Proc. 92–13A, 1992–1 C.B. 668, and Rev. Proc. 94–12, 1994–1 C.B. 565, are modified, amplified, and superseded.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Roy A. Hirschhorn and Martin Scully, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Roy A. Hirschhorn or Martin Scully, Jr. on (202) 622-4960 (not a toll-free call).

Exchange of MACRS Property for MACRS Property

Notice 2000–4

This notice provides guidance about the depreciation of property subject to § 168 of the Internal Revenue Code (MACRS property) that is acquired in a like-kind exchange under § 1031 or as a result of an involuntary conversion under § 1033. The Internal Revenue Service and the Department of Treasury intend to issue regulations under § 168 that will address these transactions. Taxpayers should follow this notice until these regulations are issued. Public comments to aid in the development of the regulations are requested by March 31, 2000.

BACKGROUND

Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear of property used a trade or business or held for the production of income. The depreciation allowable for depreciable tangible property placed in service after 1986 generally is determined under § 168 (MACRS).

Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment.

Section 1033(a)(1) provides that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, no gain is recognized.

The basis of property acquired in a transaction to which § 1031 or § 1033 applies generally is the same as the property surrendered in the transaction less any cash received plus any gain recognized. However, there is no guidance as to how to depreciate the basis of the acquired property under § 168.

APPLICATION

For purposes of determining the depreciation allowable for MACRS property acquired in an exchange of MACRS property for like-kind property to which § 1031 applies, or acquired in replacement of involuntarily converted MACRS property to which § 1033 applies, the acquired MACRS property should be treated in the same manner as the exchanged or involuntarily converted MACRS property with respect to so much of the taxpayer's basis in the acquired MACRS property as does not exceed the taxpayer's adjusted basis in the exchanged or involuntarily converted MACRS property. Thus, the acquired MACRS property is depreciated over the remaining recovery period of, and using the same depreciation method and convention as that of, the exchanged or involuntarily converted MACRS property. Any excess of the basis in the acquired MACRS property over the adjusted basis in the exchanged or involuntarily converted MACRS property is treated as newly purchased MACRS property.

For acquired MACRS property placed in service on or after January 3, 2000, in a like-kind exchange of MACRS property under § 1031 or as a result of an involuntary conversion of MACRS property under § 1033, a taxpayer must follow the principles set out in this notice.

For acquired MACRS property placed in service before January 3, 2000, in a

like-kind exchange of, or as a result of an involuntary conversion of, MACRS property, the Service is aware that taxpayers are depreciating this acquired property either (i) in the manner set out in this notice consistent with §1.168–5(f) of the proposed Income Tax Regulations, published in the Federal Register on February 16, 1984 (49 Fed. Reg. 5940), under former § 168 (ACRS); or (ii) as newly purchased MACRS property. The Service will allow a taxpayer to continue to use its present method of depreciating the acquired property and will treat these methods as allowable methods of depreciation. However, a taxpayer presently treating the acquired property as newly purchased MACRS property may change to treating the property under the principles in this notice, provided the property has been treated by the taxpayer as acquired in a § 1031 like-kind exchange or § 1033 involuntary conversion and the change is made for the first or second taxable year ending after January 3, 2000.

CHANGE IN METHOD OF ACCOUNTING

A change from treating MACRS property acquired in a § 1031 like-kind exchange or § 1033 involuntary conversion as newly purchased MACRS property to treating the property under the principles of this notice is a change in method of accounting to which the provisions of § 446 and § 481 and the regulations thereunder apply. A taxpayer changing its method of accounting for the acquired MACRS property must follow the automatic change in accounting method provisions of Rev. Proc. 99–49, 1999–52 I.R.B. 725, provided the taxpayer makes the change in method of accounting for the first or second taxable year ending after January 3, 2000, and takes into account any necessary § 481(a) adjustment in accordance with the provisions of Rev. Proc. 99–49. The scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply to the taxpayer. However, if the taxpayer is under examination, before an appeals office, or before a federal court, the taxpayer must provide a copy of the Form 3115, Application for Change in Accounting Method, to the examining agent(s), appeals officer, or counsel for the government, as appropriate, at the same time that the taxpayer files the copy of the Form 3115 with the national office. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent(s), appeals officer, or counsel for the government, as appropriate.

REQUEST FOR COMMENTS

The Service and the Treasury Department intend to issue regulations under § 168 to address the depreciation of MACRS property acquired in a § 1031 like-kind exchange or § 1033 involuntary conversion. Before issuing proposed regulations, the Service and the Treasury Department invite comments from the public to aid in the development of these regulations. Comments should be submitted in writing by March 31, 2000, to:

Internal Revenue Service
EXCHANGE OF MACRS PROPERTY FOR MACRS PROPERTY
CC:DOM:P&SI:6, Room 5112
P.O. Box 7604
Benjamin Franklin Station
Washington, DC 20044

Alternatively, comments may be submitted electronically via:
http://www.irs.gov/prod/tax_regs/comments.html (the Service Internet site).

EFFECT ON OTHER DOCUMENTS

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

DRAFTING INFORMATION

The principal author of this notice is Alan H. Cooper of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Cooper at (202) 622-3110 (not a toll-free call).

Penalty Relief for Certain Taxpayers Affected by Section 571 of the Tax Relief Extension Act of 1999

Notice 2000–5

PURPOSE

This notice informs taxpayers of penalty relief available for certain corporate taxpayers whose December 15, 1999, estimated tax installment is affected by § 571 of the Tax Relief Extension Act of 1999, P.L. 106–170 ("the Act"). The notice provides specific procedures for these taxpayers to follow in order to qualify for the penalty relief.

BACKGROUND

Section 571 of the Act amends § 6655 of the Internal Revenue Code by adding new subsection (e)(5). This subsection provides that any dividend that is received from a closely-held real estate investment trust by any person that owns (after application of § 856(d)(5)) 10 percent or more (by vote or value) of the stock or beneficial interests in the trust will be taken into account in computing annualized income tax installments under § 6655(e)(2) in a manner similar to the manner under which partnership income inclusions are taken into account. The statute also references attribution under § 856(l)(3)(B). This reference is erroneous and presumably will be the subject of a technical correction. For the purposes of § 6655(e)(5), the term "closely-held real estate investment trust" means a real estate investment trust with respect to which five or fewer persons own (after application of § 856(d)(5)) 50 percent or more (by vote or value) of the stock or beneficial interests in the trust. The amendment made by § 571 of the Act applies to estimated tax payments due on or after December 15, 1999.

RETROACTIVE EFFECT OF SECTION 571 OF THE ACT

The President signed the Act into law on December 17, 1999. As a result, § 571 of the Act retroactively applies to estimated tax installment payments due on December 15, 1999, by those corporate taxpayers that employ the annualization method to calculate quarterly estimated tax installment payments. Those taxpayers may have used the law in effect on December 15, 1999, to calculate their estimated tax installment due on that date. The retroactive application of § 571 of the Act may result in those taxpayers underpaying their installment due on December 15, 1999. If so, those taxpayers may be subject to an addition to tax under § 6655 of the Code.

PENALTY RELIEF

In a situation in which the amendment made by § 571 of the Act creates or increases an underpayment for the quarterly estimated tax installment due on December 15, 1999, the Service will not assess or will abate any addition to tax resulting from the change in law to the extent that the taxpayer, on or before January 13, 2000, makes a deposit sufficient to satisfy such underpayment using either Form 8109, Federal Tax Deposit Coupon, or the Electronic Federal Tax Payment System (EFTPS) if the taxpayer is required to deposit electronically or chooses to do so voluntarily. The taxpayer must designate that the deposit is for the taxpayer's estimated tax installment due December 15, 1999. Further, the taxpayer's 1999 Form 2220, Underpayment of Estimated Tax by Corporations, should clearly state across the top "Penalty Relief Under Notice 2000–5."

If a taxpayer that makes a deposit as described above and receives a notice imposing an addition to tax based on an underpayment of the estimated tax for the installment due on December 15, 1999, and the underpayment relates to the change to the law by § 571 of the Act, the taxpayer should contact the IRS office issuing the notice and request abatement of the addition to tax based on the provisions in this notice.

DRAFTING INFORMATION

The principal author of this notice is Robert A. Desilets, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Robert A. Desilets, Jr. at (202) 622-4910 (not a toll-free call).

Returns of Information of Brokers and Barter Exchanges

Notice 2000–6

PURPOSE

This notice provides that, pending the issuance of new regulations by the Internal Revenue Service (Service) and the Treasury Department, a barter exchange is not required under § 6045 of the Internal Revenue Code to report exchanges involving property or services with a fair market value of less than $1.00. This notice also invites comments on information reporting issues under § 6045 relating to barter exchanges in connection with the new regulations.

BACKGROUND

Section 6045 and the regulations thereunder generally require a barter exchange to make a return of information with respect to exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. Section 1.6045-1(a)(4) of the Income Tax Regulations defines a barter exchange generally to include any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. However, a barter exchange through which there are fewer than 100 exchanges during the calendar year generally is exempt from reporting for, or making a return of information with respect to, exchanges during such calendar year. Section 1.6045–1(e)(2)(ii).

Section 1.6045–1(f)(2) generally requires a barter exchange to make returns of information on a transactional basis. Under this provision, the barter exchange must show on Form 1099–B, Proceeds From Broker and Barter Exchange Transactions, the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred, and such other information required by Form 1099, in the form, manner, and number of copies required by Form 1099. However, as to each corporate member or client (as defined in the regulations) providing property or services in an exchange for which a return of information is required, the regulations allow the barter exchange to report based on an aggregate basis, rather than on a transactional basis, for the reporting period.

The Treasury Department and the Service have become aware of a growing number of barter exchanges that, through the use of electronic or Internet services, engage in millions of transactions daily involving property or services with very low fair market values. In these situations, the barter exchange reporting requirements under § 6045 may impose burdens on the barter exchange that outweigh the benefits of the information collected on Forms 1099–B. Accordingly, the Treasury Department and the Service are studying barter exchange issues with a view to proposing new regulations regarding the information reporting responsibilities of the exchanges.

DE MINIMIS EXCEPTION

A barter exchange is not required to provide an information return with respect to an exchange of property or services if the fair market value of the property or services received in that exchange is less than $1.00.

This exception applies with respect to information returns that would otherwise be due on or after January 5, 2000, and before new regulations are issued addressing the information reporting responsibilities of barter exchanges. With respect to information returns that were due before January 5, 2000, the Service will not impose penalties under §§ 6721 and 6722 on a barter exchange for its failure to file the returns or furnish payee statements with respect to exchanges that meet the criteria of the *de minimis* exception above.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on other information reporting issues relating to barter exchanges in connection with the future regulations. In particular, comments are requested concerning other means of reducing the reporting burden on barter exchanges, such as:

(1) Whether the regulations should provide an exception to the reporting requirements for cases in which the fair market value of property or services received by the member or client falls below a *de minimis* transactional threshold (such as that described in this notice) but only if the total fair market value of property or services received by the member or client during a calendar year does not exceed an aggregate threshold.

(2) Whether the regulations should

allow annual aggregate reporting with respect to amounts received by noncorporate members or clients.

(3) Whether the regulations should specifically require annual aggregate reporting, rather than transactional reporting, with respect to transactions involving certain types of property or services.

(4) Whether the regulations should apply special rules to certain bartering transactions involving the provision of electronic or Internet services.

Further, the Treasury Department and the Service welcome information and comments on additional tax issues associated with electronic commerce transactions.

Written comments should be submitted by April 4, 2000. Written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R
(Notice 2000–6)
Room 5228 (IT&A:Br2)
1111 Constitution Avenue, NW
Washington, D.C.

Alternatively, taxpayers may submit comments electronically via e-mail to the following address:

Sharon.Y.Horn@M1.IRSCOUNSEL.TREAS.GOV

All comments will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this notice is Edwin B. Cleverdon of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Cleverdon at (202) 622-4920 (not a toll-free call).

Part IV. Items of General Interest

Test of Arbitration Procedure for Appeals

Announcement 2000–4

SUMMARY: The Internal Revenue Service Office of Appeals (Appeals) is conducting a two-year test of a binding arbitration procedure. This procedure allows taxpayers to request binding arbitration for factual issues that are already in the Appeals administrative process. Under the procedure, the taxpayer and Appeals must first attempt to negotiate a settlement. If those negotiations are unsuccessful, the taxpayer and Appeals may jointly request binding arbitration. Binding arbitration will only be used to resolve factual disputes. This procedure is effective for requests for arbitration made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

BACKGROUND: Section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685, creates new section 7123(b)(2) of the Internal Revenue Code which provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on certain unresolved issues. This procedure is effective for requests for arbitration made during the two-year test period, as described above.

PUBLIC HEARING: This document contains a notice of a public hearing on the arbitration procedure set forth in this announcement. A public hearing will be held at 10:00 a.m. on April 5, 2000 in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: Written comments on the announcement should be delivered or mailed by May 5, 2000 to:

Internal Revenue Service
National Director of Appeals
Attn.: C:AP:ADR&CS, Suite 4200E
1099 14th Street, N.W.
Washington, D.C. 20005

or electronically via: http://www.irs.gov/prod/tax_regs/comments.html (the Service Internet site).

Requests to speak at the public hearing and outlines of oral comments should be delivered or mailed by March 20, 2000 to these same addresses. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the government panel and answers to these questions.

Because of controlled access restrictions, persons attending the hearing will not be permitted beyond the lobby of the Internal Revenue Service building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

FOR FURTHER INFORMATION CONTACT: Thomas Carter Louthan, Director, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1842 (not a toll-free number), or Gary Slayen, analyst, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1837 (not a toll-free number).

TEST OF ARBITRATION PROCEDURE FOR APPEALS

Summary:

Appeals is conducting a two-year test of an arbitration procedure. This procedure is effective for arbitration requests made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

Under the test, arbitration:

- is optional;
- must be agreed to in a formal agreement executed by the taxpayer and the Assistant Regional Director of Appeals-Large Case or successor (ARDA-LC);
- will bind the parties to the findings made by the arbitrator with respect to the issues to be resolved.

Overview:

Section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 creates new section 7123(b)(2) of the Internal Revenue Code, which provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on any issue unresolved at the conclusion of: (A) Appeals procedures, or (B) unsuccessful attempts to enter into a closing agreement under section 7121 or a compromise under section 7122. The Administrative Dispute Resolution (ADR) Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870, also encourages federal agencies to use all alternative dispute resolution techniques in the federal administrative process (including binding arbitration where warranted) to resolve disputes. *See* 5 U.S.C. § 575, Authorization of arbitration.

Arbitration is an optional process for resolving factual issues that are currently in the Appeals process. A factual issue is eligible for this process if it is susceptible to being resolved solely upon a finding of fact, and where any interpretation of law, regulation, ruling or other legal authority is agreed to by the parties. The taxpayer and Appeals must agree to be bound by, and not appeal, the findings of the arbitrator. The arbitrator and either party must communicate through an administrator unless both parties are present. This includes communications regarding requests for and transfers of documentation and information. The administrator will be from Appeals, Office of Alternative Dispute Resolution and Customer Service (ADR&CS), or the organization providing the arbitrator. The arbitrator and the administrator will discuss with the parties the rules and procedures concerning the arbitration process and will inform the parties that there can be no ex parte communication between either party and the arbitrator.

Scope of Arbitration:

The arbitration procedure will attempt to resolve issues while a case is in Appeals. This procedure may be used only after Appeals settlement discussions are unsuccessful, and when all other issues are resolved but for the specific factual issue(s) for which arbitration is being requested.

Arbitration is available:

- Only for factual issues (such as valuation and reasonable compensation); and
- Whether the case involves a sole factual issue or multiple issues, where the factual issue to be arbitrated can be severed.

In addition, arbitration will **not** be available for:

- Cases where arbitration is not appropriate under either 5 U.S.C. §572, General authority, or 5 U.S.C. §575, Authorization of arbitration;
- Issues involving the substantiation of expenses under I.R.C. §162, Trade or Business Expenses, or §274, Disallowance of Certain Entertainment, Etc., Expenses;
- An issue designated for litigation or docketed in any court [for the Chief Counsel arbitration program involving issues in docketed cases, see Chief Counsel Directives Manual (CCDM) (35)3(17)1];
- An Industry Specialization Program (ISP) issue or an Appeals Coordinated Issue (ACI) [ISP issues are listed in Exhibit 8.7.1–1 and ACI issues are listed in section 8.7.1–3 of the Internal Revenue Manual]; or
- An issue for which the taxpayer has filed a request for competent authority assistance, or an issue for which the taxpayer intends to seek competent authority assistance. Arbitration is also not available for an issue for which the taxpayer has requested the simultaneous Appeals/Competent Authority procedure described in section 8 of Revenue Procedure 96–13, 1996–1 C.B. 616 or subsequent revenue procedure. If a taxpayer enters into a settlement with Appeals (including an Appeals settlement through the arbitration process), and then requests competent authority assistance, the U.S. competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise amend the settlement. See section 7.05 of Revenue Procedure 96–13.

Arbitration Process:

1. *Arbitration is optional.* A taxpayer or Appeals may request arbitration after both parties agree to arbitrate. A taxpayer should send their written request to the Team Chief/Appeals Officer who has responsibility for the case. A written recommendation for action on the request will be prepared by this Team Chief/Appeals Officer. The request and recommendation will be forwarded to the immediate supervisor for approval/disapproval. That decision will be reviewed by the supervisor's manager and forwarded to the ARDA–LC for final determination. The National Director of Appeals, Office of ADR&CS will be consulted before making a final determination.

Generally, the ARDA-LC will make a final determination within 30 calendar days of the date the Team Chief/Appeals Officer received the taxpayer's request. Upon making the final determination, the ARDA-LC will promptly inform ADR&CS and the Appeals Team Chief or Appeals Associate Chief and Appeals Officer. The Team Chief or Appeals Officer will then promptly inform the taxpayer of the final determination.

Request approved - ADR&CS will schedule an administrative conference to discuss the arbitration process with the taxpayer.

Request denied - Although no formal appeal procedure exists for the denial of an arbitration request, a taxpayer may request a conference with the ARDA-LC to discuss the denial.

2. *Agreement to arbitrate.* The taxpayer and Appeals will enter into a written arbitration agreement. *See* Exhibit 1, below, for a model arbitration agreement. This agreement will be negotiated at an administrative conference provided by ADR&CS. The agreement should be as concise as possible. The agreement should focus the arbitrator on the prescribed tasks of finding facts, preventing ex parte contact between the arbitrator and the parties, and limiting or describing the kind of information the arbitrator is permitted to consider. The agreement may indicate the tax treatment of the arbitrator's findings or clarify any issues which may arise in calculating any deficiency or overpayment resulting from the arbitrator's fact finding.

The following sections describe some terms and considerations that the taxpayer and Appeals should take into account in preparing this agreement.

3. *Participants.* The parties to the arbitration process will be the taxpayer and their authorized representative and Appeals. During the test of this program, Appeals reserves the right to have an observer attend any arbitration. The purpose for this is to familiarize Appeals personnel with the arbitration process. If a taxpayer does not accept observers in this test, the taxpayer will be excluded from the test. Appeals also reserves the right to have District Counsel assist in the arbitration. Taxpayers or their representative may also have an observer attend any arbitration session.

The arbitration agreement will set forth the initial list of participants and observers for each party and may limit the number, identity, or participation of such participants. The parties are encouraged to include persons with information and expertise that will be useful to the arbitrator. The parties must notify the administrator, in a signed writing not later than two weeks before the arbitration session, of any change to the initial list of participants and observers contained in the Agreement to Arbitrate. The parties and arbitrator, by signed agreement, may modify the list of participants and observers at any time up to and including the date of the arbitration session. The administrator will promptly and simultaneously forward each party's final and complete list to the other party and the arbitrator. *See* Exhibit 2, below, for a Model Participants List.

4. *Selection of arbitrators, in general.* The taxpayer and Appeals will select an arbitrator at an administrative conference provided by ADR&CS. The test of the arbitration procedure described herein seeks to use both non-IRS and Appeals personnel as arbitrators. See sections 5, 6, and 7, below. The parties may, by mutual agreement, use any local or national organization that provides a roster of neutrals in selecting an arbitrator. In the event such local or national organization provides an arbitrator, this organization may also provide the administrator for the arbitration, or the administrator may be provided by ADR&CS.

In obtaining the services of an arbitrator, the IRS will follow all applicable provisions of the Federal Acquisition Regulation. An arbitrator shall have no official, financial, or personal conflict of interest

with respect to the parties, unless such interest is fully disclosed in writing to the taxpayer and the ARDA-LC and they agree that the arbitrator may serve. *See* 5 U.S.C. § 573.

5. *Appeals personnel as arbitrators, conflict statement, and expenses.* The taxpayer and the ARDA-LC (in consultation with the Appeals Team Chief or Appeals Associate Chief and Appeals Officer) may select an Appeals representative to be the arbitrator at an administrative conference provided by ADR&CS. The Appeals arbitrator shall be from another Appeals region, or from National Office Appeals. The ARDA-LC from the region in which the case is located will coordinate with the ARDA-LC from the region in which the proposed arbitrator is located. For cases assigned to an Appeals Officer, the Appeals arbitrator may be from another Appeals office. National Office Appeals will pay all expenses associated with an Appeals arbitrator.

Due to the inherent conflict that results because the Appeals arbitrator is an employee of the IRS, Appeals will provide to the taxpayer a statement confirming the employee's proposed service as an arbitrator, that the person is a current employee of the IRS, and that a conflict results from that arbitrator's continued status as an IRS employee. The written agreement to arbitrate shall include this statement.

6. *Non-Internal Revenue Service arbitrator, expenses.* The taxpayer and the ARDA-LC may agree on an arbitrator from outside the IRS. If a non-IRS arbitrator is selected, the taxpayer and National Office Appeals will equally share compensation, expenses, and related fees and costs of the arbitrator, as well as any reasonable costs for the services of an outside administrator subject to applicable rules and regulations for Government procurement. The arbitrator will be a contractor subject to the disclosure restrictions of I.R.C § 6103(n).

7. *Criteria for selection of arbitrators.* Criteria for selecting an arbitrator will include some or all of the following: completion of arbitration training, previous arbitration experience, a substantive knowledge of tax law and knowledge of industry practices. Criteria may also include the projected travel costs, hourly fees and other expenses, which will be considered subject to rules and regulations for Government procurement. The arbitrator's qualifications and potential conflicts of interest should be thoroughly reviewed prior to selection. The arbitrator should agree to look solely to each party for one-half of his or her compensation, expenses and related reasonable fees and costs, subject to the applicable rules and regulations for Government procurement.

8. *Issues covered.* The agreement to arbitrate will specify the factual issue(s) that the parties have agreed to arbitrate. Each party will prepare a summary of their position for consideration by the arbitrator. The parties should submit their summaries to the administrator no later than two weeks before the scheduled arbitration session.

The parties will set forth their agreement as to any legal guidance the arbitrator must consider, and may also set forth the tax or other treatment of the arbitrator's findings or clarify any other issues resulting from the arbitrator's fact finding. If appropriate, the parties may require the arbitrator to find a specific value within a range agreed to by the parties. The arbitrator will look solely to the legal guidance provided by the parties. If the arbitrator desires further legal guidance, both parties must agree in writing to the guidance.

9. *Site, date, agenda.* The agreement to arbitrate should specify that the arbitrator may request hearings as necessary. The agreement must prohibit ex parte contacts between the arbitrator and either party. In addition, the agreement must specify that no party, witness, agent or other person shall have contact with the arbitrator without the express approval of the taxpayer and Appeals. The agreement must provide that the time and place of any hearing will be determined at an administrative conference between the parties and an administrator who will be from either ADR&CS or the organization providing the arbitrator.

10. *Confidentiality.* The arbitration process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may not be disclosed by any party or arbitrator except as provided under 5 U.S.C § 574. A dispute resolution communication includes all oral or written communications prepared for the purposes of a dispute resolution proceeding [*see* 5 U.S.C. § 571(5)].

In executing the arbitration agreement, the taxpayer consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any participant or observer for the taxpayer identified in the initial list of participants and observers and to any participants and observers for the taxpayer identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. (See section 3 above.) If the arbitration agreement is executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

IRS and Treasury employees, including the administrator, who participate or observe in any way in the arbitration process and any person under contract to the IRS as described in I.R.C. § 6103(n), including the administrator, that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431.

11. *Section 7214(a)(8) disclosure.* Under I.R.C. § 7214(a)(8), IRS employees who have knowledge or information of the violation of any revenue law of the United States must report in writing such knowledge or information to the Secretary. The agreement to arbitrate will state this duty and the parties will acknowledge it.

12. *Disqualification.* The arbitrator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the arbitration. Moreover, the arbitrator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration.

The arbitrator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the arbitration, provided that: (i) the arbitrator disclosed the potential of such representation prior to the parties' acceptance of the arbitrator; (ii) such action relates to a taxable year that is different from the taxable year under arbitration; (iii) the firm's internal controls preclude the arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the arbitrator any part of the fee therefrom. In the event the arbitrator has been selected prior to learning the identity of any party involved in the arbitration, requirement (i) will be deemed satisfied if the arbitrator promptly notifies the parties of the potential representation.

Although the arbitrator may not receive a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The arbitrator and the firm are not disqualified from representing the taxpayer or any other parties involved in the arbitration in any matters unrelated to the transactions or issues that are the particular subject matter of the arbitration.

These procedures only apply to representations on matters before the IRS. The provisions of this section 12 are in addition to any other applicable disqualification provisions including, for example, the rules of the American Bar Association Model Code of Professional Conduct and the applicable canons of ethics.

13. *Withdrawal.* With the consent of the parties, the arbitrator may suspend the arbitration process to allow the parties to reach a final Appeals settlement at any time prior to the scheduled arbitration session.

14. *Arbitrator's report.* At the conclusion of the arbitration process, the arbitrator will prepare a brief written report and submit a copy to the administrator. See Exhibit 3 below, for a model arbitrator's report. The report will not provide any findings or reasoning that represents an interpretation of the law. The arbitrator is limited to the task of finding facts. Neither party may appeal the finding(s) of the arbitrator nor contest the finding(s) in any judicial proceeding, including but not limited to the Tax Court, United States Court of Federal Claims or a federal district or appellate court.

15. *Appeals procedures apply.* If the arbitrator renders a decision on all or some issues through the arbitration process, Appeals will use established procedures to close the case, including preparation of a specific matters closing agreement (Form 906). See Statement of Procedural Rules, 26 C.F.R. § 601.106. Delegation Order 236 (Rev. 3) may apply to settlements resulting from the arbitration process. Each party enters this agreement in reliance on the other party's agreement to be bound by the decision of the arbitrator.

16. *Precedential Use.* The findings by the arbitrator will neither be binding on nor otherwise control the parties for taxable years not covered by the arbitration. Except as provided in the agreement to arbitrate, the arbitration findings may not be used as precedent by any party.

17. *Effective Date.* These procedures are effective for requests for arbitration made during the two-year test period beginning on January 18, 2000, the date this Announcement is published in the Internal Revenue Bulletin.

For further information contact: Thomas Carter Louthan, Director, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1842 (not a toll-free number), or Gary Slayen, Office of Alternative Dispute Resolution and Customer Service, National Office Appeals, (202) 694-1837 (not a toll-free number).

Exhibit 1:

Model Agreement to Arbitrate

1. *The Arbitration Process*. Arbitration is optional and will be used to assist [NAME OF TAXPAYER] and the Internal Revenue Service (IRS) - Appeals (the PARTIES) in resolving certain factual issues that are currently in the Appeals administrative process. A factual issue is eligible for this process if it is susceptible to being resolved solely upon a finding of fact, and where any interpretation of law, regulation, ruling or other legal authority is agreed to by the PARTIES. The PARTIES to this agreement (see section 2 below) will submit the issue(s) for arbitration (see section 4 below) and agree to be bound by the Arbitrator's findings on these issues. There can be no ex parte communication between either PARTY, any third party, witness, agent, or other person regarding the issue(s) for arbitration, with the arbitrator. All communication between the arbitrator and either PARTY, including requesting and transferring documentation and information, will be made through an administrator who will be either the Appeals Office of Alternative Dispute Resolution and Customer Service (ADR&CS) or the organization providing the arbitrator. The administrator will inform and discuss with the PARTIES the rules and procedures pertaining to the arbitration process.

2. *Participants.* The participants in the arbitration session will be:

   Taxpayer:_____

   For Taxpayer:_____

   _____

   _____

   _____

   For IRS:_____

   _____ Assistant Regional Director of Appeals - Large Case (ARDA-LC)

   _____ Appeals Associate Chief

   _____ Appeals Team Chief

   _____ Appeals Officer

   _____ Other

   Appeals reserves the right to have an observer attend any arbitration. The purpose for this is to familiarize Appeals personnel with the arbitration process. Taxpayers or their representatives may also have an observer attend the arbitration.

   All participants and observers who will attend the arbitration on behalf of or at the request of a PARTY, including witnesses and attorneys, must be set forth in the list of participants and observers of section 2 of the Agreement to Arbitrate. If a PARTY subsequently modifies their list, then, no later than two weeks before the arbitration session, such PARTY will submit to the administrator a complete and final list of participants and observers who will attend the arbitration session. The list must identify, for each participant or observer, their position with the PARTY or other affiliation (*e.g.*, a member of the XYZ law firm, counsel to the taxpayer), and their address, telephone and fax numbers. See Exhibit 2. The administrator will submit each PARTY's list to the other PARTY and to the arbitrator. The PARTIES and the arbitrator by mutual agreement may modify the list of participants and observers in writing at any time up to and including the date of the arbitration session.

3. *Selection of Arbitrator, Costs*. **[NAME OF TAXPAYER]** and **[NAME]**, **Assistant Regional Director of Appeals-Large Case (ARDA-LC)** or successor, by mutual agreement, will select an arbitrator, and can use any local or national organization that provides a roster of neutrals in selecting an arbitrator. The arbitrator may be a non-IRS individual or an Appeals arbitrator. An arbitrator shall have no official, financial, or personal conflict of interest with respect to the PARTIES, unless such interest is fully disclosed in writing to the PARTIES, and the PARTIES agree that the arbitrator may serve. *See* 5 U.S.C. § 573.

   The costs of a non-IRS arbitrator will be shared equally by the taxpayer and National Office Appeals, subject to applicable rules and regulations for Government procurement. If an Appeals arbitrator is selected, National Office Appeals will pay all expenses associated with the arbitrator.

   A conflict results when an Appeals employee acts as an arbitrator. In such a case, Appeals will provide to the taxpayer a statement confirming the employee's proposed service as an arbitrator, that the person is a current employee of the IRS and that a conflict results from that arbitrator's continued status as an IRS employee. This statement shall be acknowledged by the taxpayer.

4. *Issues to be Arbitrated*. The PARTIES agree that the following issue(s) submitted for determination by the arbitrator are factual in nature and do not require the arbitrator to interpret any law, regulation, ruling or other legal authority:
   #1)
   #2)
   #3)

5. *Guidance for Arbitrator.* The arbitrator is not permitted to contact either PARTY, nor any participant, nor any other individual or other entity, in connection with this arbitration unless in the presence of both PARTIES.

   Although the arbitrator is not permitted to make any findings of law or provide reasoning that represents an interpretation of the law, it may be necessary for the arbitrator to refer to the law in determining a factual issue. The arbitrator shall look solely to the legal guidance provided by the PARTIES. Any legal guidance for the arbitrator is agreed to by the PARTIES as follows:

   _____

   _____

   _____

   _____

   When legal guidance provided by the PARTIES is in conflict, the arbitrator, where practicable, will ignore the guidance and decide the factual issue. If it is not practicable to set aside the PARTIES' guidance, then during the arbitration session or a hearing, the PARTIES will attempt to agree on the guidance needed to resolve the issue. If no agreement can be reached and the guidance is necessary to decide the matter, then the matter cannot be arbitrated. If any legal guidance for the arbitrator was overlooked, the PARTIES may agree upon further legal guidance and the manner in which it is to be communicated to the arbitrator.

   The PARTIES may also require the arbitrator to make certain findings, such as a specific value within a range agreed to by the PARTIES. The PARTIES should provide any further guidance for the arbitrator, and may also set forth the tax or other treatment of the arbitrator's findings or clarify any other issues resulting from the arbitrator's fact-finding.

6. *Submission of Materials.* Each PARTY agrees to provide a summary of their position including any evidence relevant and necessary for the arbitrator to understand and determine the issue(s). The PARTIES will submit their summary and any evidence to the administrator by two weeks before the arbitration session. The arbitrator may order a PARTY to produce a summary of their documents and other evidence which the PARTY intends to present in support of its position and may order a PARTY to produce other documents, exhibits or evidence deemed necessary or appropriate. Any and all information and materials that a PARTY provides must be provided to the administrator who will simultaneously forward such to the Arbitrator and the other PARTY.
   a. The PARTIES agree that the arbitrator shall have the right to interview the following persons:

      _____

      _____

      _____

      _____,

      and no other persons, except upon joint agreement of both PARTIES. The PARTIES shall specify the form and content of the questions to be asked by the arbitrator. The PARTIES shall specify the dates of the interview(s). Any such interviews shall be held in the presence of both PARTIES, or their counsel, unless either PARTY waives in writing their right to be present.
   b. The PARTIES agree that the arbitrator shall have the right to inspect the following documents or other information:

      _____

      _____

      _____

      _____,

      and no other evidentiary material, except upon agreement of both PARTIES. Such inspection shall occur only after reasonable opportunity is given to both PARTIES to be present. If relevant, describe any agreed access by the arbitrator to such documentation, including the location at which such access is to be made available.

c. The PARTIES agree that the methodology to be used by the arbitrator in deciding any issue described in section 4 must follow these principles:

_____
_____
_____
_____,

d. The PARTIES agree to clarify issues that may arise in calculating any deficiency or overpayment resulting from the arbitrator's findings and agree to the tax treatment of the arbitrator's findings as follows:

_____
_____
_____
_____,

e. The PARTIES agree that the time and location of any hearing, or postponement for good cause, shall be determined by agreement between the PARTIES. If the PARTIES cannot agree, then the determination shall be made by the administrator.

7. *Contact with Arbitrator*. The PARTIES agree that there shall be no ex parte communication between the arbitrator and either PARTY or witness or agent for a PARTY. In addition, the arbitrator may not have contact with any other individuals concerning the arbitration matter without the express approval of the PARTIES. Any contact with the arbitrator by either PARTY must be in the presence of the other PARTY and such contact must be arranged by the administrator.

8. *Proposed Schedule*. Subject to the approval of the arbitrator, the arbitration session will be conducted according to the following schedule:

Submission of Materials to arbitrator:	A DATE WHICH IS NOT LATER THAN TWO WEEKS BEFORE THE DATE OF ARBITRATION SESSION
Arbitration:	MONTH DATE , YEAR

9. *Place of Arbitration.* The PARTIES should attempt to select a site at or near the arbitrator's office, **[NAME OF TAXPAYER's]** office, or an Appeals office.

10. *Confidentiality* IRS and Treasury employees who participate in any way in the arbitration process and any person under contract to the IRS pursuant to I.R.C. § 6103(n), including the arbitrator, that the IRS invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. §§ 6103, 7213, and 7431. *See* also 5 U.S.C. § 574.

[NAME OF TAXPAYER] consents to the disclosure by the IRS of the taxpayer's returns and return information incident to the arbitration to any participant or observer for the taxpayer identified in the initial list of participants and observers in section 2 above and to any participant or observer for **[NAME OF TAXPAYER]** identified in writing by the taxpayer subsequent to execution of the agreement to arbitrate. If the arbitration agreement is executed by a person pursuant to a power of attorney executed by **[NAME OF TAXPAYER]**, that power of attorney must clearly express the grant of authority by **[NAME OF TAXPAYER]** to consent to disclose the returns and return information of **[NAME OF TAXPAYER**] by the IRS to third parties, and a copy of that power of attorney must be attached to this agreement.

11. *I.R.C. Section 7214 (a)(8) Disclosure*. The PARTIES acknowledge that IRS and all other Treasury employees involved in this arbitration, such as an Appeals arbitrator, are bound by I.R.C. § 7214 (a)(8) and must report information concerning violations of any revenue law to the Secretary.

12. *Record.* A PARTY desiring a stenographic record shall make arrangements and shall bear costs. The PARTIES agree that any stenographic record or other recording of the arbitration proceeding shall remain confidential as described in section 10 of this agreement.

13. *Withdrawal and Postponement*. By mutual agreement of the PARTIES, the arbitrator, through the administrator, may allow the PARTIES to withdraw from the arbitration process in order to reach a final Appeals settlement any time before the scheduled arbitration session. Established Appeals procedures apply to any resolution reached by the PARTIES. The arbitrator may grant postponements for good cause after a hearing before both PARTIES.

14. *Report by Arbitrator*. The arbitrator's report will identify each issue described in section 4, and will explain the findings for each issue and any methodology referred to in section 6.c. that was utilized in reaching such findings.

15. *Arbitrator's Decision is Final*. The PARTIES agree to be bound by the arbitrator's findings and to incorporate these findings into an Appeals closing agreement that the PARTIES will execute. Delegation Order 236 (Rev. 3) may be applied to settlements resulting from the arbitration process. Neither

    PARTY may appeal the findings of the arbitrator nor contest the finding(s) in any judicial proceeding, including but not limited to the United States Tax Court, United States Court of Federal Claims, or a federal district or federal appellate court. Each PARTY enters this agreement in reliance on the other PARTY'S agreement to be bound by the decision of the arbitrator.

16. *Precedential Use.* The findings by the arbitrator will not be binding on, or otherwise control, the PARTIES for taxable years not covered by the arbitration. Except as provided in the agreement to arbitrate, the arbitration findings may not be used as precedent by any PARTY.

INTERNAL REVENUE SERVICE, APPEALS	NAME OF TAXPAYER
By: _____	By: _____
Assistant Regional Director of Appeals-Large Case	NAME Title
Date :_____	Date: _____

Exhibit 2

Model Arbitration List of Participants and Observers

Case Name: _____

Submitted By: _____

Date: _____

Please list below all participants and observers attending the arbitration including witnesses, agents or other individuals, and attorneys, and indicate any observers with an asterisk next to their names. This form must be sent to the administrator no later than two weeks before the arbitration session. The administrator will promptly forward each party's list to the other party and to the arbitrator.

NAME & TELEPHONE	POSITION OR AFFILIATION	ADDRESS	FAX No.

Exhibit 3:

Model Arbitrator's Report

The PARTIES below agreed to arbitrate their dispute on **MONTH, DATE, YEAR**.

The arbitrator made the following findings:

ISSUE:

FINDING:

ISSUE:

FINDING:

ISSUE:

FINDING:

Settlement documents will be prepared under established Appeals procedures.

DATED this ____ day of _____, 200X

_____
/s/ Arbitrator

_____
/s/ PARTY

_____
/s/ PARTY

Notice of Proposed Rulemaking by Cross Reference to Temporary Regulation

Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities

REG–116704–99

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document provides a proposed regulation relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities. The proposed regulation would permit the IRS to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture. The text of the temporary regulation T.D. 8854, published on page 306, also serves as the text of this proposed regulation.

DATES: Written and electronic comments and requests for a public hearing must be received by April 3, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116704–99), room 5226 Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to : CC:DOM:CORP:R (REG–116704–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW; Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site: http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer S. McGinty, (202) 622-4570; concerning submissions of comments, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8854 amend the Procedure and Administration Regulations (26 CFR part 301) relating to section 6103(j)(5). The temporary regulations contain rules relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities.

The text of these temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Explanation of Provisions

This proposed regulation will allow the IRS to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture.

The disclosure of the specific items of return information identified in this regulation is necessary in order for the Department of Agriculture to accurately identify, locate, and classify, as well as properly process, information from agricultural businesses to be surveyed for the statutorily mandated Census of Agriculture.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It 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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this proposed regulation will be submitted to the Chief Counsel for Advocacy for the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the Service. Additionally, the Service and Treasury Department specifically request comments on the clarity of the proposed regulation and how it can 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 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 this regulation is Jennifer S. McGinty, Office of the Assistant Chief Counsel (Disclosure Litigation), IRS. However, other personnel from the IRS and Treasury Department participated in its 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6103(j)(5)–1 also issued under 26 U.S.C. 6103(j)(5). * * *

Par. 2. Section 301.6103(j)(5)–1 is added to read as follows:

§ 301.6103(j)(5)–1. Disclosures of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities.

[The text of this proposed regulation is the same as the text of §301.6103(j)(5)–1T published elsewhere in T.D. 8854]

* * *

Charles O. Rossotti,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 3, 2000, 8:45 a.m., and published in the issue of the Federal Register for January 4, 2000, 65 F.R. 263)

Notice of Proposed Rulemaking

Relief for Service in Combat Zone and for Presidentially Declared Disaster

REG–101492–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect taxpayers serving in a combat zone and taxpayers affected by a Presidentially declared disaster.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 30, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–101492– 98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101492–98), 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.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622-4940; concerning the hearing and submissions of written comments, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997.

In general, section 7508 provides that the time individuals serve in a Acombat zone@ plus 180 days will be disregarded in determining whether acts listed in section 7508(a)(1), such as filing returns, paying taxes, filing certain petitions with the Tax Court, filing a claim for credit or refund, bringing suit, and assessing tax, are performed within the time prescribed. Under section 7508(a)(1)(K), the Secretary has the authority to provide by regulation other acts to which section 7508 will apply.

Section 7508A provides that, in the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster, the Secretary may postpone certain tax-related deadlines for up to 90 days. The deadlines that may be postponed are determined by cross-reference to section 7508(a)(1). Pursuant to section 7508A(b), the provision does not apply for purposes of determining interest on any overpayment or underpayment (if the underpayment arose prior to the disaster). See also H.R. Rep. No. 148, 105th Cong., 1st Sess. 397 (1997).

Explanation of Provisions

Under section 7508, the proposed regulations provide that, in addition to the acts described in section 7508(a)(1), the IRS may postpone other acts specified in revenue rulings, revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

Under section 7508A, the proposed regulations provide that, for any tax, penalty, additional amount, or addition to the tax of an affected taxpayer in a Presidentially declared disaster area, the IRS may disregard up to 90 days in determining whether certain tax-related deadlines described in section 7508(a)(1) were satisfied and the amount of any credit or refund. The proposed regulations apply to taxpayer deadlines, such as the time for filing returns and paying taxes relating to most income taxes (including domestic service employment taxes), estate taxes, and gift taxes; filing certain court documents, including petitions filed in United States Tax Court for redetermination of a deficiency; and filing claims for refund. In addition, under the authority in section 7508(a)(1)(K), the proposed regulations provide that for purposes of section 7508A, the IRS may disregard up to 90 days in determining whether the deadlines for filing returns and paying taxes relating to certain excise taxes and employment taxes have been met. Although the proposed regulations do not apply to deadlines for depositing federal taxes pursuant to section 6302 and the underlying regulations, it is anticipated that the failure to deposit penalty under section 6656 will be waived in appropriate circumstances, and thus section 7508A relief will not be necessary.

The proposed regulations also provide for the postponement of certain government deadlines, such as the time for making assessments, taking collection action, and bringing suit. However, the IRS and Treasury Department anticipate that the authority to postpone government deadlines will only be used in limited circumstances when it is determined that such a postponement is necessary and appropriate.

The proposed regulations provide that an affected taxpayer is 1) any individual whose principal residence is located in a covered disaster area; 2) any business whose principal place of business is located in a covered disaster area; 3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area; 4) any individual whose principal residence or any business whose principal place of business is located outside the disaster area, but whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner=s office, in a covered disaster area; 5) any estate or trust whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner=s office, in a covered disaster area; 6) any individual who files a joint return with an affected taxpayer; or 7) any other person who is determined by the IRS to be affected by a Presidentially declared disaster. A covered disaster area means the location of a Presidentially declared disaster to which the IRS determines section 7508A applies.

It is anticipated that the IRS=s authority to grant extensions of time to file tax returns under section 6081 and to pay tax with respect to such returns under section 6161 will provide taxpayers with the necessary relief in the case of many Presidentially declared disasters. However, if the IRS determines that section 7508A applies, it will publish guidance to inform taxpayers of the counties included in the covered disaster area, the taxpayer and government deadlines to which section 7508A applies, and the period to be disregarded (up to 90 days). Guidance will be published as soon as practicable after the declaration of a Presidentially declared disaster.

Section 6404(h) provides that in the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such returns under section 6161, interest will be abated during the extension period. The proposed regulations clarify that if, in addition to an extension under sections 6081 and 6161, there is a postponement of tax-related deadlines under section 7508A, interest will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extensions of time to file and pay. The abatement of interest only applies in the case of underpayments of income tax that arise during the extension period.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the 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 or written comments (a signed original and 8 copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Beverly A. Baughman, Office of

Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.7508–1 also issued under 26 U.S.C. 7508(a)(1)(K).

Section 301.7508A–1 also issued under 26 U.S.C. 7508(a)(1)(K) and 7508A(a). * * *

Par. 2. Section 301.7508–1 is added to read as follows:

§301.7508–1 Time for performing certain acts postponed by reason of service in a combat zone.

(a) *General rule*. The period of time that may be disregarded for performing certain acts pursuant to section 7508 applies to acts described in section 7508(a)(1) and to other acts specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see ‘601.601(d)(2) of this chapter).

(b) *Effective date*. This section applies to any period for performing an act that has not expired before December 30, 1999.

Par. 3. Section 301.7508A–1 is added to read as follows:

‘301.7508A–1 Postponement of certain tax-related deadlines by reason of Presidentially declared disaster.

(a) *Scope.* This section prescribes rules by which the Internal Revenue Service (IRS) may postpone deadlines for performing certain acts with respect to taxes other than taxes not administered by the IRS such as taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E).

(b) *Postponed deadlines.* For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (defined in paragraph (d)(1) of this section), the IRS may disregard a period of up to 90 days in determining, under the internal revenue laws—

(1) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed; and

(2) The amount of any credit or refund.

(c) *Acts for which a period may be disregarded*—(1) *Acts performed by taxpayers*. Paragraph (b) of this section applies to the following acts performed by taxpayers—

(i) Filing any return of income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(ii) Payment of any income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof (including payment under section 6159 relating to installment agreements) or of any other liability to the United States in respect thereof, but not including deposits of taxes pursuant to section 6302 and the regulations thereunder;

(iii) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(iv) Allowance of a credit or refund of any tax;

(v) Filing a claim for credit or refund of any tax;

(vi) Bringing suit upon a claim for credit or refund of any tax; and

(vii) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see ‘601.601(d)(2) of this chapter).

(2) *Acts performed by the government.* Paragraph (b) of this section applies to the following acts performed by the government—

(i) Assessment of any tax;

(ii) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(iii) Collection by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(iv) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(v) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see ‘601.601(d)(2) of this chapter).

(d) *Definitions*—(1) *Affected taxpayer* means—

(i) Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a covered disaster area;

(ii) Any business whose principal place of business is located in a covered disaster area;

(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;

(iv) Any individual whose principal residence (for purposes of section 1033(h)(4)) or any business whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner=s office, in a covered disaster area;

(v) Any estate or trust whose tax records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner=s office, in a covered disaster area;

(vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or

(vii) Any other person determined by the IRS to be affected by a Presidentially declared disaster (within the meaning of section 1033(h)(3)).

(2) *Covered disaster area* means an area of a Presidentially declared disaster (within the meaning of section 1033(h)(3)) to which the IRS has determined paragraph (b) of this section applies.

(e) *Notice of postponement of certain acts*. If any tax- related deadline is postponed pursuant to section 7508A and this

section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance (see '601.601(d)(2) of this chapter) describing the acts postponed, the number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance under this paragraph (e) will be published as soon as practicable after the declaration of a Presidentially declared disaster.

(f) *Abatement of interest under section 6404(h).* In the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such return under section 6161, and, in addition, a postponement of tax-related deadlines under section 7508A, interest on an underpayment of income tax that arises during such period will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extension of time to file and the extension of time to pay.

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

Example 1. (i) Corporation M, a calendar year taxpayer, has its principal place of business in County A in State X. Pursuant to a timely filed request for extension of time to file, Corporation M's 1999 Form 1120, "U.S. Corporation Income Tax Return," is due on September 15, 2000. Also due on September 15, 2000, is Corporation M's third quarter estimated tax payment for 2000. Corporation M's 2000 third quarter Form 720, "Quarterly Federal Excise Tax Return," and third quarter Form 941, "Employer's Quarterly Federal Tax Return," are due on October 31, 2000. In addition, Corporation M has an employment tax deposit due on September 15, 2000.

(ii) On September 1, 2000, a hurricane strikes County A. On September 6, 2000, the President declares that County A is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County A in State X is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on September 1, 2000, and ending on November 6, 2000, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because Corporation M=s principal place of business is in County A, Corporation M is an affected taxpayer. Accordingly, Corporation M=s 1999 Form 1120 will be filed timely if filed on or before December 14, 2000. Corporation M=s 2000 third quarter estimated tax payment will be made timely if paid on or before December 14, 2000. In addition, because excise and employment tax returns are described in paragraph (c) of this section, Corporation M's 2000 third quarter Form 720 and third quarter Form 941 will be filed timely if filed on or before January 29, 2001. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation M's employment tax deposit is due on September 15, 2000.

Example 2. The facts are the same as in *Example 1*, except that during 2000, Corporation M=s 1996 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation M timely filed its 1996 Form 1120 on September 15, 1997. Without application of this section, the statute of limitations on assessment for 1996 income tax will expire on September 15, 2000. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to 90 days may be disregarded. The IRS determines that an extension of the statute of limitations is necessary and appropriate under these circumstances. Because the September 15, 2000, expiration date of the statute of limitations on assessment falls within the period of the disaster as described in the IRS=s published guidance, the 90 day period disregarded under paragraph (b) of this section begins on September 16, 2000, and ends on December 14, 2000. Accordingly, the statute of limitations on assessment for Corporation M=s 1996 income tax will expire on December 14, 2000.

Example 3. The facts are the same as in *Example 2*, except that the examination of the 1996 taxable year was completed earlier in 2000, and on July 28, 2000, the IRS mailed a statutory notice of deficiency to Corporation M. Without application of this section, Corporation M has 90 days (or until October 26, 2000) to file a petition with the Tax Court. However, pursuant to paragraph (c) of this section, filing a petition with the Tax Court is one of the taxpayer acts for which up to 90 days may be disregarded. Because Corporation M is an affected taxpayer, Corporation M's petition to the Tax Court will be filed timely if filed on or before January 24, 2001.

Example 4. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2001 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2002. H and W fully and timely paid all taxes for the 2001 taxable year, including domestic service employment taxes, through withholding and estimated tax payments. H and W=s principal residence is in County B in State Y.

(ii) On April 2, 2002, a severe ice storm strikes County B. On April 5, 2002, the President declares that County B is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County B in State Y is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 2, 2002, and ending on April 19, 2002, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because H and W=s principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H and W=s 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS=s published guidance, the 90 day period disregarded under paragraph (b) of this section begins on April 16, 2002, and ends on July 14, 2002, a Sunday. Pursuant to section 7503, if the last day for performing an act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Accordingly, H and W=s 2001 Form 1040 will be filed timely if filed on or before July 15, 2002. In addition, the Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. The facts are the same as in *Example 4*, except H and W want to file an amended return to request a refund of 1998 taxes. H and W timely filed their 1998 income tax return on April 15, 1999. Without application of this section, H and W's amended 1998 tax return must be filed on or before April 15, 2002. However, pursuant to paragraph (c) of this section, filing a claim for refund of a tax is one of the taxpayer acts for which up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b) of this section beginning on April 16, 2002, and ending on July 14, 2002. Accordingly, H and W's claim for refund for 1998 taxes will be filed timely if filed, as in *Example 4*, on or before July 15, 2002.

Example 6. (i) L is an unmarried, calendar year taxpayer whose principal residence is located in County R in State T. L does not timely file a 2001 Form 1040, "U.S. Individual Income Tax Return," which is due on April 15, 2002, and does not timely pay tax owed on that return. Absent reasonable cause, L is subject to the failure to file and failure to pay penalties under section 6651 beginning on April 16, 2002.

(ii) On May 10, 2002, a tornado strikes County R. On May 14, 2002, the President declares that County R is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County R in State T is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to

be performed within the period beginning on May 10, 2002, and ending on June 27, 2002, 90 days will be disregarded in determining whether the acts are timely.

(iii) On May 31, 2002, L files a 2001 Form 1040, "U.S. Individual Income Tax Return," and pays the tax owed for 2001.

(iv) Because L's principal residence is in County R, L is an affected taxpayer. For purposes of penalties under section 6651, 90 days are disregarded under paragraph (b) of this section beginning on May 10, 2002. Because L files the return on May 31, 2002, the penalties under section 6651 will run from April 16, 2002, until May 10, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through May 31, 2002.

Example 7. The facts are the same as in *Example 6*, except L does not file the 2001 Form 1040 until November 25, 2002. Ninety days are disregarded under paragraph (b) of this section beginning on May 10, 2002, and ending on August 8, 2002. Therefore, the section 6651 penalties will run from April 16, 2002, until May 10, 2002, and from August 9, 2002, until November 25, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through November 25, 2002.

Example 8. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, AU.S. Individual Income Tax Return,@ for the 2001 taxable year. The joint return is due on April 15, 2002. After credits for withholding under section 31 and estimated tax payments, H and W owe tax for the 2001 taxable year. H and W's principal residence is in County C in State Z.

(ii) On March 1, 2002, severe flooding strikes County C. On March 5, 2002, the President declares that County C is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County C in State Z is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on March 1, 2002, and ending on April 25, 2002, 90 days will be disregarded in determining whether the acts are performed timely. The guidance also grants affected taxpayers an additional 6 month extension of time to file returns under section 6081 and an additional 6 month extension of time to pay under section 6161.

(iii) Because H and W's principal residence is in County C, H and W are affected taxpayers. Pursuant to the published guidance, H and W have until January 13, 2003, to file their return and pay the tax. This date is computed as follows: Under sections 6081 and 6161, H and W will have an additional 6 months, until October 15, 2002, to file and pay the tax. Further, under paragraph (f) of this section, 90 days are disregarded in determining the period of the extension. Therefore, H and W=s return and payment of tax will be timely if filed and paid on or before January 13, 2003. In addition, under section 6404(h), underpayment interest under section 6601 is abated for the entire period, from April 16, 2002, until January 13, 2003.

(h) *Effective date*. This section applies to disasters declared after December 30, 1999.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on December 29, 1999, 8:45 a.m., and published in the issue of the Federal Register for December 30, 1999, 64 F.R. 73444)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

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