Bulletin No. 1996–53
December 30, 1996

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. 96–62, page 6.
Training costs; business expenses. The Supreme Court's decision in *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992), does not affect the treatment of training costs as business expenses which are generally deductible under section 162 of the Code.

Rev. Rul. 96–63, page 8.
Section 1274A inflation-adjusted numbers for 1997. This ruling provides the dollar amounts, increased by the 1997 inflation-adjustment, for section 1274A of the Code. Rev. Rul. 96–4 supplemented and superseded.

Rev. Rul. 96–64, page 11.
CPI adjustment for below-market loans for 1997. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987–1997. Rev. Rul. 96–5 supplemented and superseded.

Rev. Rul. 96–65, page 5.
Damages received on account of personal injuries or sickness. Under current section 104(a)(2) of the Code, back pay and damages for emotional distress received to satisfy a claim for disparate treatment employment discrimination under Title VII of the 1964 Civil Rights Act are not excludable from gross income. Under former section 104(a)(2), back pay received to satisfy such a claim was not excludable from gross income, but damages received for emotional distress were excludable. Rev. Ruls. 72–341, 94–92, and 93–88 obsoleted. Notice 95–45 superseded. Rev. Proc. 96–3 modified.

Notice 96–67, page 12.
Notice on application of section 401(a)(9) to employees who attain age 70½ in 1996. This notice provides transitional guidance on the application of the definition of ''required beginning date'' found in section 401(a)(9)(C) of the Code, as amended by the Small Business Job Protection Act of 1996, to employees who attain age 70½ in 1996.

EMPLOYEE PLANS

Notice 96–66, page 12.
Weighted average interest rate update. Guidelines are set forth for determining for December 1996 the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

Announcement 96–133, page 60.
Beginning January 1, 1997, requests for employee plan determination letters and applications for recognition of tax exemption, formerly sent to the district offices in Chicago, Illinois and Dallas, Texas, should be sent to the Internal Revenue Service Center in Covington, Kentucky.

EMPLOYMENT TAX

Page 59.
Social security contribution and benefit base. The Commissioner of the Social Security Administration has announced the OASDI contribution and benefit base for remuneration paid in 1997 and self-employment income earned in taxable years beginning in 1997.

Page 9.
Railroad retirement; rate determination; quarterly. The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 34 cents for the quarter beginning October 1, 1996, and 35 cents for the quarter beginning January 1, 1997.

(Continued on page 4)

Finding Lists begin on page 64.
Announcement of Disbarments and Suspensions begins on page 62.

HIGHLIGHTS OF THIS ISSUE—Continued

EMPLOYMENT TAX—Continued

Rev. Proc. 96–60, page 24.
Modification of Rev. Proc. 84–77. This procedure explains the standards and alternate procedures to be used in preparing employment tax forms when a predecessor-successor employer relationship exists. Rev. Proc. 84–77 modified and superseded.

Announcement 96–134, page 60.
Three codes have been added to identify new amounts required to be reported in box 13 of the 1997 Form W–2.

EXCISE TAX

Announcement 96–135, page 60.
A petition has been filed to add diglycidyl ether of bisphenol-A to the list of taxable substances in section 4672(a)(3) of the Code.

ADMINISTRATIVE

Rev. Proc. 96–38, page 13.
This procedure provides guidance to taxpayers who wish to submit offers in compromise on photocopies or computer-generated copies that are verbatim duplicates of the official Form 656, Offer in Compromise, published by the Service.

Rev. Proc. 96–57, page 14.
Automatic extensions for Forms W–2. Automatic extensions of time to file Forms W–2 with the Social Security Administration and to furnish Forms W–2 to employees will be granted to ''Qualified Employers.''

Rev. Proc. 96–58, page 16.
Penalties; substantial understatement. Guidance is provided concerning when information shown on a return in accordance with the applicable forms and instructions will be adequate disclosure for purposes of reducing an understatement of income tax under section 6662(d) of the Code.

Rev. Proc. 96–59, page 17.
1997 cost-of-living adjustments. The Service provides 1997 cost-of-living adjustment factors and their applications to the tax rate tables for individuals and for estates and trusts, the standard deduction amounts, the personal exemption, and several other items that use the adjustment method provided for the tax rate tables.

Rev. Proc. 96–61, page 27.
1997 Electronic filing program; Form 1040. Participants in the 1997 Electronic Filing Program for the Form 1040 series are informed of their obligations to the Service, taxpayers, and other participants.

Rev. Proc. 96–62, page 38.
1997 On-line filing program; Form 1040. Participants in the 1997 On-Line Filing Program for the Form 1040 series are informed of their obligations to the Service, taxpayers, and other participants.

Rev. Proc. 96–63, page 46.
1997 Optional standard mileage rates. This procedure announces 31.5 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, and 10 cents as the optional rate for deducting or accounting for use of an automobile as a medical or moving expense for 1997. It provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 95–54 superseded.

Rev. Proc. 96–64, page 52.
Per diem allowances. This procedure provides optional rules for deeming substantiated the amount for certain reimbursed traveling expenses of an employee as well as for determining the amount of deductible meals while traveling away from home. Rev. Proc. 96–28 superseded.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

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

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

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

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

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

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

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

Section 1.—Tax Imposed

26 CFR 1.1–1: Income tax on individuals.

The Service is providing adjusted tax tables for individuals and trusts and estates for taxable years beginning in 1997 to reflect changes in the cost of living. Also provided are certain reductions allowed against the unearned income of minor children in computing the ''kiddie tax.'' The amounts used to determine whether a parent may elect to report the ''kiddie tax'' on the parent's return are also adjusted. The adjustments concerning the election to report the ''kiddie tax'' on the parent's return are for taxable years beginning in 1996 and 1997. See Rev. Proc. 96–59, page 17.

Section 32.—Earned Income

26 CFR 1.32–2: Earned income credit for taxable years beginning after December 31, 1978.

The Service is providing inflation adjustments for taxable years beginning in 1997 to the limitations on the earned income tax credit. See Rev. Proc. 96–59, page 17.

Section 59.—Other Definitions and Special Rules

The Service is providing an inflation adjustment for taxable years beginning in 1996 and 1997 to the exemption amount use in computing the alternative minimum tax for a minor child subject to the ''kiddie tax.'' See Rev. Proc. 96–59, page 17.

Section 61.—Gross Income Defined

26 CFR 1.61–1: Gross income.

Are amounts received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, excludable from gross income under § 104(a)(2)? See Rev. Rul. 96–65, this page.

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules are set forth under which a reimbursement or other expense allowance arrangement for the cost of lodging, meal, and incidental expenses or meal and incidental expenses incurred by an employee while traveling away from home will satisfy the requirements of § 62(c) of the Code as to substantiation of the amount of expenses. See Rev. Proc. 96–64, page 52.

Rules under which a reimbursement or other expense allowance arrangement for the cost of operating an automobile for business purposes will satisfy the requirements of section 62(c) of the Code as to business connection, substantiation, and returning amounts in excess of expenses. See Rev. Proc. 96–63, page 46.

Section 63.—Taxable Income Defined

26 CFR 1.63–1: Change of treatment with respect to the zero bracket amount and itemized deductions.

The Service is providing inflation adjustments for taxable years beginning in 1997 to the standard deduction amounts (including the limitation in the case of certain dependents, and the additional standard deduction for the aged or blind). See Rev. Proc. 96–59, page 17.

Section 68.—Overall Limitation on Itemized Deductions

The Service is providing inflation adjustments for taxable years beginning in 1997 to the overall limitation on itemized deductions. See Rev. Proc. 96–59, page 17.

Section 104.—Compensation for Injuries or Sickness

26 CFR 1.104–1(c): Damages received on account of personal injuries or sickness.
(Also §§ 61, 3121, 3231, 3306, 3401, 7805; 1.61–1; 31–3121(a)–1; 31.3231(e)–1; 31.3306(b)–1; 31.3401(a)–1; 301.7805–1.)

Damages received on account of personal injuries or sickness. Under current § 104(a)(2), back pay and damages for emotional distress received to satisfy a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the 1964 Civil Rights Act are not excludable from gross income. Under former § 104(a)(2), as in effect before August 21, 1996, back pay received to satisfy such a claim is not excludable from gross income. However, damages received for emotional distress under that statute are excludable. Rev. Rul. 93–88 obsoleted. Notice 95–45 superseded. Rev. Rul. 72–341 and 84–92 obsoleted. Rev. Proc. 96–3 modified.

Rev. Rul. 96–65

ISSUE

Are amounts received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991 (Title VII), excludable from gross income under § 104(a)(2) of the Internal Revenue Code?

LAW AND ANALYSIS

In general, § 61(a) provides that, except as otherwise provided by law, gross income includes all income from whatever source derived.

Section 104(a)(2), as amended by § 1605 of the Small Business Job Protection Act of 1996 (the 1996 Act) 110 Stat. 1755, 1838, provides generally that gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal *physical* injuries or *physical* sickness. Section 104(a) further provides that, for purposes of paragraph (2), emotional distress is not treated as a physical injury or physical sickness except to the extent of damages paid for medical care (described in § 213(d)-(1)(A) or (B)) attributable to emotional distress. The 1996 Act amendments to § 104(a) apply to amounts received after August 20, 1996, but not to amounts received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.

Before its amendment by the 1996 Act, former § 104(a)(2) provided generally that gross income does not include the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness.

Section 1.104–1(c) of the Income Tax Regulations provides that the term ''damages received (whether by suit or agreement)'' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution.

In *United States v. Burke*, 504 U.S. 229 (1992), the Supreme Court held that back pay received for disparate impact gender discrimination under Title VII was not excludable from gross income as damages received on account of personal injuries under former § 104(a)(2) because that part of Title VII did not compensate for a broad range of traditional tort harms.

In light of *Burke*, the Service issued Rev. Rul. 93–88, 1993–2 C.B. 61, which holds that compensatory damages and back pay are excludable from gross income as damages for personal injury under former § 104(a)(2) when received for: (1) disparate treatment gender discrimination under Title VII, as amended in 1991; (2) racial discrimination under § 16 of the Civil Rights Act of 1870, 42 U.S.C. § 1981 and Title VII; and (3) disparate treatment discrimination under the Americans With Disabilities Act, 42

U.S.C. §§ 12101–12213, as amended in 1991. All three of these statutes provide a broad range of compensatory damages of the type the Supreme Court focused upon in *Burke.*

In *Commissioner v. Schleier*, 515 U.S. _____ , 115 S. Ct. 2159 (1995), the Supreme Court held that back pay and liquidated damages received to settle a claim under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621–634 (ADEA), are not excludable from gross income under former § 104(a)(2). The Court concluded that former § 104(a)(2) and its regulations set forth two requirements for a recovery to be excludable from gross income: (1) it must be based on tort or tort type rights, and (2) it must be received ''on account of personal injuries or sickness.'' The Court held that back pay and liquidated damages received under the ADEA meet neither requirement because (1) the ADEA does not compensate for any of the other traditional tort harms associated with personal injury, (2) the back pay is completely independent of the existence or extent of any personal injury, and (3) the ADEA liquidated damages are punitive in nature.

Based on *Schleier*, Notice 95–45, 1995–2 C.B. 330, suspended Rev. Rul. 93–88, and added section 5.05 to Rev. Proc. 95–3, 1995–1 C.B. 385, to provide that pending issuance of published guidance, the Service will not issue rulings or determination letters on whether amounts received are excludable from gross income under § 104(a)(2) in situations affected by Schleier.

In light of *Schleier*, and the amendment of § 104(a)(2) by the 1996 Act, the Internal Revenue Service has reconsidered Rev. Rul. 93–88.

HOLDINGS

(1) *Current § 104(a)(2).* Back pay received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII is not excludable from gross income under § 104(a)(2) because it is completely independent of, and thus is not damages received on account of, personal physical injuries or physical sickness under that section. Similarly, amounts received for emotional distress in satisfaction of such a claim are not excludable from gross income under § 104(a)(2), except to the extent they are damages paid for medical care (as described in § 213(d)(1)(A) or (B)) attributable to emotional distress.

(2) *Former § 104(a)(2).* Back pay received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII is not excludable from gross income under former § 104(a)(2) because it is completely independent of, and thus is not damages received on account of, personal injuries or sickness under that section. However, damages received for emotional distress in satisfaction of such a claim are excludable from gross income under former § 104(a)(2) because they are received ''on account of personal injuries or sickness.''

(3) *Wages and compensation.* Back pay includible in gross income under Holding (1) or (2) is ''wages'' for purposes of § 3121 (Federal Insurance Contributions Act (FICA)), § 3306 (Federal Unemployment Tax Act (FUTA)), and § 3401 (federal income tax withholding), and is ''compensation'' for purposes of § 3231 (Railroad Retirement Tax Act (RRTA)).

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 93–88 is obsoleted. Notice 95–45 is superseded. Rev. Rul. 72–341, 1972–2 C.B. 32, and Rev. Rul. 84–92, 1984–1 C.B. 204, which hold that amounts received to settle a claim under pre-1991 Title VII are (1) includible in gross income as compensation, (2) ''wages'' for FICA, FUTA, and federal income tax withholding purposes, and (3) ''compensation'' for RRTA purposes, are obsoleted. Rev. Proc. 96–3, 1996–1 I.R.B. 82, is modified to delete section 5.05.

PROSPECTIVE APPLICATION

Pursuant to the authority contained in § 7805(b), this revenue ruling will not apply adversely to damages received under any provision of law providing tort or tort type remedies for employment discrimination for race, color, religion, gender, national origin, or other similar classifications, if the damages are received (1) on or before June 14, 1995, the date that *Schleier* was decided by the Supreme Court, or (2) pursuant to a written binding agreement, court decree, or mediation award in effect on (or issued on or before) June 14, 1995.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sheldon A. Iskow of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Iskow on (202) 622–4920 (not a toll-free call).

Section 132.—Certain Fringe Benefits

The Service is providing inflation adjustments for taxable years beginning in 1997 to the limitation on the exclusion of a qualified transportation fringe. See Rev. Proc. 96–59, page 17.

Section 135.—Income From United States Savings Bonds Used To Pay Higher Education Tuition and Fees

The Service is providing inflation adjustments for taxable years beginning in 1993 through 1997 to the limitation on the exclusion of income from United States savings bonds for taxpayers who pay qualified higher education expenses for taxable years. See Rev. Proc. 96–59, page 17.

Section 151.—Allowance of Deductions for Personal Exemptions

26 CFR 1.151–4: Amount of deduction for each exemption under section 151.

The Service is providing inflation adjustments for taxable years beginning in 1997 to the personal exemption and to the threshold amounts of adjusted gross income above which the exemption amount phases out. See Rev. Proc. 96–59, page 17.

Section 162.—Trade or Business Expenses

26 CFR 1.162–1: Business expenses. (Also section 263; 1.263(a)–1.)

Training costs; business expenses. The Supreme Court's decision in *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992), does not affect the treatment of training costs as business expenses which are generally deductible under section 162 of the Code.

Rev. Rul. 96–62

ISSUE

Does the Supreme Court's decision in *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992), affect the treatment of training costs as business expenses, which are generally deductible under § 162 of the Internal Revenue Code?

LAW AND ANALYSIS

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

Section 263(a) and § 1.263(a)–1(a) provide that no deduction is allowed for any amount paid out for permanent improvements or betterments made to increase the value of any property.

Through provisions such as §§ 162(a), 263(a), and related sections, the Internal Revenue Code generally endeavors to match expenses with the revenues of the taxable period to which the expenses are properly attributable, thereby resulting in a more accurate calculation of net income for tax purposes. *See INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *Commissioner v. Idaho Power Co.*, 418 U.S. 1, 16 (1974).

In *INDOPCO*, the Supreme Court concluded that certain legal and professional fees incurred by a target corporation to facilitate a friendly merger created significant long-term benefits for the taxpayer and, therefore, were capital expenditures. In reaching this decision, the Court specifically rejected the argument that its decision in *Commissioner v. Lincoln Savings and Loan Association*, 403 U.S. 345 (1971), should be read as holding ''that *only* expenditures that create or enhance separate and distinct assets are to be capitalized under § 263.'' *INDOPCO* at 86–87 (emphasis in original).

The *INDOPCO* decision clarifies that the creation or enhancement of a separate and distinct asset is not a prerequisite to capitalization. That clarification does not, however, change the fundamental legal principles for determining whether a particular expenditure can be deducted or must be capitalized. As the Supreme Court has specifically recognized, the ''decisive distinctions [between capital and ordinary expenditures] are those of degree and not of kind. . . .'' *Welch v. Helvering*, 290 U.S. 111, 114 (1933); *Deputy v. du Pont*, 308 U.S. 488, 496 (1940). Therefore, with respect to expenditures that produce benefits both in the current year and in future years, the determination of whether such expenditures must be capitalized or may be deducted requires a careful examination of all the facts. Although the mere presence of some future benefit may not warrant capitalization, a taxpayer's realization of future benefits is undeniably important in determining whether an expenditure is immediately deductible or must be capitalized. *See INDOPCO* at 87–88.

The *INDOPCO* decision does not affect the treatment of training costs under § 162. Amounts paid or incurred for training, including the costs of trainers and routine updates of training materials, are generally deductible as business expenses under that section even though they may have some future benefit. *INDOPCO* at 87. *See, e.g., Cleveland Electric Illuminating Co. v. United States*, 7 Cl. Ct. 220 (1985) (deduction for costs of training employees to operate new equipment in an existing business); Rev. Rul. 58–238, 1958–1 C.B. 90, 91 (deduction for costs of training employees that relate to the regular conduct of the employer's business); *see also Ithaca Industries, Inc. v. Commissioner*, 97 T.C. 253, 271 (1991) (deduction for costs of training new employees to keep the assembled workforce unchanged), *aff'd*, 17 F.3d 684 (4th Cir.), *cert. denied*, 115 S. Ct. 83 (1994). Training costs must be capitalized only in the unusual circumstance where the training is intended primarily to obtain future benefits significantly beyond those traditionally associated with training provided in the ordinary course of a taxpayer's trade or business. *See, e.g., Cleveland Electric*, 7 Cl. Ct. at 227–29 (capitalization of costs for training employees of an electric utility to operate a new nuclear power plant, which were akin to start-up costs of a new business).

HOLDING

The *INDOPCO* decision does not affect the treatment of training costs as business expenses, which are generally deductible under § 162.

DRAFTING INFORMATION

The principal author of this revenue ruling is Barry M. Freiman of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Freiman on (202) 622–4950 (not a toll-free call).

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26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

The rules for substantiating the amount of a deduction or expense for business use of an automobile that most nearly represents current costs are set forth. See Rev. Proc. 96–63, page 46.

The rules for substantiating the amount of a deduction or expense for lodging, meal, and incidental expenses or meal and incidental expenses incurred while traveling away from home that most nearly represents current costs are set forth. See Rev. Proc. 96–64, page 52.

Section 170.—Charitable, Etc., Contributions and Gifts

26 CFR 1.170–1: Charitable, etc., contributions and gifts; allowance of deductions.

The Service is providing inflation adjustments for calendar year 1997 to the ''insubstantial benefit'' guidelines. Under the guidelines, a charitable contribution is fully deductible even though the contributor receives ''insubstantial benefits'' from the charity. See Rev. Proc. 96–59, page 17.

Section 263.—Capital Expenditures

26 CFR 1.263(a)–1: Capital expenditures; in general.

Does the Supreme Court's decision in *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992), affect the treatment of training costs as business expenses which are generally deductible under § 162 of the Code? See Rev. Rul. 96–62, page 38.

Section 267.—Losses, Expenses, and Interest With Respect to Transactions Between Related Taxpayers

26 CFR 1.267(a)–1: Deductions disallowed.

When a payor provides a per diem allowance to an employee who is a related party, the rules set forth for the deemed substantiation to the payor of the amount of the employee's ordinary and necessary business expenses for lodging, meal, and/or incidental expenses incurred while traveling away from home do not apply. See Rev. Proc. 96–64, page 52.

Section 274.—Disallowance of Certain Entertainment, Etc., Expenses

26 CFR 1.274(d)–1: Substantiation requirements

Simplified optional method for substantiating the amount of a deduction or expense for business use of an automobile. See Rev. Proc. 96–63, page 46.

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26 CFR 1.274(d)–1(a): Substantiation requirements.

Rules are set forth for substantiating the amount of ordinary and necessary business expense of an employee for lodging, meal, and incidental expenses or meal and incidental expenses incurred while traveling away from home when a payor provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. See Rev. Proc. 96–64, page 52.

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26 CFR 1.274–5T: Substantiation requirements (temporary).

Simplified optional method for substantiating the amount of a deduction or expense for business use of an automobile. See Rev. Proc. 96–63, page 46.

Rules are set forth for substantiating the amount of ordinary and necessary business expense of an employee for lodging, meal, and incidental expenses or meal and incidental expenses incurred while traveling away from home when a payor provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Rules are also set forth for an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. See Rev. Proc. 96–64, page 52.

Section 483.—Interest on Certain Deferred Payments

26 CFR 1.483–1: Computation of interest on certain deferred payments.

As defined by section 1274A, the definitions for both ''qualified debt instruments'' and ''cash method debt instruments'' have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 1997 calendar year. See Rev. Rul. 96–63, page 46.

Section 512.—Unrelated Business Taxable Income

The Service is providing inflation adjustments for taxable years beginning in 1996 and 1997 to the maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members. See Rev. Proc. 96–59, page 17.

Section 513.—Unrelated Trade or Business

The Service is providing inflation adjustments for taxable years beginning in 1997 to the maximum amount of a ''low cost article.'' Funds raised through a charity's distribution of ''low cost articles'' will not be treated as unrelated business income to the charity. See Rev. Proc. 96–59, page 17.

Section 877.—Expatriation To Avoid Tax

The Service is providing inflation adjustments for calendar year 1997 to amounts used to determine whether a principal purpose of expatriation is to avoid tax. See Rev. Proc. 96–59, page 17.

Section 1016.—Adjustments to Basis

26 CFR 1.1016–3: Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

Reduction of basis for business use of an automobile under either the optional standard mileage rate method or a mileage allowance under a reimbursement or other expense allowance arrangement. See Rev. Proc. 96–63, page 46.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

26 CFR 1.1274A–1: Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

As defined by section 1274A, the definitions for both ''qualified debt instruments'' and ''cash method debt instruments'' have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 1997 calendar year. See Rev. Rul. 96–63, this page.

Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000.

(Also §§ 1274, 483; 1.1274A–1.)

Section 1274A inflation-adjusted numbers for 1997. This ruling provides the dollar amounts, increased by the 1997 inflation-adjustment, for section 1274A of the Code. Rev. Rul. 96–4 supplemented and superseded.

Rev. Rul. 96–63

This revenue ruling provides the dollar amounts, increased by the 1997 inflation adjustment, for § 1274A of the Internal Revenue Code.

BACKGROUND

In general, §§ 483 and 1274 of the Code determine the principal amount of a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a ''qualified debt instrument,'' the discount rate used for purposes of §§ 483 and 1274 of the Code may not exceed 9 percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A-(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is $2,800,000.

In the case of a ''cash method debt instrument,'' as defined in § 1274A(c) of the Code, the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed $2,000,000, (B) The lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged, (C) Section 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) An election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A–1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) of the Code provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of $100 (or, if the increase is a multiple of $50 and not of $100, the increase is increased to the nearest multiple of $100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A-(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

INFLATION-ADJUSTED AMOUNTS

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

Rev. Rul. 96–63 Table 1
Inflation-Adjusted Amounts Under § 1274A

Calendar Year of Sale or Exchange	*1274A(b) Amount (qualified debt instrument)*	*1274A(c)(2)(A) Amount (cash method debt instrument)*
1990	$2,933,200	$2,095,100
1991	$3,079,600	$2,199,700
1992	$3,234,900	$2,310,600
1993	$3,332,400	$2,380,300
1994	$3,433,500	$2,452,500
1995	$3,523,600	$2,516,900
1996	$3,622,500	$2,587,500
1997	$3,723,800	$2,659,900

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982–1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 96–4, 1996–3 I.R.B. 16, is supplemented and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is David B. Silber of the Office of the Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Mr. Silber on (202) 622–3930 (not a toll-free call).

Section 3121.—Definitions

26 CFR 31.3121(a)–1: Wages.

Is back pay that is received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, treated as ''wages'' for purposes of § 3121 (FICA)? See Rev. Rul. 96–65, page 5.

Section 3221.—Rate of Tax

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

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1996, 33.8 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.2 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 27, 1996.

Beatrice Ezerski,
Secretary to the Board

(Filed by the Office of the Federal Register on September 4, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 5, 1996, 61 F.R. 46871)

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1997, 33.4 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.6 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 4, 1996.

Beatrice Ezerski,
Secretary to the Board

(Filed by the Office of the Federal Register on December 11, 1996, 8:45 a.m., and published in the issue of the Federal Register for December 12, 1996, 61 F.R. 65422)

Section 3231.—Definitions

26 CFR 31.3231(e)–1: Compensation

Is back pay that is received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, treated as ''compensation'' for purposes of § 3231 (RRTA)? See Rev. Rul. 96–65, page 5.

Section 3306.—Definitions

26 CFR 31.3306(b)–1: Wages.

Is back pay that is received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, treated as ''wages'' for purposes of § 3306 (FUTA)? See Rev. Rul. 96–65, page 5.

Section 3401.—Definitions

26 CFR 31.3401(a)–1: Wages.

Is back pay that is received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, treated as ''wages'' for purposes of § 3401 (federal income tax withholding)?

Section 4001.—Passenger Vehicles

The Service is providing inflation adjustments to the price above which a passenger vehicle becomes subject to an excise tax for transactions occurring in calendar year 1997. See Rev. Proc. 96–59, page 17.

Section 4003.—Special Rules

The Service is providing inflation adjustments to the price above which a passenger vehicle becomes subject to an excise tax for transactions occurring in calendar year 1997. (Price includes the price of installation of parts or accessories on a passenger vehicle within six months of the date after the vehicle was first placed in service.) See Rev. Proc. 96–59, page 17.

Section 6011.—General Requirement of Return, Statement, or List.

26 CFR 31.6011(a)–4: Returns of income tax withheld.

Standard and alternate procedures to be used in preparing employment tax forms where a predecessor-successor employer relationship exists. Rev. Proc. 84–77 modified and superseded. See Rev. Proc. 96–60, page 24.

26 CFR 301.6011–2T: Required use of magnetic media (Temporary).

Automatic extensions of time to furnish Forms W–2 to employees and file Forms W–2 with the Social Security Administration are provided for ''Qualified Employers.'' See Rev. Proc. 96–57, page 14.

Section 6012.—Persons Required to Make Returns of Income

26 CFR 1.6012–1: Individuals required to make returns of income.

The Service is providing adjusted tax tables for individuals and trusts and estates for taxable years beginning in 1997 to reflect changes in the cost of living. See Rev. Proc. 96–59, page 17.

26 CFR 1.6012–5: Composite return in lieu of specified form.

What are the requirements for participation in the 1997 Electronic Filing Program for the Form 1040 series? See Rev. Proc. 96–61, page 27.

What are the requirements for participation in the 1997 On-Line Filing Program for the Form 1040 series? See Rev. Proc. 96–62, page 38.

Section 6013.—Joint Returns of Income Tax by Husband and Wife

26 CFR 1.6013–1: Joint returns.

The Service is providing adjusted tax tables for individuals for taxable years beginning in 1997 to reflect changes in the cost of living. See Rev. Proc. 96–59, page 17.

Section 6033.—Returns by Exempt Organizations

The Service is providing inflation adjustments for taxable years beginning in 1997 to the amount of dues certain exempt organizations can charge and still be excepted from the reporting requirements for exempt organizations with nondeductible lobbying expenditures. See Rev. Proc. 96–59, page 17.

Section 6039F.—Notice of Large Gifts Received From Foreign Persons

The Service is providing an inflation adjustment for taxable years beginning in 1997 to the amount of gifts in a taxable year from foreign person(s) that triggers a reporting requirement for a United States person. See Rev. Proc. 96–59, page 17.

Section 6051.—Receipts for Employees

26 CFR 31.6051–1: Statements for employees.

Automatic extensions of time to furnish Forms W–2 to employees and file Forms W–2 with the Social Security Administration are provided for ''Qualified Employers.'' See Rev. Proc. 96–57, page 14.

Standard and alternate procedures to be used in preparing employment tax forms where a predecessor-successor employer relationship exists. Rev. Proc. 84–77 modified and superseded. See Rev. Proc. 96–60, page 24.

Section 6061.—Signing of Returns and Other Documents

26 CFR 1.6061–1: Signing of returns and other documents by individuals.

What are the requirements for participation in the 1997 Electronic Filing Program for the Form 1040 series? See Rev. Proc. 96–61, page 27.

Section 6071.—Time for Filing Returns and Other Documents

26 CFR 31.6071(a)–1: Time for filing returns and other documents.

Automatic extensions of time to furnish Forms W–2 to employees and file Forms W–2 with the Social Security Administration are provided for ''Qualified Employers.'' See Rev. Proc. 96–57, page 14.

Standard and alternate procedures to be used in preparing employment tax forms where a predecessor-successor employer relationship exists. Rev. Proc. 84–77 modified and superseded. See Rev. Proc. 96–60, page 24.

Section 6081.—Extension of Time for Filing Returns.

26 CFR 31.6081(a)–1: Extensions of time for filing returns and other documents.

Automatic extensions of time to furnish Forms W–2 to employees and file Forms W–2 with the Social Security Administration are provided for ''Qualified Employers.'' See Rev. Proc. 96–57, page 14.

Section 6601.—Interest on Underpayment, Nonpayment or Extensions of Time for Payment of Tax

26 CFR 301.6601–1: Interest on underpayments.

Uniform tables for computing interest using the daily compounding rules. See Rev. Proc. 95–17, 1995–1, C.B. *556.*

Section 6611.—Interest on Overpayments

26 CFR 301.6611–1: Interest on overpayments.

Uniform tables for computing interest using the daily compounding rules. See Rev. Proc. 95–17, 1995–1, C.B. *556.*

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Uniform tables for computing interest using the daily compounding rules. See Rev. Proc. 95–17, 1995–1, C.B. *556.*

Section 6622.—Interest Compounded Daily

26 CFR 301.6622–1: Interest compounded daily.

Uniform tables for computing interest using the daily compounding rules. See Rev. Proc. 95–17, 1995–1, C.B. *556.*

Section 7430.—Awarding of Costs and Certain Fees

The Service is providing an inflation adjustment for calendar year 1997 to the hourly limit on attorney fees that may be awarded in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty. See Rev. Proc. 96–59, page 17.

Section 7805.—Rules and Regulations

26 CFR 301.7805–1: Rules and regulations.

Are amounts received in satisfaction of a claim for denial of a promotion due to disparate treatment employment discrimination under Title VII of the Civil Rights Act of 1964, as amended in 1991, excludable from gross income under § 104(a)(2)? The holding will not apply adversely to damages received under any provision of law providing tort or tort type remedies for employment discrimination on the basis of race, color, religion, gender, national origin, or other similar classifications, if the damages are received (1) on or before June 14, 1995, the date that *Schleier* was decided by the Supreme Court, or (2) pursuant to a written binding agreement, court decree, or mediation award in effect on (or issued on or before) June 14, 1995. See Rev. Rul. 96–65, page 5.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

CPI adjustment for below-market loans for 1997. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987–1997. Rev. Rul. 96–5 supplemented and superseded.

Rev. Rul. 96–64

This revenue ruling publishes the amount that § 7872(g) of the Internal Revenue Code permits a taxpayer to lend to a qualifying continuing care facility without incurring imputed interest. The amount is adjusted for inflation for the years after 1986.

Section 7872 of the Code generally treats loans bearing a below-market interest rate as if they bore interest at the market rate.

Section 7872(g)(1) of the Code provides that, in general, § 7872 does not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of the year.

Section 7872(g)(2) of the Code provides that, in the case of loans made after October 11, 1985, and before 1987, § 7872(g)(1) applies only to the extent that the aggregate outstanding amount of any loan to which § 7872(g) applies (determined without regard to § 7872(g)(2)), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which § 7872(g)(1) applies, does not exceed $90,000.

Section 7872(g)(5) of the Code provides that, for loans made during any calendar year after 1986 to which § 7872(g)(1) applies, the $90,000 limit specified in § 7872(g)(2) is increased by an inflation adjustment. The inflation adjustment for any calendar year is the percentage (if any) by which the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for calendar year 1985. Section 7872(g)(5) states that the CPI for any calendar year is the average of the CPI as of the close of the 12-month period ending on September 30 of that calendar year.

Rev. Rul. 96–5, 1996–3 I.R.B. 29, publishes the amount specified in § 7872(g)(2) of the Code, increased by the inflation adjustment, for the years 1987–96.

Table 1 sets forth the amount specified in § 7872(g)(2) of the Code. The amount is increased by the inflation adjustment for the years 1987–97.

REV. RUL. 96–64 TABLE 1
Limit under 7872(g)(2)

Year	*Amount*
Before 1987	$ 90,000
1987	$ 92,200
1988	$ 94,800
1989	$ 98,800
1990	$103,500
1991	$108,600
1992	$114,100
1993	$117,500
1994	$121,100
1995	$124,300
1996	$127,800
1997	$131,300

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index 1982–1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 96–5, 1996–3 I.R.B. 29, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is David B. Silber of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Mr. Silber on (202) 622–3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 96–66

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

The average yield on the 30-year Treasury Constant Maturities for November 1996 is 6.48 percent.

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

Month	Year	Weighted Average	90% to 108% Permissible Range	90% to 110% Permissible Range
December	1996	6.89	6.20 to 7.44	6.20 to 7.58

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622–6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622–7377 (also not a toll-free number).

Application of Section 401(a)(9) to Employees who Attain Age 70½ in 1996.

Notice 96–67

PURPOSE

This Notice addresses certain issues related to amendments, made by section 1404 of the Small Business Job Protection Act of 1996, Pub.L. 104–188 (SBJPA), to the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code. Specifically, the notice provides guidance on the application of section 401(a)(9), as amended by the SBJPA, to employees (other than 5-percent owners) who attain age 70½ in 1996 but who have not retired by the end of 1996.

BACKGROUND

Section 401(a)(9) provides that, in order for a plan to be qualified under section 401(a), distributions from the plan must commence no later than the ''required beginning date''. Similar rules apply to an individual retirement account or annuity (IRA) and a section 403(b) contract (*i.e.*, an annuity contract described in section 403(b), a custodial account described in section 403(b)(7) or a retirement income account described in section 403(b)(9)).

Prior to the amendments made by the SBJPA, section 401(a)(9)(C) generally defined required beginning date as April 1 of the calendar year following the calendar year in which an employee attained age 70½. This meant that an employee who attained age 70½ was required to commence distributions from the plan, even if the employee had not retired from employment with the employer maintaining the plan.

Section 1404 of the SBJPA amended the definition of required beginning date that applies to an employee who is not a 5-percent owner. The amendment provides that, in the case of such an employee, the required beginning date is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. In the case of an employee who is a 5-percent owner, the required beginning date remains April 1 of the calendar year following the calendar year in which the 5-percent owner attains age 70½. The amendments made by section 1404 of the SBJPA apply to years beginning after December 31, 1996.

The amendments do not apply to the required beginning date for distributions from an IRA, including an IRA established in conjunction with a Simplified Employee Pension (SEP) or a SIMPLE Plan. In addition, the amendments do not affect the determination of the required beginning date for church plans and government plans, since, under the pre-SBJPA version of section 401(a)(9), the required beginning date for these plans already was April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires.

Taxpayers have requested guidance on the application of the amendments to section 401(a)(9)(C) made by the SBJPA to employees who attain age 70½ in 1996, but have not retired by the end of 1996. This Notice is issued in response to those requests.

QUESTIONS AND ANSWERS

Q–1: What is the effective date of the amendments to section 401(a)(9) made by section 1404 of the SBJPA?

A–1: Section 401(a)(9), as amended by section 1404 of the SBJPA, applies in determining the amount of any minimum distribution required to be made during any calendar year beginning on or after January 1, 1997 (that was not required to be made during an earlier calendar year).

Q–2: Is a minimum distribution required to be made by April 1, 1997 for an employee (other than a 5-percent owner) who attains age 70½ in 1996, but has not retired from employment with the employer maintaining the plan by the end of 1996?

A–2: No. Such an employee's required beginning date is determined under section 401(a)(9), as amended by the SBJPA. Thus, the employee's required beginning date is not April 1, 1997. Instead, the employee's required beginning date is April 1 of the calendar year following the year in which the employee retires from employment with the employer maintaining the plan.

Q–3: If a plan distribution is made in 1996 to an employee (other than a 5-percent owner) who attains age 70½ in that year, but has not retired by the end of 1996 from employment with the employer maintaining the plan, is any portion of the distribution a required distribution for purposes of section 402(c)(4)(B)?

A–3: Yes. Section 402(c)(4)(B) provides that a distribution is not an eli-

gible rollover distribution to the extent that it is required under section 401(a)(9). If a distribution is made during 1996 (*i.e.*, prior to the January 1, 1997 effective date of the SBJPA amendments to section 401(a)(9)), then, whether that distribution is a required distribution under section 401(a)(9) is determined by applying section 401(a)(9) as in effect prior to amendment by the SBJPA.

Under Q&A–7 of § 1.402(c)–2 of the Income Tax Regulations, a distribution in the year an employee attains age 70½ is treated as a required distribution under section 401(a)(9) to the extent that the total required minimum distribution under section 401(a)(9) for that year has not been satisfied. Therefore, although under Q&A–2 of this Notice, no distribution is required to be made by April 1, 1997 with respect to an employee (other than a 5-percent owner) who attains age 70½ during 1996, but has not retired by the end of that year, if a distribution actually is made to such an employee in 1996, the distribution is treated as a required distribution to the extent that the total required minimum distribution under section 401(a)(9), as in effect prior to amendment by the SBJPA, has not been satisfied. Thus, to that extent, the distribution is not an eligible rollover distribution and is not subject to mandatory 20% withholding under section 3405(c). However, a distribution to such an employee in 1997 (*i.e.*, after the effective date of the SBJPA amendments) is not a required distribution under section 401(a)(9).

Q–4: How does the guidance provided in Q&A–2 and Q&A–3 of this Notice apply to the determination of the required minimum distribution from a section 403(b) contract?

A–4: In applying section 401(a)(9) to a section 403(b) contract to which contributions are made by an employer, an employee's required beginning date is determined under section 401(a)(9) in the same manner as it would be determined for a qualified plan maintained by that employer. Accordingly, the required beginning date with respect to a section 403(b) contract of an employee who attains age 70½ in 1996 and who has not retired from employment by the end of 1996 is determined under Q&A–2 of this Notice. Similarly, whether a distribution in 1996 from a section 403(b) contract is a required minimum distribution (and thus not an eligible rollover distribution) is determined in accordance with the guidance in Q&A–3 of this notice.

REQUEST FOR COMMENTS CONCERNING RELAXATION OF SECTION 411(d)(6)

Except to the extent provided by regulations, section 411(d)(6)(B) precludes a plan amendment that eliminates an optional form of benefit as it applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. The right to commence benefit distributions in any form at a particular time is an optional form of benefit within the meaning of section 411(d)(6)(B) and Q&A–1(b) of § 1.411(d)–4 of the Income Tax Regulations. When it enacted section 1404 of the SBJPA, Congress did not alter the application of section 411(d)(6). Accordingly, an amendment that eliminates the right to receive a distribution prior to retirement (an in-service distribution) after age 70½ is precluded by section 411(d)(6) if the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment.

A plan that retains in-service distributions after age 70½ (either as a mandatory or an optional form of distribution) will satisfy the requirements of section 401(a)(9) as amended, and will not be prohibited by section 411(d)(6). However, the Service and the Treasury recognize the potential complexity of administering these distribution options. Therefore, the Service and the Treasury are considering the extent to which it is appropriate to exercise the authority in section 411(d)(6)(B) to permit plan amendments to eliminate the option to receive in-service distributions after age 70½. In making this determination, factors that the Service and the Treasury will take into account include the importance to plan participants of protecting the option to receive in-service distributions as well as the potential complexity to employers, plan administrators and participants of retaining the option.

The Service and the Treasury request comments concerning the extent to which a relaxation of section 411(d)(6) protection is appropriate for amendments that eliminate in-service distributions after age 70½ (*e.g.*, by limiting section 411(d)(6) protection to employees above a certain age). Because the Service and the Treasury have received requests that this guidance be provided on an expedited basis, comments are requested to be submitted by January 31, 1997.

Comments can be addressed to CC:DOM:CORP:R (Notice 96–XX), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 96–XX), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

DRAFTING INFORMATION

The principal author of this Notice is Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this Notice, contact Thomas R. Foley at (202) 622–6050 (not a toll-free number).

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26 CFR 601.203: Offers in compromise. (Also Part I, Section 7122; 301.7122–1)

Rev. Proc. 96–38

SECTION 1. PURPOSE

This revenue procedure provides guidance to taxpayers who wish to submit offers in compromise on photocopies or computer generated copies of Form 656, Offer in Compromise, published by the Service at the time the taxpayer makes the offer. This revenue procedure also establishes the conditions under which the Service will process offers submitted on such forms. Specifically, this revenue procedure sets forth the required content of a photocopied or a computer generated Form 656 and states that taxpayers who submit offers on such copies authorize the Service to treat them as verbatim duplicates of the Form 656 published by the Service.

SEC. 2. CHANGES

.01 This revenue procedure provides guidance to taxpayers who wish to submit offers in compromise on photocopies or computer generated copies of Form 656, Offer in Compromise, which the Service publishes and processes when the taxpayer makes the offer.

.02 This revenue procedure declares Rev. Proc. 57–41, 1957–2 C.B. 1119 and Rev. Proc. 80–6, 1980–1 C.B. 586 obsolete.

SEC. 3. PROCEDURE

.01 The Service administers an offer in compromise program whereby a taxpayer may submit an offer to compromise a tax liability based on doubt as to liability or doubt as to collectibility. These offers are submitted on Form 656, Offer in Compromise, which is revised by the Service when necessary.

.02 The Service will receive for processing legible photocopies or computer generated copies that are verbatim duplicates of the most current, revised version of Form 656, Offer in Compromise, published by the Service when the taxpayer makes the offer. However, this procedure only applies to revised versions of Form 656 showing a revision date after September 1993. (See Sec. 6 for a description of the revised versions of Form 656 to which this revenue procedure applies.) An offer submitted on a photocopy or computer generated copy of Form 656 must be printed on the same size paper the Service uses to publish Forms 656 at the time the offer is made. (The Service currently publishes Form 656 on paper measuring eight and one-half by eleven inches).

.03 When a taxpayer makes an offer on a form that appears to be a photocopy or computer generated copy of Form 656, then pursuant to the terms of that form, the taxpayer authorizes the Service to treat the copy as a verbatim duplicate of the Service's most currently revised version of Form 656 that has a revision date after September 1993.

.04 An offer submitted on a photocopy or computer generated copy of Form 656 must bear the taxpayer's original signature and initials, if required. The Service will not process an offer in compromise bearing a signature or initials that were duplicated by electronic or photographic means, *i.e.*, a facsimile transmission or photocopy.

.05 If a taxpayer submits an offer in compromise on a photocopy or computer generated copy of Form 656 and the terms and conditions of the offer appear on any page other than the front and reverse sides of the signature page, then the taxpayer must initial and date all pages containing terms and conditions of the offer.

.06 The decision whether to process photocopies or computer generated copies of Form 656 remains within the Service's discretion.

SEC. 4. INQUIRIES

Inquiries regarding this revenue procedure should be directed to Internal Revenue Service, Office of Special Procedures CP:CO:C:SP, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

SEC. 5. EFFECT ON OTHER REVENUE PROCEDURES

This revenue procedure declares Rev. Proc. 57–41, 1957–2 C.B. 1119 and Rev. Proc. 80–6, 1980–1 C.B. 586 obsolete. Rev. Proc. 57–41 is obsolete because it required taxpayers to use a revision of Form 656 that is not currently published or processed by the Service. Rev. Proc. 80–6 is obsolete because the delegations and procedural matters described therein have been superseded, *i.e.*, delegations of authority are now set forth in Delegation Order No. 11 (Rev. 24) and IRM Handbook 1229; all other procedural matters described therein are now set forth in Delegation Order No. 11 (Rev. 24), IRM Handbook 1229, IRM 57(10)0 through 57(10)(23).4, IRM 8(13)20 through 8(13)70, and CCDM (34)510 through (34)560.

SEC. 6. EFFECTIVE DATE

This revenue procedure is effective when published. It applies to all revisions of Form 656, Offer in Compromise, showing a revision date after September 1993. The Service is currently revising Form 656. The version of Form 656 currently published by the Service bears the revision date of September 1993. This revenue procedure shall not apply to the September 1993 version of Form 656, and the Service will not process substitute forms based on that version, but will process substitute forms based on the next revised version.

DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Rawlins of the Office of Assistant Chief Counsel (General Litigation). For further information regarding this revenue procedure, contact Elizabeth Rawlins on (202) 622–3630 (not a toll-free call).

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26 CFR 601.602: Forms and instructions.
(Also Part I, §§ 6011, 6051, 6071, 6081; 301.6011–2T, 31.6051–1, 31.6071(a)–1, 31.6081 (a)–1)

Rev. Proc. 96–57

SECTION 1. PURPOSE

.01 This revenue procedure provides automatic extensions of time for (1) furnishing Form W–2, Wage and Tax Statement, to employees and (2) filing Form W–2, with the Social Security Administration (SSA) as provided in §§ 31.6051–1(d)(2)(ii) and 31.6081(a)–1(a)(3)(ii) of the Employment Tax Regulations. These automatic extensions also apply to Form 499R–2/W–2PR, Withholding Statement; Form W–2VI, U.S. Virgin Island Wage and Tax Statement; Form W–2GU, Guam Wage and Tax Statement; and Form W–2AS, American Samoa Wage and Tax Statement. These automatic extensions are only available to ''Qualified Employers,'' as defined below.

SECTION 2. BACKGROUND

.01 Section 6011(a) of the Internal Revenue Code provides that any person made liable for any tax, or for the collection of the tax, must make a return or statement according to the forms or regulations prescribed by the Secretary.

.02 Section 31.6011(a)–1 prescribes Form 941 as the form to use for persons required to make a quarterly return under the Federal Insurance Contributions Act.

.03 Section 31.6011(a)–4 prescribes Form 941 as the form to use for persons required to make a quarterly return of income tax withheld from wages.

.04 Section 31.6011(a)–6 provides that an employer who ceases to pay wages reportable on Form 941 shall file a final Form 941.

.05 Section 31.6071(a)–1 provides that Form 941 generally must be filed on or before the last day of the first calendar month following the quarter for which it is made.

.06 Section 6051(a) provides that (1) every person required to deduct and withhold income tax, or who would have been required to deduct and withhold if the employee had claimed no more than 1 withholding exemption, or (2) every employer engaged in a trade or business who pays remuneration for services performed by an employee, must furnish a written statement to an employee regarding the remuneration paid to the employee during the calen-

dar year. Section 31.6051–1(a) provides that the statement is Form W–2. Form W–2 must be furnished to the employee on or before January 31 of the following calendar year. If the employee's employment is terminated before the close of the calendar year, however, and the employee requests the Form W–2 in writing, the Form W–2 must be furnished to the employee within 30 days of the later of the written request from the employee or the last payment of wages, provided such 30-day period ends before January 31.

.07 Section 31.6051–1(d)(1)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must furnish Forms W–2 to its employees on or before the date required for filing the final Form 941. If the final Form 941 is a monthly return, as described in § 31.6011(a)–5, the Forms W–2 must be furnished on or before the last day of the month in which the final Form 941 is required to be filed.

.08 Section 31.6071(a)–1(a)(3)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must file Forms W–2 on or before the last day of the second calendar month following the period for which the final Form 941 is filed.

.09 Section 301.6011–2T(b)(2) of the temporary Regulations on Procedure and Administration provides that if an employer is required to file 250 or more Forms W–2, Forms 499R–2/W–2PR, Forms W–2VI, Forms W–2GU, or Forms W–2AS in a calendar year, the employer must file these forms on magnetic media. The 250 return threshold applies separately to each type of form. Employers who file less than 250 of these forms in a calendar year may file their forms on magnetic media with SSA, but are not required to do so.

.10 SSA prepares the magnetic media specifications (Specifications) for filing Forms W–2 and updates them annually. SSA updates the Specifications generally by July of the year to which they apply, and prints them in Technical Information Bulletin–4 (TIB–4). Employers may obtain the Specifications by contacting their Magnetic Media Coordinator (call 1–800–SSA–1213 for the number of the local coordinator). Employers using a personal computer and a modem can download the TIB–4 from either of two electronic bulletin board systems: SSA–BBS (410–965–1133) or IRP–BBS(IRS) (304–264–7070). Employers can generally obtain the Specifications by either of these methods in July of the current year.

.11 SSA mails the TIB–4 to those employers who filed on magnetic media in the prior year. SSA mails the TIB–4 early in the fourth quarter of each year to allow employers sufficient time to update their payroll systems for preparing the current year Forms W–2, which generally are due the last day of February following the year in which the wages were paid.

.12 SSA also prepares the magnetic media specifications for Forms 499R–2/W–2PR, Forms W–2VI, Forms W–2GU, and Forms W–2AS. These specifications, which are published in TIB–5 (Forms 499R–2/W–2PR); TIB–6 (Form W–2VI); and TIB–7 (Forms W–2GU and Forms W–2AS), are available early in the fourth quarter of the year to which they apply.

.13 Section 31.6051–1(d)(2)(ii) provides that the Commissioner may publish procedures for automatic extensions of time to furnish Forms W–2 to employees where the employer is required to furnish Forms W–2 on an expedited basis.

.14 Section 31.6081(a)–1(a)(3)(ii) provides that the Commissioner may publish procedures for automatic extensions of time to file Forms W–2 with SSA where the employer is required to file Forms W–2 on an expedited basis.

.15 Automatic extensions are appropriate for those employers who are required to (1) furnish Forms W–2 to employees and file Forms W–2 with SSA on an expedited basis, and (2) file Forms W–2 on magnetic media before the current Specifications are available. They are also appropriate for those employers who have filed on magnetic media in the prior year, even though not required to do so. While use of magnetic media does not apply to Forms W–2 furnished to employees, an extended due date for the employee copy of Forms W–2 is granted to allow the employer to prepare all the Forms W–2 at approximately the same time.

SECTION 3. SCOPE

.01 *Qualified Employers.* The automatic extensions of time are available to ''Qualified Employers.'' A ''Qualified Employer'' is an employer who:

1) is required to furnish Forms W–2 to its employees on an expedited basis under § 31.6051–1(d)(1)(ii) and file Forms W–2 with SSA on an expedited basis under § 31.6071(a)–1(a)(3)(ii), and

2) is either required to file the expedited Forms W–2 with SSA on magnetic media, or filed Forms W–2 on magnetic media in the year prior to the year that expedited Forms W–2 are required (whether or not the employer was required to file on magnetic media in the prior year).

.02 *Application to returns filed by employers for employees in Guam, U.S. Virgin Islands, American Samoa and Puerto Rico.* Wage and tax statements filed by employers for employees in Guam, U.S. Virgin Islands, American Samoa and Puerto Rico (Form W–2GU, Form W–2VI, Form W–2AS and Form 499R–2/W–2PR, respectively) are treated in the same manner as Forms W–2.

SECTION 4. AUTOMATIC EXTENSION PERIOD

.01 Qualified Employers must furnish Forms W–2 to the employees on or before the later of the expedited due date under § 31.6051–1(d)(1)(ii) or October 31 of the year in which they file their final Form 941.

.02 This automatic extension of time to furnish Forms W–2 to employees does not relieve an employer of its obligation to furnish a Form W–2 within 30 days to any employee who makes such a request in writing under § 6051.

.03 Qualified Employers must file Forms W–2 on or before the later of the expedited due date under § 31.6071(a)–1(a)(3)(ii) or November 30 of the year in which they file their final Form 941.

.04 These automatic extension periods remain in effect until new automatic extension periods are published by the Commissioner.

SECTION 5. DISCRETIONARY EXTENSIONS

.01 Qualified Employers may request additional extensions of time to furnish Forms W–2 to employees and file Forms W–2 with SSA. Additional extensions of time are discretionary and should be requested from the Director, Martinsburg Computing Center. See §§ 31.6051–1(d)(2)(i), 31.6081(a)–1(a)(3)(i) and Form 8809.

.02 Employers who do not meet the definition of a ''Qualified Employer'' may request an extension of time to furnish Forms W–2 to employees and file Forms W–2 with SSA. These exten-

sions of time are discretionary and should be requested from the Director, Martinsburg Computing Center. See §§ 31.6051–1(d)(2)(i), 31.6081(a)–1(a)(3)(i) and Form 8809.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 1, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue procedure, contact Ms. Casey on (202) 622–6040 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, § 6662.)

Rev. Proc. 96–58

SECTION 1. PURPOSE

.01 This revenue procedure updates Rev. Proc. 95–55, 1995–2 C.B. 457, and identifies circumstances under which the disclosure on a taxpayer's return of a position with respect to an item is adequate for the purpose of reducing the understatement of income tax under § 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under § 6694(a) (relating to understatements due to unrealistic positions). This revenue procedure does not apply with respect to any other penalty provision (including the negligence or disregard provisions of the § 6662 accuracy-related penalty).

.02 This revenue procedure applies to any return filed on 1996 tax forms for a taxable year beginning in 1996, and to any return filed on 1996 tax forms in 1997 for short taxable years beginning in 1997.

SEC. 2. CHANGES FROM REV. PROC. 95–55

Editorial changes only have been made in this revenue procedure.

SEC. 3. BACKGROUND

.01 If § 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment to which the section applies is added to the tax. (The penalty rate is 40 percent in the case of certain gross valuation misstatements.) Under § 6662(b)(2), § 6662 applies to the portion of an underpayment that is attributable to a substantial understatement of income tax.

.02 Section 6662(d)(1) provides that there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the amount of tax required to be shown on the return for the taxable year or $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). Section 6662(d)(2) defines an understatement as the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate (within the meaning of § 6211(b)(2)).

.03 In the case of an item not attributable to a tax shelter, § 6662(d)(2)-(B)(ii) provides that the amount of the understatement is reduced by the portion of the understatement attributable to any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed on the return or on a statement attached to the return, and there is a reasonable basis for the tax treatment of such item by the taxpayer.

.04 In general, this revenue procedure provides guidance in determining when disclosure is adequate for purposes of § 6662(d). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms .and instructions, and the money amounts entered on these forms must be verifiable. Guidance under § 6662(d) for returns filed in 1994, 1995, and 1996 is provided in Rev. Proc. 94–36, 1994–1 C.B. 682; Rev. Proc. 94–74, 1994–2 C.B. 823; and Rev. Proc. 95–55, 1995–2 C.B. 457, respectively.

SEC. 4. PROCEDURE

.01 Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under § 6662(d) provided that the forms and attachments are completed in a clear manner and in accordance with their instructions. The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can demonstrate the origin of the number (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(1) Form 1040, Schedule A, Itemized Deductions:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expense: Complete lines 10 through 14, supplying all required information. This section 4.01(1)(c) does not apply to (i) amounts disallowed under § 163(d) unless Form 4952, Investment Interest Expense Deduction, is completed, or (ii) amounts disallowed under § 265.

(d) Contributions: Complete lines 15 through 18, supplying all required information. Merely entering the amount of the donation on Schedule A, however, will not constitute adequate disclosure if the taxpayer receives a substantial benefit from the donation shown. If a contribution of property other than cash is made and the amount claimed as a deduction exceeds $500, a properly completed Form 8283, Noncash Charitable Contributions, must be attached to the return. This section 4.01(1)(d) will not apply to any contribution of $250 or more unless the contemporaneous written acknowledgement requirement of § 170(f)(8) is satisfied.

(e) Casualty and Theft Losses: Complete Form 4684, Casualties and Thefts, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section 4.01(2), the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.01(1)(e) above must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section 4.01(2)(b) does not apply, however, to amounts properly characterized as capi-

tal expenditures, personal expenses, or nondeductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1120, Schedule E, Compensation of Officers, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to ''part'' or ''as needed.'' This section 4.01(2)(d) does not apply to ''golden parachute'' payments, as defined under § 280G. This section 4.01(2)(d) will not apply to the extent that remuneration paid or incurred exceeds the $1 million employee remuneration limitation, if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section 4.01(2)(e) does not apply, however, to any repair expenses properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Form 1120, Schedule M–1, Reconciliation of Income (Loss) per Books With Income per Return, provided:

(a) The amount of the deviation from the financial books and records is not the result of a computation that includes the netting of items; and

(b) The information provided reasonably may be expected to apprise the Internal Revenue Service of the nature of the potential controversy concerning the tax treatment of the item.

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, International Boycott Report.

(b) Intercompany Transactions: Transactions and amounts shown on Schedule M (Form 5471), Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons, lines 19 and 20, and Form 5472, Part IV, Monetary Transactions Between Reporting Corporations and Foreign Related Party, lines 7 and 18.

(5) Other:

(a) Moving Expenses: Complete Form 3903, Moving Expenses, or Form 3903–F, Foreign Moving Expenses, and attach to the return.

(b) Sale or Exchange of Your Main Home: Complete Form 2119, Sale of Your Home, and attach to the return.

(c) Employee Business Expenses: Complete Form 2106, Employee Business Expenses, or Form 2106–EZ, Unreimbursed Employee Business Expenses, and attach to the return. This section 4.01(5)(c) does not apply to club dues, or to travel expenses for any non-employee accompanying the taxpayer on a trip.

(d) Fuels Credit: Complete Form 4136, Credit for Federal Tax Paid on Fuels, and attach to the return.

(e) Investment Credit: Complete Form 3468, Investment Credit, and attach to the return.

SEC. 5. EFFECTIVE DATE

.01 This revenue procedure applies to any return filed on 1996 tax forms for a taxable year beginning in 1996, and to any return filed on 1996 tax forms in 1997 for short taxable years beginning in 1997.

SEC. 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Marcia Rachy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Rachy on (202) 622–6232 (not a toll-free call).

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26 CFR 601.602: Tax forms and instructions.
(Also Part I, §§ 1, 32, 59, 63, 68, 132, 135, 151, 170, 512, 513, 877, 4001, 4003, 6012, 6013, 6033, 6039F, 7430; 1.1–1, 1.32–2, 1.63–1, 1.151–4, 1.170–1, 1.6012–1, 1.6013–1)

Rev. Proc. 96–59

Table of Contents

SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 1997.

SECTION 2. CHANGES MADE FROM PRECEDING YEAR

.01 Amounts used to determine eligibility for the elective method under § 1(g)(7) to report the ''kiddie tax'' on the parent's tax return, and to make computations under this method, are adjusted for inflation for tax years beginning in 1997. See section 3.02 of this revenue procedure.

.02 The amount of investment income that causes an individual to be denied the earned income tax credit under § 32(i) is adjusted for inflation for tax years beginning in 1997. See section 3.03(2) of this revenue procedure.

.03 A limited exemption from the alternative minimum tax under § 59(j) for a child subject to the ''kiddie tax'' is adjusted for inflation for tax years beginning in 1997. See section 3.04 of this revenue procedure.

.04 The maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations under § 512(d)(1) without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members is adjusted for inflation for tax years beginning in 1997. See section 3.10 of this revenue procedure.

.05 The amounts used under § 877 to determine whether a principal purpose of expatriation is to avoid tax are adjusted for inflation for calendar year 1997. See section 3.12 of this revenue procedure.

.06 The amount of gifts in a taxable year from foreign person(s), which triggers a reporting requirement for a United States person under § 6039F, is adjusted for inflation for tax years beginning in 1997. See section 3.15 of this revenue procedure.

.07 The hourly limit on attorney fees that may be awarded under § 7430, in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty under the Code, is adjusted for inflation for tax years beginning in 1997. See section 3.16 of this revenue procedure.

SECTION 3. 1997 ADJUSTED ITEMS

.01 *Tax Rate Tables.* The following adjusted tax rate tables are prescribed in lieu of the tables in subsections (a), (b), (c), (d), and (e) of § 1 of the Code with respect to tax years beginning in 1997.

TABLE 1—Section 1(a).—MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES

If Taxable Income Is:	The Tax Is:
Not Over $41,200	15% of the taxable income
Over $41,200 but not over $99,600	$6,180 plus 28% of the excess over $41,200
Over $99,600 but not over $151,750	$22,532 plus 31% of the excess over $99,600
Over $151,750 but not over $271,050	$38,698.50 plus 36% of the excess over $151,750
Over $271,050	$81,646.50 plus 39.6% of the excess over $271,050

TABLE 2—Section 1(b).—HEADS OF HOUSEHOLDS

If Taxable Income Is:	The Tax Is:
Not Over $33,050	15% of the taxable income
Over $33,050 but not over $85,350	$4,957.50 plus 28% of the excess over $33,050
Over $85,350 but not over $138,200	$19,601.50 plus 31% of the excess over $85,350
Over $138,200 but not over $271,050	$35,985 plus 36% of the excess over $138,200
Over $271,050	$83,811 plus 39.6% of the excess over $271,050

TABLE 3—Section 1(c).—UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS)

If Taxable Income Is:	The Tax Is:
Not Over $24,650	15% of the taxable income
Over $24,650 but not over $59,750	$3,697.50 plus 28% of the excess over $24,650

TABLE 3—Section 1(c).—UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS)—Continued

If Taxable Income Is:	The Tax Is:
Over $59,750 but not over $124,650	$13,525.50 plus 31% of the excess over $59,750
Over $124,650 but not over $271,050	$33,644.50 plus 36% of the excess over $124,650
Over $271,050	$86,348.50 plus 39.6% of the excess over $271,050

TABLE 4—Section 1(d).—MARRIED INDIVIDUALS FILING SEPARATE RETURNS

If Taxable Income Is:	The Tax Is:
Not Over $20,600	15% of the taxable income
Over $20,600 but not over $49,800	$3,090 plus 28% of the excess over $20,600
Over $49,800 but not over $75,875	$11,266 plus 31% of the excess over $49,800
Over $75,875 but not over $135,525	$19,349.25 plus 36% of the excess over $75,875
Over $135,525	$40,823.25 plus 39.6% of the excess over $135,525

TABLE 5—Section 1(e).—ESTATES AND TRUSTS

If Taxable Income Is:	The Tax Is:
Not Over $1,650	15% of the taxable income
Over $1,650 but not over $3,900	$247.50 plus 28% of the excess over $1,650
Over $3,900 but not over $5,950	$877.50 plus 31% of the excess over $3,900
Over $5,950 but not over $8,100	$1,513 plus 36% of the excess over $5,950
Over $8,100	$2,287 plus 39.6% of the excess over $8,100

.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax").*

(1) *Reporting on Child's Return.*

(a) Section 1(g) provides that the tax on the net unearned income of a child under the age of 14 is computed at the marginal rate of the child's parent. Under § 1(g)(4)(A)(ii), net unearned income generally equals unearned income less the sum of (I) the amount in effect for the tax year under § 63(c)(5)(A), plus (II) the greater of the amount described in (I) or certain itemized deductions.

(b) The amount in effect for tax years beginning in 1997 under § 63(c)(5)(A) is $650. See section 3.05(2) below. Accordingly, for tax years beginning in 1997, net unearned income will generally equal unearned income less the greater of $1,300 or $650 plus certain itemized deductions.

(2) *Election to Report on Parent's Return.*

(a) Section 1(g)(7)(A) provides that if a child's gross income from interest and dividends is more than the amount described in § 1(g)(4)(A)(ii)(I) and less than ten times that amount, and certain other conditions are met, a parent may elect to include a child's gross income in the parent's gross income for the taxable year. Under § 1(g)(7)(B), the ''kiddie tax'' is determined by (I) including the portion of a child's gross income in the parent's gross income to the extent that the child's gross income exceeds twice the amount described in § 1(g)(4)(A)(ii)(I), and (II) adding to the tax on that income the lesser of 15 percent of either the amount described in § 1(g)(4)(A)(ii)(I) or the excess of the child's gross income over such amount.

(b) The amount in effect for tax years beginning in 1997 under § 1(g)(4)(A)(ii)(I), which is also the amount under § 63(c)(5)(A) (see section 3.02(1)(b) above), is $650. Accordingly, for tax years beginning in 1997, to qualify to make the parent's election, the child's gross income from interest and dividends must be more than $650 and less than $6,500 pursuant to § 1(g)(7)(A). Under § 1(g)(7)(B), the ''kiddie tax'' is imposed on the parent by (I) including a child's gross income in excess of $1,300 in the parent's gross income, and (II) adding to the tax on that income the lesser of either $97.50 (or $98 if the taxpayer elects to round on the return) or 15 percent of the excess of the child's gross income over $650.

.03 *Earned Income Tax Credit.*

(1) *Amount of credit; phaseout income levels.*

(a) Section 32(a)(1) provides an earned income tax credit amount for certain taxpayers with one child, two or more children, or no children. For tax years beginning in 1997, the ''maximum amount of the credit'' is calculated by multiplying the ''earned income amount'' by the ''credit percentage'' as follows:

Type of Taxpayer	*Credit Percentage*	*Earned Income Amount*	*Maximum Amount of the Credit*
1 child	34	$6,500	$2,210
2 or more children	40	$9,140	$3,656
No children	7.65	$4,340	$ 332

(b) Section 32(a)(2) provides for the phaseout of the earned income tax credit. The amount of the reduction in the maximum amount of the credit caused by the phaseout is calculated by multiplying the ''phaseout percentage'' by the amount by which the taxpayer's adjusted gross income (or, if greater, earned income) exceeds the ''threshold phaseout amount.'' For tax years beginning in 1997, the ''phaseout percentages,'' the ''threshold phaseout amounts,'' and the ''completed phaseout amounts'' are as follows:

Type of Taxpayer	*Phaseout Percentage*	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
1 child	15.98	$11,930	$25,760
2 or more children	21.06	$11,930	$29,290
No children	7.65	$ 5,430	$ 9,770

(c) The Internal Revenue Service will prescribe tables showing the amount of the earned income tax credit for each type of taxpayer.

(2) *Excessive investment income.*

(a) Under § 32(i), the earned income tax credit is denied if the aggregate amount of certain investment income for the taxable year exceeds $2,200 (the ''disqualified income limitation'').

(b) For tax years beginning in 1997, the ''disqualified income limitation'' is $2,250.

.04 *Alternative Minimum Tax Exemption for ''Kiddie Tax'' Reported on Parent's Return.*

(1) Section 59(j) provides that for a child to whom § 1(g) applies, the exemption amount for purposes of the alternative minimum tax under § 55 shall not exceed the sum of (A) such child's earned income for the taxable year, plus (B) twice the amount in effect for the taxable year under § 63(c)(5)(A) (or, if greater, the child's share of the unused parental minimum tax exemption).

(2) The amount in effect for tax years beginning in 1997 under § 63(c)(5)(A) is $650. See section 3.05(2) below. Accordingly, for tax years beginning in 1997, twice the amount in effect for the taxable year under § 63(c)(5)(A) is $1,300.

.05 *Standard Deduction.*

(1) The following adjusted standard deduction amounts are prescribed in lieu of the amounts set forth in § 63(c)(2) with respect to tax years beginning in 1997.

Filing Status	*Standard Deduction*
MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES (§ 1(a))	$6,900
HEADS OF HOUSEHOLDS (§ 1(b))	$6,050
UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS) (§ 1(c))	$4,150
MARRIED INDIVIDUALS FILING SEPARATE RETURNS (§ 1(d))	$3,450

(2) Under § 63(c)(5)(A) for tax years beginning in 1997, the standard deduction for an individual who may be claimed as a dependent by another taxpayer for a tax year beginning in the calendar year in which the individual's tax year begins, cannot exceed the greater of (A) $650 or (B) the amount of the individual's earned income.

(3) Under § 63(f) for tax years beginning in 1997, the additional standard deduction amounts for the aged and for the blind are $800 for each. These amounts are each increased to $1,000 if the individual is also unmarried and not a surviving spouse.

.06 *Overall Limitation on Itemized Deductions.*

(1) Section 68 provides that the amount of itemized deductions otherwise allowable for the tax year shall be reduced by the lesser of (1) 3 percent of the excess of adjusted gross income over the ''applicable amount,'' or (2) 80 percent of the amount of certain itemized deductions otherwise allowable for the tax year.

(2) The ''applicable amount'' for tax years beginning in 1997 is $121,200 ($60,600 in the case of a separate return filed by a married individual within the meaning of § 7703).

.07 *Qualified Transportation Fringe.*

(1) Section 132(f) provides an exclusion from gross income for certain employer-provided transportation referred to as a ''qualified transportation fringe.'' A ''qualified transportation fringe'' means any of the following: transportation in a commuter highway vehicle between the employee's residence and place of employment, any transit pass, and qualified parking. Section 132(f)(2)(A) limits the exclusion for the aggregate of the transportation in a commuter highway vehicle and the transit pass to $60 per month (the ''$60 vehicle/transit'' limitation). Section 132(f)(2)(B) limits the exclusion for qualified parking to $155 per month (the ''$155 parking'' limitation).

(2) For tax years beginning in 1997, the ''$60 vehicle/transit'' limitation is $65 and the ''$155 parking'' limitation is $170.

.08 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.*

(1) Section 135 provides an exclusion of income from the redemption of United States savings bonds for taxpayers who pay qualified higher education expenses. Section 135(b)(2) provides for the phaseout of the exclusion. The amount of the reduction in the exclusion caused by the phaseout is calculated by multiplying the amount otherwise excludable by a fraction. The numerator of the fraction is the excess of the taxpayer's modified adjusted gross income

over the threshold amount ($60,000 for joint returns or $40,000 for others) and the denominator is $30,000 for joint returns or $15,000 for others.

(2) For tax years beginning in 1997, the amounts of modified adjusted gross income above which the phaseout of the exclusion begins (''threshold phaseout amounts''), and the amounts at which the benefit is completely phased out (''completed phaseout amounts''), are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
Code § 1(a)	$76,250	$106,250
Others	$50,850	$ 65,850

.09 *Personal Exemption.*

(1) Section 151(b) generally allows a taxpayer an exemption for himself or herself. Section 151(c) generally allows a taxpayer additional exemptions for dependents as defined in § 152. The personal exemption for tax years beginning in 1997 is $2,650.

(2) Section 151(d)(3) provides for the phaseout of the tax benefit of the personal exemptions allowed by § 151. The reduction in the amount of personal exemptions caused by the phaseout is calculated by reducing the total amount of the personal exemptions by 2 percent for each $2,500 increment (or portion thereof) of adjusted gross income in excess of a threshold phaseout amount. For tax years beginning in 1997, the ''threshold phaseout amounts'' and the ''completed phaseout amounts'' are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount After*
Code § 1(a)	$181,800	$304,300
Code § 1(b)	$151,500	$274,000
Code § 1(c)	$121,200	$243,700
Code § 1(d)	$ 90,900	$152,150

.10 *Treatment of Dues Paid to Agricultural or Horticultural Organizations.*

(1) Section 512(d)(1) provides that no portion of annual dues required by an agricultural or horticultural organization described in § 501(c)(5) is treated as derived from an unrelated trade or business by reason of any benefits or privileges to which members are entitled if the amount of required annual dues from each member does not exceed $100 (the ''$100 amount'').

(2) For tax years beginning in 1997, the ''$100 amount'' is $106.

.11 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.*

(1) Section 513(h)(1)(A) provides that, in the case of certain exempt organizations, the term ''unrelated business income'' does not include activities relating to the distribution of ''low cost articles'' (as defined in § 513(h)(2)) if the distribution of such articles is incidental to the solicitation of charitable contributions.

(2) Section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471, as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and as modified by Rev. Proc. 92–102, 1992–2 C.B. 579, provides guidelines for determining the deductible amount of contributions under § 170 when contributors receive something in return for their contributions. The guidelines provide that insubstantial benefits received by a contributor (in the context of a charitable fund-raising campaign) are disregarded, which makes the contribution fully deductible under § 170. The guidelines further provide the following three alternative limitations on what are insubstantial benefits:

(a) The fair market value of all the benefits received is not more than 2-percent of the contribution, or $50 (the ''$50 benefit'' limitation), whichever is less;

(b) The contribution is $25 (the ''$25 payment'' limitation) or more, and the only benefits received by the donor in return during the calendar year have a cost, in the aggregate, of not more than a ''low cost article'' under § 513(h)(2); or

(c) In connection with a request for a charitable contribution, the charity mails or otherwise distributes free, unordered items to patrons, and the cost of such items (in the aggregate) distributed to any single patron in a calendar year is not more than a ''low cost article'' under § 513(h)(2).

(3) For tax years beginning in 1997, the ''$50 benefit'' limitation is $69, the ''$25 payment'' limitation is $34.50, and the ''low cost article'' limitation is $6.90.

.12 *Expatriation to Avoid Tax.*

(1) Under § 877(a)(1), an individual who loses United States citizenship may be subject to taxation under § 877(b) if a principal purpose of such loss is the avoidance of tax. Under § 877(a)(2), an individual is treated as having the avoidance of tax as a principal purpose of such loss if (A) the average annual net income tax (as defined in § 38(c)(1)) of such individual for a period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $100,000 (the ''$100,000 amount'') or (B) the net worth of the individual as of such date is $500,000 or more (the ''$500,000 amount'').

(2) For calendar year 1997, the ''$100,000 amount'' is $106,000 and the ''$500,000 amount'' is $528,000.

.13 *Luxury Automobile Excise Tax.*

(1) Section 4001(a) imposes an excise tax on the first retail sale of any passenger vehicle to the extent the price exceeds $30,000 (the ''$30,000 amount''). Section 4003(a) imposes an excise tax on the installation of parts or accessories on a passenger vehicle within six months of the date after the vehicle was first placed in service, to the extent the price of all parts and accessories, including installation, and the price of the vehicle exceed the ''$30,000 amount.''

(2) For calendar year 1997, the ''$30,000 amount'' is $36,000.

.14 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures.*

(1) Section 6033(e)(1)(A) provides that certain exempt organizations that pay or incur nondeductible lobbying expenditures must include the total of those expenditures on their annual returns and must notify their members with a reasonable estimate of the portion of dues allocated to those expenditures. Section 6033(e)(3) provides that § 6033(e)(1)(A) shall not apply to an organization that establishes to the satisfaction of the Secretary that substantially all of its dues are nondeductible without regard to the lobbying expenditure restrictions. Section 4.02 of Rev. Proc. 95–35, 1995–2 C.B. 391, provides that § 501(c)(4) social welfare organizations and § 501(c)(5) agricultural and horticultural organizations are treated as satisfying § 6033(e)(3) if either (1) more than 90 percent of all annual dues are received from persons, families, or entities who each pay $50 or less (the ''$50 exception'' amount), or (2) more than 90 percent of all annual dues are received from certain exempt entities.

(2) For tax years beginning in 1997, the ''$50 exception'' amount is $53.

.15 *Notice of Large Gifts Received from Foreign Persons.*

(1) Section 6039F requires that a United States person report information on gifts from foreign persons if the

aggregate of such gifts from all such persons exceeds $10,000 (the ''$10,000 amount'') in a taxable year.

(2) For tax years beginning in 1997, the ''$10,000 amount'' is $10,276.

.16 *Attorney Fee Awards.*

(1) Under § 7430, attorney fees may be awarded in a judgment or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty under the Code. The attorney fees are subject to an hourly limit of $110 (the ''$110 amount'') pursuant to § 7430(c)(1).

(2) For calendar year 1997, the ''$110 amount'' is $110.

SECTION 4. COMPUTATION OF INFLATION ADJUSTMENTS

.01 *Tax Rate Tables.*

(1) Section 1(f)(1) provides that not later than December 15 of each calendar year, the Secretary shall prescribe inflation-adjusted tax rate tables that apply in lieu of the tax rate tables in § 1 with respect to tax years beginning in the succeeding calendar year.

(2) Under § 1(f)(3), the inflation adjustment for a calendar year is the percentage (if any) by which the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for the calendar year 1992. However, § 1(f)(7)(B) provides that in prescribing the inflation adjustments for the 36 percent and 39.6 percent tax rate brackets, the preceding calendar year's CPI is compared with the CPI for the calendar year 1993. For purposes of computing the inflation adjustment, § 1(f)(4) defines the CPI as the average of the 12 monthly CPIs for the 12-month period ending on August 31 of such calendar year. Under § 1(f)(5), the CPI is that for all-urban consumers published by the Department of Labor.

(3) Section 1(f)(2)(A) provides that the inflation adjustment is reflected in the tax rate tables by increasing the minimum and maximum dollar amounts for each rate bracket. Under § 1(f)(6), an adjusted bracket amount is ''rounded down'' to the nearest multiple of $50 ($25 in the case of married individuals filing separately).

.02 *Kiddie Tax.*

(1) *Reporting on Child's Return.* Section 1(g)(4) uses the limitation on the standard deduction for certain dependents under § 63(c)(5)(A) in computing the ''kiddie tax.'' That limitation is adjusted for inflation under § 63(c)(4). The inflation adjustment computation under § 63(c)(4) is described below in section 4.05.

(2) *Election To Report on Parent's Return.* Section 1(g)(7) uses an amount described in § 1(g)(4) in computing the ''kiddie tax.'' Section 1(g)(4) uses the limitation on the standard deduction for certain dependents under § 63(c)(5)(A), and is adjusted, as described above in section 4.02(1).

.03 *Earned Income Tax Credit.*

(1) *Amount of credit; phaseout income levels.*

(a) Section 32(j) provides that the ''earned income amounts'' and ''phaseout amounts,'' which limit the earned income tax credit, are adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1995. Under § 32(j)(2)(A), the adjusted amount is rounded to the nearest multiple of $10.

(b) Under § 32(b)(2), the base amounts of the ''earned income amounts'' and ''phaseout amounts'' are $6,330 and $11,610 for a taxpayer with one child, $8,890 and $11,610 for a taxpayer with two or more children, and $4,220 and $5,280 for a taxpayer with no children.

(2) *Excessive Investment Income.*

(a) Section 32(j) provides that the ''disqualified income limitation'' is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1995. Under § 32(j)(2)(B), the ''disqualified income limitation'' is ''rounded down'' to the next lowest multiple of $50.

(b) Under § 32(i), the base amount of the ''disqualified income limitation'' is $2,200.

.04 *Alternative Minimum Tax Exemption for "Kiddie Tax" Reported on Parent's Return.* Section 59(j) uses the limitation on the standard deduction for certain dependents under § 63(c)(5)(A) in computing the alternative minimum tax on income subject to the ''kiddie tax.'' The limitation on the standard deduction is adjusted for inflation under § 63(c)(4). The inflation adjustment computation under § 63(c)(4) is described below in section 4.05.

.05 *Standard Deduction.*

(1) Under § 63(c)(4), the standard deduction amounts (including the limitation for certain dependents and the additional standard deduction amounts for the aged and for the blind) are adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1987. Under § 1(f)(6), an adjusted amount is ''rounded down'' to the nearest multiple of $50 ($25 in the case of the basic standard deduction for married individuals filing separately).

(2) Under § 63(c)(2), the base amounts of the basic standard deduction are $5,000 for married individuals filing joint returns and surviving spouses; $4,400 for heads of households; $3,000 for unmarried individuals (other than surviving spouses and heads of households); and $2,500 for married individuals filing separate returns. Under § 63(c)(5)(A), the base amount of the limited standard deduction for an individual who may be claimed as a dependent by another taxpayer is $500. Under § 63(f), the base amounts of the additional standard deduction for the aged and for the blind are $600 for each, except that these amounts are increased to $750 if the individual is unmarried and not a surviving spouse.

.06 *Overall Limitation on Itemized Deductions.*

(1) Section 68(b)(2) provides that the ''applicable amount'' for the overall limitation on itemized deductions is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1990. Under § 1(f)(6), the adjusted ''applicable amount'' is ''rounded down'' to the nearest multiple of $50 ($25 in the case of married individuals filing separately).

(2) Under § 68(b)(1), the base amount of the ''applicable amount'' is $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of § 7703).

.07 *Qualified Transportation Fringe.* Section 132(f)(6) provides that the limitation on the amount of the exclusion from gross income for a qualified transportation fringe is adjusted for inflation under the method described in § 1(f)(3). See section 4.01 above. Under § 132(f)(6)(B), an increased amount that is not a multiple of $5 is ''rounded down'' to the next lowest multiple of $5.

.08 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* Section 135(b)(2)(B) provides that the dollar amount at which the phaseout of

the exclusion (of income from the redemption of United States savings bonds for taxpayers who pay qualified higher education expenses) begins is adjusted for inflation under the method described in § 1(f)(3). The preceding calendar year's CPI is compared with the CPI for the calendar year 1989. The adjusted dollar amount is rounded to the nearest multiple of $50 (if the adjusted figure is a multiple of $25, it is increased to the next highest multiple of $50) under § 135(b)(2)(C).

.09 *Personal Exemption.*

(1) Exemption amount.

(a) Section 151(d)(4)(A) provides that the personal exemption amount is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1988. The adjusted exemption is ''rounded down'' to the nearest multiple of $50 under § 1(f)(6).

(b) Under § 151(d)(1), the base amount of the personal exemption is $2,000.

(2) *Phaseout amounts.*

(a) Section 151(d)(4)(B) provides that the ''threshold amounts'' at which the phaseout of the tax benefit of the personal exemptions begins are adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1990. Under § 1(f)(6), an adjusted ''threshold amount'' is ''rounded down'' to the nearest multiple of $50 ($25 in the case of married individuals filing separately).

(b) Under § 151(d)(3)(C), the base amounts of the ''threshold amounts'' are $150,000 for Code § 1(a) taxpayers; $125,000 for Code § 1(b) taxpayers; $100,000 for Code § 1(c) taxpayers; and $75,000 for Code § 1(d) taxpayers.

.10 *Treatment of Dues Paid to Agricultural or Horticultural Organizations.* Section 512(d)(2) provides that the ''$100 amount'' is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1994.

.11 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.*

(1) *Section 513(h).*

(a) Section 513(h)(1)(C) provides that the maximum cost of a ''low cost article'' is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1987.

(b) Under § 513(h)(2)(A), the base amount of the ''low cost article'' is $5.

(2) *Rev. Proc. 90–12.* Rev. Proc. 90–12 provides for the adjustment of the ''low cost article'' and the ''$25 payment'' limitations in that revenue procedure as provided under § 513(h)(2)(C). The ''$50 benefit'' limitation in that revenue procedure is adjusted in the same manner.

.12 *Expatriation to Avoid Tax.* Section 877(a)(2) provides that the ''$100,000 amount'' and the ''$500,000 amount'' are adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1994. Under § 877(a)(2), the adjusted ''$100,000 amount'' and ''$500,000 amount'' are rounded to the nearest multiple of $1,000.

.13 *Luxury Automobile Excise Tax.* Section 4001(e)(1) provides that the ''$30,000 amount'' threshold for the excise tax on a luxury automobile in §§ 4001(a) and 4003(a) is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1990. Under § 4001(e)(2), the adjusted ''$30,000 amount'' is ''rounded down'' to the nearest multiple of $2,000.

.14 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures.* Section 5.05 of Rev. Proc. 95–35 provides that the ''$50 exception'' amount is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1994. The adjusted ''$50 exception'' amount is rounded up to the next highest dollar.

.15 *Notice of Large Gifts Received from Foreign Persons.* Section 6039F(d) provides that the ''$10,000 amount'' is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1995.

.16 *Attorney Fee Awards.* Section 7430(c)(1)(B) provides that the ''$110 amount'' is adjusted for inflation under the method described in § 1(f)(3), except that the preceding calendar year's CPI is compared with the CPI for the calendar year 1995. The adjusted ''$110 amount'' is rounded to the nearest multiple of $10 under § 7430(c)(1)(B).

SECTION 5. 1997 INFLATION ADJUSTMENT FACTORS

.01 *1995 Base Year Adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1995 is 151.0750000000. This results in an inflation adjustment factor of 1.0275801202. This factor applies to the earned income tax credit, the reporting of large gifts from foreign persons for tax years beginning in 1997, and the awarding of attorney fees for calendar year 1997.

.02 *1994 Base Year Adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1994 is 146.9000000000. This results in an inflation adjustment factor of 1.0567846608. This factor applies to the treatment of dues paid to agricultural or horticultural organizations, the amounts used to determine whether a principal purpose of expatriation is to avoid tax, and the reporting exception for certain exempt organizations with nondeductible lobbying expenditures for tax years beginning in 1997.

.03 1993 Base Year Adjustments. The CPI for 1996 is 155.2416666667 and the CPI for 1993 is 143.1750000000. This results in an inflation adjustment factor of 1.0842791456. This factor applies to the 36 percent and 39.6 percent brackets of the tax rate tables for tax years beginning in 1997.

.04 *1992 Base Year Adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1992 is 138.9250000000. This results in an inflation adjustment factor of 1.1174494631. This factor applies to the 15 percent, 28 percent, and 31 percent brackets of the tax rate tables, and to the qualified transportation fringe limitations for tax years beginning in 1997.

.05 *1990 base year adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1990 is 128.0583333333. This results in an inflation adjustment factor of 1.2122730526. This factor applies to the phaseout of personal exemptions, to the limitation on itemized deductions, and to the luxury automobile excise tax threshold for tax years beginning in 1997.

.06 *1989 base year adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1989 is 122.1500000000. This results in an inflation adjustment factor of 1.2709100832. This factor applies to

the qualified higher education expense exclusion for tax years beginning in 1997.

.07 *1988 Base Year Adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1988 is 116.6166666667. This results in an inflation adjustment factor of 1.3312133772. This factor applies to the personal exemption for tax years beginning in 1997.

.08 *1987 Base Year Adjustments.* The CPI for 1996 is 155.2416666667 and the CPI for 1987 is 111.9833333333. This results in an inflation adjustment factor of 1.3862926031. This factor applies to the ''kiddie tax'' (including the election to report on the parent's return) and the limitation on the alternative minimum tax exemption for ''kiddie tax'' reported on a parent's return, the standard deduction amounts, and the insubstantial benefit limitations for charitable contributions for tax years beginning in 1997.

SECTION 6. EFFECT ON OTHER DOCUMENTS

.01 *Rev. Proc. 95–53.* Rev. Proc. 95–53, 1995–2 C.B. 445, is amplified and modified as follows:

(1) *Kiddie Tax.* For tax years beginning in 1996, the amount in effect under § 1(g)(4)(A)(ii)(I) for purposes of the election to report on a parent's return is the same as that provided in section 3.02(b) of this revenue procedure for tax years beginning in 1997.

(2) *Alternative Minimum Tax Exemption for ''Kiddie Tax'' Reported on Parent's Return.* For tax years beginning in 1996, the amount in effect under § 63(c)(5)(A) is the same as that provided in section 3.04 of this revenue procedure for tax years beginning in 1997.

(3) *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* For tax years beginning in 1996, the amounts of modified adjusted gross income above which the § 135 exclusion begins to phase out and the amounts at which the phaseout is complete, are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
Code § 1(a)	$74,200	$104,200
Others	$49,450	$ 64,450

(4) *Treatment of Dues Paid to Agricultural or Horticultural Organizations.* For tax years beginning in 1996, no portion of annual dues required by an agricultural or horticultural organization described in § 501(c)(5) is treated as derived from an unrelated trade or business by reason of any benefits or privileges to which members are entitled if the amount of required annual dues from each member does not exceed $103.

.02 *Rev. Proc. 94–72.* Rev. Proc. 94–72, 1994–2 C.B. 811, is modified as follows: For tax years beginning in 1995, the amounts of modified adjusted gross income above which the § 135 exclusion begins to phase out and the amounts at which the phaseout is complete, are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
Code § 1(a)	$72,150	$102,150
Others	$48,100	$ 63,100

.03 *Rev. Proc. 93–49.* Rev. Proc. 93–49, 1993–2 C.B. 581, is modified as follows: For tax years beginning in 1994, the amounts of modified adjusted gross income above which the § 135 exclusion begins to phase out and the amounts at which the phaseout is complete, are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
Code § 1(a)	$70,350	$100,350
Others	$46,900	$ 61,900

.04 *Rev. Proc. 92–102.* Rev. Proc. 92–102, 1992–2 C.B. 579, is modified as follows: For tax years beginning in 1993, the amounts of modified adjusted gross income above which the § 135 exclusion begins to phase out and the amounts at which the phaseout is complete, are as follows:

Filing Status	*Threshold Phaseout Amount*	*Completed Phaseout Amount*
Code § 1(a)	$68,250	$98,250
Others	$45,500	$60,500

SECTION 7. EFFECTIVE DATE

.01 *General Rule.* Except as provided in sections 6 and 7.02, this revenue procedure applies to tax years beginning in 1997.

.02 *Calendar Year Rule.* This revenue procedure applies to transactions or events occurring in calendar year 1997 for purposes of section 3.12 (the expatriation tax), section 3.13 (the excise tax on luxury automobiles), and section 3.16 (the hourly limit on attorney fee awards).

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is John Moran of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Moran on (202) 622–4940 (not a toll-free call).

The economist responsible for development of the factors set forth in this revenue procedure is David Ludlum of the Research Division of the Internal Revenue Service. For further information regarding these factors, contact Mr. Ludlum on (202) 874–0026 (not a toll-free call).

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26 CFR 601.602: Forms and instructions.
(Also Part I, §§ 6011, 6051, 6071; 31.6011(a)–4, 31.6051–1, 31.6071(a)–1.

Rev. Proc. 96–60

SECTION 1. PURPOSE

.01 This revenue procedure modifies and supersedes Rev. Proc. 84–77, 1984–2 C.B. 753. This revenue procedure explains both the standard procedure and an alternate procedure for preparing and filing Form W–2, Wage and Tax Statement; Form W–3, Transmittal of Income and Tax Statements; Form 941, Employer's Quarterly Federal Tax Return; Form W–4, Employee's Withholding Allowance Certificate; and Form W–5, Earned Income Credit Advance Payment Certificate in certain acquisitions. This revenue procedure applies when an employer (successor) acquires substantially all the property (1) used in a trade or business of another employer (predecessor), or (2) used in a separate unit of a trade or business of a predecessor, and in connection with, or immediately after the acquisition (but during the same calendar year) the successor employs individuals who immediately prior to the acquisition were employed in the trade or business of the predecessor. (The term ''trade or business,'' for purposes of this revenue procedure, may include the activity of a nonprofit organization or of a federal or state agency.)

.02 This revenue procedure does not apply to the situation described in Rev. Rul. 62–60, 1962–1 C.B. 186, which relates to the absorption of one corpora-

tion by another in a statutory merger or consolidation, where the resultant entity is regarded as the same taxpayer and the same employer as the absorbed corporation.

SECTION 2. CHANGES

.01 Section 4.01, which provided the time frame for a predecessor to furnish Forms W–2 under the standard procedure, has been modified to explain that the predecessor must furnish Forms W–2 to its former employees, and file Forms W–2 and W–3 with the Social Security Administration (SSA) on an expedited basis, if the predecessor has ceased to pay wages and is required to file a final Form 941.

.02 Section 5.01, which provided the alternate procedure for furnishing Forms W–2, has been modified to provide that the expedited furnishing and filing requirements do not apply to the successor.

.03 Section 5.02, which provided the alternate procedure for the predecessor to submit Form 941, has been modified to provide that if the predecessor is required to file a final Form 941, the predecessor must both furnish Forms W–2 to its employees who are not acquired by the successor and file Forms W–2 and W–3 with SSA on an expedited basis.

.04 Section 5.06 has been added to provide procedures for transferring electronically filed Forms W–4 from the predecessor to the successor.

SECTION 3. BACKGROUND

.01 Section 6011(a) of the Internal Revenue Code provides that any person made liable for any tax, or for the collection of the tax, must make a return or statement according to the forms or regulations prescribed by the Secretary.

.02 Section 31.6011(a)–1 of the Employment Tax Regulations prescribes Form 941 as the form to use for persons required to make a quarterly return under the Federal Insurance Contributions Act.

.03 Section 31.6011(a)–4 prescribes Form 941 as the form to use for persons required to make a quarterly return of income tax withheld from wages.

.04 Section 31.6011(a)–6 provides that an employer who ceases to pay wages reportable on Form 941 shall file a final Form 941.

.05 Section 31.6071(a)–1 provides that the Form 941 generally must be filed on or before the last day of the first calendar month following the quarter for which it is made.

.06 Section 6051(a) provides that (1) every person required to deduct and withhold income tax, or who would have been required to deduct and withhold if the employee had claimed no more than 1 withholding exemption, or (2) every employer engaged in a trade or business who pays remuneration for services performed by an employee, must furnish a written statement to an employee regarding the remuneration paid to the employee during the calendar year. Section 31.6051–1(a) provides that the statement is Form W–2. Form W–2 must be furnished to the employee on or before January 31 of the following calendar year. If the employee's employment is terminated before the close of the calendar year, however, and the employee requests the Form W–2 in writing, the Form W–2 must be furnished to the employee within 30 days of the later of the written request from the employee or the last payment of wages, provided such 30-day period ends before January 31.

.07 Section 31.6051–1(d)(1)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must furnish Forms W–2 to its employees on or before the date required for filing the final Form 941. If the final Form 941 is a monthly return as described in § 31.6011(a)–5, the Forms W–2 must be furnished on or before the last day of the month in which the final Form 941 is required to be filed.

.08 Section 31.6071(a)–1(a)(3)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must file Forms W–2 and W–3 on or before the last day of the second calendar month following the period for which the final Form 941 is filed.

.09 Section 31.3402(f)(5)–1(c) provides that an employer may establish a system for its employees to file Form W–4 electronically.

SECTION 4. STANDARD PROCEDURE

.01 *In general.* Under the standard procedure, the predecessor performs all the reporting duties for the wages and other compensation it pays. These duties include the filing of quarterly Forms 941 and the furnishing and filing of Forms W–2 and W–3. In connection with the successor's acquisition of property and hiring of employees from the predecessor, as described in section 1.01, the predecessor may cease to pay any wages required to be reported on Form 941 (for example, the predecessor may go out of business). In that case, the predecessor must file the Form 941 for the quarter of the acquisition as a final Form 941. If the predecessor does not cease to pay any wages required to be reported on Form 941, (for example, the predecessor remains in business) a final Form 941 is not required. Instead, the predecessor would file its quarterly Form 941 for the quarter of the acquisition. The successor, under the standard procedure, performs all the reporting duties for the wages and other compensation it pays.

.02 *Forms W–2.*

(1) *In general.* If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor and successor both must furnish Forms W–2 to their respective employees no later than January 31 of the following calendar year. If an employee requests the Form W–2 earlier, however, the Form W–2 must be furnished within 30 days of the written request, or within 30 days after the final payment of wages to the employee, whichever is later, provided the 30 day period ends before January 31. The predecessor and successor must file Forms W–2 and W–3 for their respective employees with SSA no later than the last day of February of the following calendar year.

(2) *Expedited Forms W–2.* If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W–2 to its former employees on an expedited basis. The Forms W–2 are due on or before the date required for filing the final Form 941. If the predecessor is required to file Form 941 on a monthly basis, the Forms W–2 are due on or before the last day of the month in which the final Form 941 is required to be filed. The predecessor must also file Forms W–2 and W–3 with SSA on an expedited basis. The Forms W–2 and W–3 are due on or before the last day of the second calendar month following the period for which the final Form 941 is required to be filed.

.03 *Forms W–4.* The predecessor must keep on file the Forms W–4 provided by its former employees. The transferred employees must provide the successor with new Forms W–4 as the

successor now becomes responsible for deducting and withholding tax from wages paid to the transferred employees.

.04 *Forms W–5.* The predecessor must also keep on file the Forms W–5 provided by its former employees. The transferred employees must provide the successor with new Forms W–5 for the current year.

SEC. 5. ALTERNATE PROCEDURE

.01 *In general.* If, in connection with the circumstances described in section 1.01, the predecessor and successor so agree, the predecessor will be relieved from furnishing Forms W–2 to any employees who will be employed in the same calendar year by the successor (acquired employees). In such circumstances the acquired employees presumably will be paid wages by the successor in the same calendar year and the Forms W–2 furnished to the acquired employees by the successor for the year will include wages paid, and taxes withheld, by both the predecessor and the successor. The predecessor will also be relieved from filing Forms W–2 with SSA for the acquired employees. The predecessor's entire Form W–2 reporting obligations for the acquired employees will be assumed by the successor. The predecessor remains responsible for the Form W–2 reporting obligations for those employees who are not employed by the successor.

.02 *Forms W–2.*

(1) *In general.* If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor must furnish Forms W–2 to employees who are not employed by the successor by January 31 of the following calendar year. Forms W–2 and W–3 filed by the predecessor with SSA for employees who are not employed by the successor are due the last day of February of the following calendar year. If the successor assumes the predecessor's obligation to furnish Forms W–2 to the acquired employees for a calendar year, the successor must assume the predecessor's entire Form W–2 reporting obligation. Thus, Forms W–2 furnished by the successor to the acquired employees must include the wages paid and the taxes withheld by both the predecessor and the successor. The successor must include on the Forms W–2 any amount reportable by the predecessor, including ''Other compensation'' or uncollected employee tax on tips, if applicable. Forms W–2 must be furnished by the successor to its employees (both the acquired employees and any other employees of the successor) by January 31 of the following calendar year. Forms W–2 and W–3 must be filed by the successor with SSA by the last day of February of the following calendar year.

(2) *Expedited Forms W–2.* If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W–2 to the employees who are not employed by the successor on an expedited basis. Forms W–2 and W–3 filed with SSA by the predecessor must also be filed on an expedited basis. The successor is not required to either furnish Forms W–2 to the acquired employees or to file the Forms W–2 and W–3 with SSA on an expedited basis.

.03 *Form 941 filed by predecessor.* To the extent the wages paid and the taxes withheld by the predecessor are to be included in the Forms W–2 furnished to the acquired employees by the successor, there will be a difference between the amounts shown on the predecessor's Form W–3 and its Form 941. When the predecessor files its Form 941, it should attach a statement explaining the discrepancy and include the name, address, and identification number of the successor and a reference to this revenue procedure. This Form 941 cannot be filed electronically. See Rev. Proc. 96–19, 1996–4 I.R.B. 80, section 3.03.

.04 *Form 941 filed by successor.* There will be a corresponding difference between the amounts shown on the successor's Form W–3 and its Form 941. When the successor files its Form 941, it should also attach a statement to its Form 941 explaining the discrepancy, and include the name, address, and identification number of the predecessor and a reference to this revenue procedure. This Form 941 cannot be filed electronically. See Rev. Proc. 96–19, 1996–4 I.R.B. 80, section 3.03. For instructions relating to annual wage limitations, see § 31.3121(a)(1)–1.

.05 *Forms W–4.* The predecessor must transfer to the successor all current Forms W–4 that were provided to the predecessor by the acquired employees. The successor must keep the transferred Forms W–4 on file and deduct and withhold from the wages it pays to the acquired employees according to the information supplied on those forms until an employee submits a revised form. The successor employer must submit to the Service, in accordance with § 31.3402(f)(2)–1(g), copies of the Forms W–4 received by the predecessor during the current calendar quarter and the preceding calendar quarter.

.06 *Transfer of Forms W–4 furnished electronically.* If the predecessor and successor both maintain an electronic system for use by employees in filing Forms W–4, and the systems are compatible, the predecessor may electronically transfer the Forms W–4 of the acquired employees to the successor. The successor may also choose to acquire and maintain the predecessor's system. If these options do not apply, the transferred employees must provide the successor with a new Form W–4, either electronically or on paper, as prescribed by the successor.

.07 *Forms W–5.* The predecessor must transfer to the successor all Forms W–5 for the current year that were provided to the predecessor by the acquired employees.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 84–77 is modified and superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective January 1, 1997.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1510.

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

The collections of information in this revenue procedure are in sections 5.03 and 5.04. This information is required to explain the discrepancy between the amounts reported on Forms 941 and W–3 filed by both the predecessor and successor who use the Alternate Procedure. This information will be used to assist the IRS in reconciling Forms 941 and W–3. The collections of information are required to use the Alternate Procedure. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 110,700 hours.

The estimated annual burden per respondent is 12 minutes. The estimated number of respondents is 553,500.

The estimated annual frequency of responses is on occasion.

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

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue procedure, contact Ms. Casey on (202) 622–6040 (not a toll-free call).

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26 CFR 601.602: Tax forms and instructions. (Also Part I, Sections 6012, 6061; 1.6012–5, 1.6061–1.)

Rev. Proc. 96–61

CONTENTS

SECTION 1. PURPOSE

This revenue procedure informs those who participate in the 1997 Electronic Filing Program for Form 1040 and Form 1040A, U.S. Individual Income Tax Return, and Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, of their obligations to the Internal Revenue Service, taxpayers, and other participants. This revenue procedure updates Rev. Proc. 95–49, 1995–2 C.B. 419.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 1.6012–5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.02 For purposes of this revenue procedure, an electronically filed Form 1040, Form 1040A, or Form 1040EZ is a composite return consisting of electronically transmitted data and certain paper documents. The nonelectronic portion of the return consists of Form 8453, U.S. Individual Income Tax Declaration for Electronic Filing, and other paper documents that cannot be electronically transmitted. Form 8453 must be received by the Service before any electronically filed return is complete (see section 5.08 of this revenue procedure). An electronically filed return must contain the same information that a return filed completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453.

.03 The Service will periodically issue a publication that lists the forms and schedules associated with a Form 1040 that can be electronically transmitted.

.04 A Form 1040, a Form 1040A, or a Form 1040EZ cannot be electronically filed after October 15, 1997, notwithstanding the fact that the taxpayer has been granted an extension to file a return beyond that date.

.05 An amended tax return cannot be electronically filed. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.06 A tax return that has a foreign address for the taxpayer cannot be electronically filed. Army/Air Force (APO) and Fleet (FPO) post offices are not considered foreign addresses.

.07 A tax return for a decedent cannot be electronically filed. The decedent's spouse or personal representative must file a paper tax return for the decedent.

.08 This revenue procedure updates Rev. Proc. 95–49, which applied to the Electronic Filing Program for the 1996 filing season. The updates include changes in the Electronic Filing Program for the 1997 filing season, clarifications of prior Electronic Filing Program statements, and additional guidance derived from other Service documents that relate to the Electronic Filing Program. Some of the updates are:

(1) in certain circumstances, a letter may be submitted in lieu of a revised Form 8633 (section 4.04);

(2) the application period to submit a new application for an applicant that purchases an Electronic Filer on or after November 1, 1996, is 30 days after the date of the purchase (section 4.05(2));

(3) the time period to submit a revised Form 8633 is extended to 30 days (section 4.06);

(4) a Principal for a firm or organization is defined (section 4.10);

(5) certain Responsible Officials may be listed on a maximum of ten or twenty Forms 8633 (sections 4.12);

(6) an Electronic Filer's foreign location no longer has to have an APO or FPO address and additional information is required on Form 8633 for a foreign location (section 4.14);

(7) a nonparticipating ERO may be dropped from the Electronic Filing Program (section 4.16);

(8) a fee for the electronic transmission of a tax return may not be

computed using any amount from the return (section 5.05);

(9) the time period for an Electronic Filer to notify the Service that it is discontinuing its participation in the Electronic Filing Program is extended to 30 days (section 5.07);

(10) the duties of a Transmitter are clarified (section 5.16);

(11) an ERO must advise taxpayers that refund information is available on TeleTax (section 8.05);

(12) information an Electronic Filer must provide regarding a taxpayer's address of record is clarified (section 8.06);

(13) the effect of suspending a Principal or a Responsible Official, on entities that listed the Principal or Responsible Official on their Forms 8633, is clarified (section 13.02);

(14) the two-year periods for denial and suspension are modified and clarified (sections 13.10 and 13.11);

(15) the time and method to respond to a proposed letter of denial and a denial letter are clarified (sections 14.03 and 14.06); and

(16) the time and method to respond to a proposed suspension letter and a suspension letter are clarified (sections 15.02 and 15.05).

SECTION 3. ELECTRONIC FILING PARTICIPANTS—DEFINITIONS

.01 After acceptance into the Electronic Filing Program, as described in section 4 of this revenue procedure, a participant is referred to as an ''Electronic Filer.''

.02 An Electronic Filer is categorized as follows:

(1) ELECTRONIC RETURN ORIGINATOR. An ''Electronic Return Originator'' (ERO) is: (a) an ''Electronic Return Preparer'' who prepares tax returns, including Forms 8453, for taxpayers who intend to have their returns electronically filed; and/or (b) an ''Electronic Return Collector'' who accepts completed tax returns, including Forms 8453, from taxpayers who intend to have their returns electronically filed.

(2) SERVICE BUREAU. A ''Service Bureau'' receives tax return information on any media from an ERO, formats the return information, and either forwards the return information to a Transmitter or sends back the return information to the ERO. A Service Bureau may or may not process Forms 8453 and send them to the appropriate service center.

(3) SOFTWARE DEVELOPER. A ''Software Developer'' develops software for the purposes of (a) formatting returns according to the Service's electronic return specifications; and/or (b) transmitting electronic returns directly to the Service. A Software Developer may also sell its software.

(4) TRANSMITTER. A ''Transmitter'' transmits the electronic portion of a return directly to the IRS Data Communications Subsystem. An entity that provides a ''bump-up'' service is a Transmitter. A bump-up service provider increases the transmission rate or line speed of formatted or reformatted information that is being sent to the Service via a public switched telephone network. For example, a bump-up service provider may increase the transmission rate or line speed of information from 4800 bits per second (BPS) to 9600 BPS. Service specifications for electronic filing require an asynchronous speed of 300 BPS to 38,400 BPS or a bisynchronous speed of 4800 BPS to 19,200 BPS.

.03 The Electronic Filer categories are not mutually exclusive. For example, an ERO can, at the same time, be considered a Transmitter, Software Developer, or Service Bureau depending on the function(s) performed.

.04 An electronic filing controlled office: (1) is an office in which an Electronic Filer has an ownership interest; (2) uses hardware, software, and transmission services supplied by an Electronic Filer; (3) receives income tax returns for electronic filing; and (4) has direct contact with taxpayers. At a minimum, direct contact includes verifying dollar amounts, routing transit numbers, and depositor account numbers on Forms 8453. A controlled office may or may not be open all year.

.05 An Electronic Filer may have a drop-off collection point(s). The activity at a drop-off collection point is limited solely to receiving a return or return information that a taxpayer wants to have electronically filed and collecting a fee for electronically filing that return. No returns may be prepared at the drop-off collection point. An Electronic Filer need not have an ownership interest in the drop-off collection point.

SECTION 4. ACCEPTANCE IN THE ELECTRONIC FILING PROGRAM

.01 Except as provided in sections 4.02 through 4.04 of this revenue procedure, an Electronic Filer that has actively participated in the 1996 Electronic Filing Program does not have to reapply to participate in the 1997 Electronic Filing Program. However, an Electronic Filer that intends to function as a Transmitter or a Software Developer in the 1997 Electronic Filing Program must first successfully complete the testing described in section 4.08 of this revenue procedure. In addition, section 4.15 of this revenue procedure provides for the Service's issuance of credentials necessary for participation in the 1997 Electronic Filing Program.

.02 Applicants and Electronic Filers must file a new Form 8633, Application to Participate in the Electronic Filing Program, with completed fingerprint cards for the appropriate individuals if:

(1) the applicant has never actively participated in the Electronic Filing Program;

(2) the applicant is an Electronic Filer that has actively participated in the Electronic Filing Program and wants to operate an electronic filing business at a new location;

(3) the applicant has previously been denied participation in the Electronic Filing Program; or

(4) the applicant has been suspended from the Electronic Filing Program.

.03 To participate in the 1997 Electronic Filing Program, an Electronic Filer in the 1996 Electronic Filing Program must submit a revised Form 8633, signed by all Principals and the Responsible Official, with completed fingerprint cards for the appropriate individuals if:

(1) the Electronic Filer functioned solely as a Software Developer during the 1996 Electronic Filing Program and intends to function as an ERO, Service Bureau, or Transmitter during the 1997 Electronic Filing Program;

(2) there is an additional principal, such as a partner or a corporate officer, that must be listed on Form 8633, line 8 (formerly line 1k(1)), ''Principals of Your Firm or Organization'';

(3) there is a ''Principal'' listed on Form 8633, line 8, that should be deleted; or

(4) the ''Responsible Official'' on Form 8633, line 9 (formerly line 1k(2)), changes.

.04 To participate in the 1997 Electronic Filing Program, an Electronic Filer in the 1996 Electronic Filing Program must submit either a revised Form 8633, or a letter containing the same information contained in a revised Form

8633, if there is any revision to the following information:

(1) the Firm name or Doing Business As (DBA) name;

(2) the business or mailing address;

(3) the contact representative or the alternate contact representative's name or telephone number;

(4) the Electronic Filer's form of organization, as described on Form 8633, line 1k;

(5) the electronic functions performed by an Electronic Filer, other than an Electronic Filer that functions solely as a Software Developer; or

(6) the number or location(s) of drop-off collection points.

A Form 8633 or letter submitted under this section should only include the information requested on lines 1a through 1i of Form 8633 and the information being revised. A Principal or a Responsible Official must sign the Form 8633 or the letter.

.05 Applicants described in section 4.02 of this revenue procedure must submit new applications within the following time periods:

(1) except as provided in section 4.05(2) of this revenue procedure, the application period begins on August 1, 1996, and ends on December 2, 1996; and

(2) if an applicant purchases an Electronic Filer on or after November 1, 1996, a new application must be submitted within 30 days after the date of the purchase.

.06 Revised applications described in sections 4.03 and 4.04 of this revenue procedure must be submitted within 30 days of the change(s) reflected on the revised Form 8633 or in the letter.

.07 Applicants and Electronic Filers described in sections 4.02 through 4.04 of this revenue procedure must file Form 8633 (or a letter containing the same information as provided in section 4.04 of this revenue procedure) with the service center that accepts electronically filed returns from the applicant's state.

.08 Applicants and Electronic Filers described in sections 4.01 through 4.03 of this revenue procedure that intend to function as a Transmitter or a Software Developer in the 1997 Electronic Filing Program must first successfully complete the necessary testing at the appropriate service center(s).

.09 Each individual listed as a Principal or a Responsible Official must:

(1) be a United States citizen or an alien lawfully admitted for permanent residence as described in 8 U.S.C. § 1101(a)(20) (1994);

(2) have attained the age of 21 as of the date of application;

(3) submit with Form 8633 one standard fingerprint card with a full set of fingerprints taken by a law enforcement agency, except as provided in section 4.10 of this revenue procedure;

(4) pass a suitability check that includes a credit check and a fingerprint check; and

(5) if applying to be an ERO, meet state and local licensing and/or bonding requirements in connection with the preparation of tax returns and the collection of prepared returns that taxpayers intend to have electronically filed. However, if the state and local licensing and/or bonding requirements apply to a business entity, the individual(s) must demonstrate that the business entity meets the requirements.

.10 A Principal for a firm or organization includes the following:

(1) Sole Proprietorship. The sole proprietor is the Principal for a sole proprietorship.

(2) Partnership. Each partner who has a five percent (5%) or more interest in the partnership is a Principal of the partnership. If no partner has at least a 5% or more interest in the partnership, the Principal is an individual authorized to act for the partnership in legal and/or tax matters (at least one such individual must be listed on Form 8633).

(3) Corporation. The President, Vice-President, Secretary, and Treasurer of the corporation are each a Principal of the corporation.

(4) Other. The Principal for a for-profit entity that is not a sole proprietorship, partnership, or corporation, is an individual authorized to act for the entity in legal and/or tax matters (at least one such individual must be listed on Form 8633).

.11 A Responsible Official is the individual who oversees the daily operations of an Electronic Filer's office. As set forth in section 4.12 of this revenue procedure, a Responsible Official may be responsible for more than one office.

.12 A Responsible Official is categorized as follows:

(1) TIER I RESPONSIBLE OFFICIAL. A ''Tier I Responsible Official'' is a Responsible Official who does not meet the definition of a ''Tier II Responsible Official.'' A Tier I Responsible Official should be able to physically visit on a daily basis each office for which he or she is listed as a Responsible Official. A Tier I Responsible Official may be listed on a maximum of ten applications (Forms 8633).

(2) TIER II RESPONSIBLE OFFICIAL. A ''Tier II Responsible Official'' is an individual who has participated in the Electronic Filing Program as a Responsible Official during at least the two most recent filing seasons and who has never been suspended from participation in the Electronic Filing Program. A Tier II Responsible Official should be able to physically visit on a daily basis any office for which he or she is listed as a Responsible Official. A Tier II Responsible Official may be listed on a maximum of twenty applications (Forms 8633).

.13 An individual may choose to submit evidence of the individual's professional status in lieu of one standard fingerprint card if the individual is:

(1) an attorney in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not currently under suspension or disbarment from practice before the Service;

(2) a certified public accountant who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia and is not currently under suspension or disbarment from practice before the Service;

(3) an enrolled agent pursuant to part 10 of 31 C.F.R. Subtitle A;

(4) an officer of a publicly held corporation; or

(5) a banking official who is bonded and has been fingerprinted within the last two years.

.14 If an Electronic Filer has a foreign location, the following information is required on any new or revised Form 8633:

(1) the complete name of the contact representative at the foreign location;

(2) the complete mailing address for the foreign location (including city, country, and postal code);

(3) the complete business address for the foreign location (including city, country, and postal code);

(4) the complete local telephone number for the foreign location (include international access code, country code, and city code); and

(5) the information on lines 1m, 1n, 1p, and 1q of Form 8633 for the stateside contact representative. The

stateside contact representative will receive all Service correspondence for the foreign location relating to the Electronic Filing Program.

.15 The Service will issue credentials to eligible applicants for the 1997 Electronic Filing Program, as well as Electronic Filers that do not have to reapply pursuant to section 4.01, 4.03, or 4.04 of this revenue procedure (provided they have first satisfactorily completed the testing described in section 4.08 of this revenue procedure if they intend to function as a Transmitter or Software Developer). No one may participate in the Electronic Filing Program for the 1997 filing season without the following credentials:

(1) a letter of acceptance into the Electronic Filing Program for the 1997 filing season;

(2) an Electronic Filing Identification Number (EFIN);

(3) if appropriate, an Electronic Transmitter Identification Number (ETIN);

(4) if appropriate, a Service Bureau Identification Number (SBIN); and

(5) if appropriate, a Collection Point Identification Number (CPIN).

.16 An ERO may not receive a letter of acceptance to participate in the 1997 Electronic Filing Program if the Service did not receive and accept during the 1996 filing season any electronically filed returns containing the ERO's EFIN. In addition, an ERO may be dropped from the 1997 Electronic Filing Program if the Service does not receive and accept prior to April 15, 1997, any electronically filed returns containing the ERO's EFIN. In either case, the Service will notify the ERO that it has been dropped from the Electronic Filing Program and explain what steps the ERO needs to take for future participation in the program.

.17 If an Electronic Filer is a Software Developer that performs no other function in the Electronic Filing Program but software development, no Principal or Responsible Official needs to pass a suitability check.

.18 If an Electronic Filer will have a drop-off collection point(s) (as defined in section 3.05 of this revenue procedure) for the 1997 filing season, an Electronic Filer must submit a Form 8633 that lists each drop-off collection point. By listing a drop-off collection site on Form 8633, an Electronic Filer becomes a ''parent'' in relation to a listed drop-off collection point.

.19 The following reasons, which apply to any firm, organization, Principal, or Responsible Official listed on Form 8633, may result in the rejection of an application to participate in the 1997 Electronic Filing Program (this list is not all-inclusive):

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to file timely and accurate tax returns, including returns indicating that no tax is due;

(3) failure to timely pay any tax liabilities;

(4) assessment of tax penalties;

(5) suspension/disbarment from practice before the Service;

(6) other facts or conduct of a disreputable nature that would reflect adversely on the Electronic Filing Program;

(7) misrepresentation on an application;

(8) suspension or rejection from the program in a prior year;

(9) unethical practices in return preparation;

(10) stockpiling returns prior to official acceptance into the Electronic Filing Program (see section 5.14 of this revenue procedure);

(11) knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual that is prohibited from applying to participate in the Electronic Filing Program (see section 13.10 of this revenue procedure) or that is suspended from participating in the Electronic Filing Program (see section 13.11 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the Electronic Filing Program; or

(12) knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual that is prohibited from applying to participate in the Electronic Filing Program (see section 13.10 of this revenue procedure) or that is suspended from participating in the Electronic Filing Program (see section 13.11 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the Electronic Filing Program.

SECTION 5. RESPONSIBILITIES OF AN ELECTRONIC FILER

.01 To ensure that complete returns are accurately and efficiently filed, an Electronic Filer must comply with all the publications and notices of the Service. Currently, these publications and notices include:

(1) Handbook for Electronic Filers of Individual Income Tax Returns, Publication 1345, and Handbook for Electronic Filers of Individual Income Tax Returns (Supplement), Publication 1345A;

(2) Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns, Publication 1346;

(3) Test Package for Electronic Filing of Individual Income Tax Returns, Publication 1436; and

(4) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board).

.02 An Electronic Filer must maintain a high degree of integrity, compliance, and accuracy.

.03 An Electronic Filer may only accept returns for electronic filing directly from taxpayers, from drop-off collection sites accurately identified on its own Form 8633 (see section 4.18 of this revenue procedure), or from another Electronic Filer.

.04 If the taxpayer's address on a Form W–2, Wage and Tax Statement, Form W–2G, Statement for Recipients of Certain Gambling Winnings, Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., Form 1040, Schedule C, Profit or Loss From Business (Sole Proprietorship), or Form 1040, Schedule C–EZ, Profit or Loss From Business—Short Version, or any other tax form is different than the taxpayer's address in the entity section of the electronic portion of the taxpayer's Form 1040, the ERO or the Service Bureau must input for transmission to the Service those addresses that differ from the taxpayer's address on the electronic portion of the taxpayer's Form 1040.

.05 If an Electronic Filer charges a fee for the electronic transmission of a tax return, the fee may not be based on a percentage of the refund amount or any other amount from the tax return. An Electronic Filer may not charge a separate fee for Direct Deposit. See section 9 of this revenue procedure.

.06 An Electronic Filer must submit a revised Form 8633 to the appropriate service center within 30 days of when any of the conditions or changes described in section 4.03 or 4.04 of this revenue procedure occur. See section 4.06 of this revenue procedure.

.07 An Electronic Filer must notify the service center where the Electronic Filer filed its Form 8633 within 30 days of discontinuing its participation in the Electronic Filing Program. This does not preclude reapplication in the future.

.08 An Electronic Filer must ensure that an electronic return is filed on or before the due date of the return. A tax return is not considered filed until the electronic portion of the tax return has been acknowledged by the Service as accepted for processing and a completed and signed Form 8453 has been received by the Service. However, if the electronic portion of a return is successfully transmitted on or shortly before the due date and the Electronic Filer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the electronic portion of a return is initially transmitted on or shortly before the due date and is ultimately rejected, but the Electronic Filer and the taxpayer comply with section 5.13 of this revenue procedure, the return will be deemed timely filed. In the case of a balance due return, see section 11 of this revenue procedure for instructions on how to make a timely payment of tax.

.09 An Electronic Filer that functions as an ERO must:

(1) comply with the procedures for completing and securing Forms 8453 described in section 7 of this revenue procedure;

(2) comply with the procedures described in section 11 of this revenue procedure for handling a balance due return;

(3) while returns are being filed, retain and, if requested, make available to the Service the following material at the business address from which a return was accepted for electronic filing:

(a) a copy of the signed Form 8453 and paper copies of Forms W–2, W–2G, and 1099–R;

(b) a complete copy of the electronic portion of the return (may be retained on magnetic media) that can be readily and accurately converted into an electronic transmission that the Service can process; and

(c) the acknowledgement file received from the Service or from a third party Transmitter; and

(4) retain until the end of the calendar year in which a return was filed, and, if requested, make available to the Service the materials described in section 5.09(3) of this revenue procedure at either the business address from which a return was electronically filed or from the contact representative named on Form 8633.

.10 An ERO who is the paid preparer of an electronic tax return must also retain for the prescribed amount of time the materials described in § 1.6107–1(b) that are required to be kept by an income tax return preparer.

.11 An ERO must identify the paid preparer (if any) in the appropriate field of the electronic return, in addition to ensuring that the paid preparer signed Form 8453. If Form 8453 is not signed by the paid preparer, the ERO must attach a copy of the Form 1040EZ signed by the paid preparer below the taxpayer's signature or pages one and two of Form 1040A or Form 1040 that includes the paid preparer's signature. These copies must be marked ''COPY-DO NOT PROCESS'' to prevent duplicate filings.

.12 An ERO must ensure against the unauthorized use of its EFIN and, if applicable, the CPIN(s) issued to its drop-off collection point(s). An ERO must not transfer its EFIN or the CPIN(s) of its drop-off collection point(s) by sale, merger, loan, gift, or otherwise to another entity.

.13 If the electronic portion of a taxpayer's return is acknowledged as rejected by the Service, and the reason for the rejection cannot be rectified by the actions described in section 6.02(3), the ERO, within 24 hours of receiving the rejection, must take all reasonable steps to tell the taxpayer that the taxpayer's return has not been filed. When the ERO advises the taxpayer that the taxpayer's return has not been filed, the ERO must provide the taxpayer with the reject code(s), an explanation of the reject code(s), and the sequence number of each reject code(s). If the taxpayer chooses not to have the previously rejected return retransmitted or if the return cannot be accepted for processing, the taxpayer must file a paper return by the later of:

(1) the due date of the return; or

(2) within ten calendar days after the Service's acknowledgement that the return is rejected or notification that the return cannot be retransmitted with an explanation of why the return is being filed after the due date.

.14 An ERO is responsible for ensuring that stockpiling does not occur at its office(s) or drop-off collection point(s). Stockpiling means collecting returns from taxpayers or from another Electronic Filer prior to official acceptance into the Electronic Filing Program, or, after official acceptance into the Electronic Filing Program, waiting more than three calendar days to transmit a return to the Service after receiving the information necessary for an electronic transmission of a tax return.

.15 An Electronic Filer who functions as a Service Bureau must:

(1) deliver all electronic returns to a Transmitter or to the ERO who gave the electronic returns to the Service Bureau within three calendar days of receipt;

(2) retrieve the acknowledgement file from the Transmitter within one calendar day of receipt by the Transmitter;

(3) initiate the communication of the acknowledgement file to the ERO (whether related or not) within one work day of retrieving the acknowledgement file;

(4) if the Service Bureau processes Forms 8453, send back to the ERO any return and Form 8453 that needs correction, unless the correction is described in section 6.02(3);

(5) accept tax return information only from Electronic Filers;

(6) include its SBIN and the ERO's EFIN with all return information the Service Bureau forwards to a Transmitter or sends back to an ERO;

(7) retain each acknowledgement file received from a Transmitter until the end of the calendar year in which the electronic return was filed;

(8) if requested, serve as a contact point between its client EROs and the Service;

(9) if requested, provide the Service with a list of each client ERO; and

(10) ensure against the unauthorized use of its SBIN. A Service Bureau must not transfer its SBIN by sale, merger, loan, gift, or otherwise to another entity.

.16 An Electronic Filer who functions as a Transmitter must:

(1) transmit all electronic returns within three calendar days of receipt;

(2) retrieve the acknowledgement file within two work days of transmission;

(3) match the acknowledgement file to the original transmission file and initiate the communication of the acknowledgement file to the ERO or the Service Bureau (whether or not the ERO or the Service Bureau are related to the Transmitter) within two work days of retrieving the acknowledgement file;

(4) retain an acknowledgement file received from the Service until the end of the calendar year in which the electronic return was filed;

(5) immediately contact the appropriate service center's Electronic Filing Unit for further instructions if an acknowledgement of acceptance for processing has not been received by the Transmitter within two work days of transmission or if a Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission;

(6) promptly correct any transmission error that causes an electronic transmission to be rejected;

(7) contact the appropriate service center's Electronic Filing Unit for assistance if a return has been rejected after three transmission attempts;

(8) ensure the security of all transmitted data;

(9) ensure against the unauthorized use of its EFIN or ETIN. A Transmitter must not transfer its EFIN or ETIN by sale, merger, loan, gift, or otherwise to another entity; and

(10) not use software that has a Service assigned production password built into the software.

.17 A Transmitter who provides transmission services to other unrelated Electronic Filers must only accept electronic returns for transmission to the IRS Data Communications Subsystem from accepted Electronic Filers. A Transmitter must include the ERO's EFIN and if applicable, the CPIN on each return that the Transmitter accepts from an ERO. In addition, a Transmitter must also include a Service Bureau's SBIN if a Service Bureau formats the return information.

.18 An Electronic Filer who functions as a Software Developer must:

(1) promptly correct any software error which causes an electronic return to be rejected;

(2) promptly distribute any software correction;

(3) ensure that any software package that will be used to transmit any returns from multiple Electronic Filers has the capability of combining returns from these Electronic Filers into one Service transmission file taking into account the sorting requirements of the Declaration Control Number (DCN);

(4) ensure that no other entity uses the Software Developer's EFIN or ETIN. A Software Developer must not transfer by sale, merger, loan, gift, or otherwise its EFIN or ETIN to another entity; and

(5) not incorporate into its software a Service assigned production password.

.19 An Electronic Filer with a drop-off collection point is the ERO for that drop-off collection point. The ERO must clearly display its name at each drop-off collection point. The Service will hold the ERO responsible for any violation of the advertising standards described in section 12 or any other violation of this revenue procedure that occurs at a drop-off collection point listed on the ERO's Form 8633. The ERO must also serve as the contact point between the Service and the drop-off collection point for all correspondence including problem resolution and report evaluation.

.20 In addition to the specific responsibilities described in this section, an Electronic Filer must meet all the requirements in this revenue procedure to keep the privilege of participating in the Electronic Filing Program.

SECTION 6. PENALTIES

.01 Penalties for Disclosure or Use of Information.

(1) An Electronic Filer, except a Software Developer, is a tax return preparer (Preparer) under the definition of § 301.7216–1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for disclosure or use of tax return information, as described in § 301.7216–1(a). In general, that regulation provides that any preparer who discloses or uses any tax return information for a purpose other than preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of a tax return is guilty of a misdemeanor. In addition, § 6713 of the Internal Revenue Code provides for civil penalties that may be assessed against a preparer who makes an unauthorized disclosure or use of tax return information.

(2) Under § 301.7216–2(h), disclosure of tax return information among accepted Electronic Filers for the purpose of preparing a return is permissible. For example, it is permissible for an ERO to pass on tax return information to a Service Bureau and/or a Transmitter for the purpose of having an electronic return formatted and transmitted to the Service. However, if the tax return information is disclosed or used in any other way, a Service Bureau and/or a Transmitter may be guilty of a misdemeanor as described in section 6.01(1) of this revenue procedure.

.02 Other Preparer Penalties.

(1) Preparer penalties may be asserted against an individual or firm who meets the definition of an income tax return preparer under § 7701(a)(36) and § 301.7701–15. Examples of preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701–15(d), Electronic Return Collectors, Service Bureaus, Transmitters, and Software Developers are not income tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to ''typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.''

(3) If an Electronic Return Collector, Service Bureau, Transmitter, or Software Developer alters the return information in a nonsubstantive way, this alteration will be considered to come under the ''mechanical assistance'' exception described in § 301.7701–15(d)(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within the following tolerances:

(a) the Total Tax amount, Withholding amount, Refund amount, or Amount Owed shown on Form 8453 differs from the corresponding amount on the electronic portion of the tax return by no more than $7;

(b) the Total Income amount shown on Form 8453 differs from the corresponding amount on the electronic portion of the tax return by no more than $25; or

(c) dropping cents and rounding to whole dollars.

(4) If an Electronic Return Collector, Service Bureau, or Transmitter alters the return information in a substantive way, rather than having the taxpayer alter the return, the Electronic Return Collector, Service Bureau, or Transmitter will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If an Electronic Return Collector, Service Bureau, or Transmitter, or the product of a Software Developer, goes beyond mechanical assistance, any of these parties may be held liable for income tax return preparer penalties. Rev. Rul. 85–189, 1985–2 C.B. 341, describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties.

.03 In addition to the above specified provisions, the Service reserves the right to assert all appropriate preparer, nonpreparer, and disclosure penalties against an Electronic Filer as warranted under the circumstances.

SECTION 7. FORM 8453, U.S. INDIVIDUAL INCOME TAX DECLARATION FOR ELECTRONIC FILING

.01 Procedures for Completing Form 8453.

(1) Form 8453 must be completed in accordance with the instructions for Form 8453.

(2) The taxpayer(s)'s name, address, social security number(s), tax return information, and direct deposit of refund information in the electronic transmission must be identical to the information on the Form 8453 that the taxpayer(s) signed and provided for submission to the Service.

(3) An Electronic Filer, a financial institution, or any other entity associated with the electronic filing of a taxpayer's return must not put its address in the section reserved for the taxpayer's address on Form 8453 or anywhere in the electronic portion of a return.

(4) After the return has been prepared and before the return is electronically transmitted, the taxpayer must verify the information on the electronic portion of the return and on Form 8453, and must sign Form 8453. The taxpayer may verify the information on the electronic portion of the return by viewing this information on a computer display terminal. Both spouses' signatures are required on a joint return prior to the electronic transmission of the tax return.

(5) An Electronic Filer must submit the taxpayer's Form 8453 to the appropriate service center within one work day after the Electronic Filer receives acknowledgment that the electronic portion of the taxpayer's return has been accepted for processing.

(6) If an Electronic Filer functions as an ERO, the Electronic Filer must sign the ERO's Declaration on Form 8453.

(7) If the ERO is also the paid preparer, the ERO must check the ''Paid Preparer'' box and sign the ERO Declaration on Form 8453.

.02 Corrections to Form 8453.

(1) A new Form 8453 is not required for a nonsubstantive change. A nonsubstantive change is limited to a correction that does not exceed the tolerances, described in section 7.02(2) of this revenue procedure for arithmetic errors, a transposition error, a misplaced entry, or a spelling error. The incorrect nonsubstantive information must be neatly lined through on the Form 8453 and the correct data entered next to the lined-through entry. Also, the individual making the correction must initial the correction.

(2) The tolerances for section 7.02(1) of this revenue procedure are:

(a) the ''Total Income'' does not differ from the amount on the electronic tax return by more than $25; or

(b) the ''Total Tax'', the ''Federal income tax withheld'', the ''Refund'', or the ''Amount you owe'' does not differ from the amount on the electronic portion of the tax return by more than $7.

(3) If the ERO makes a substantive change to the electronic portion of the return after Form 8453 has been signed by the taxpayer, but before it is transmitted, the ERO must have all the necessary parties described above sign a new Form 8453 that reflects the corrections before the return is transmitted.

(4) Dropping cents or rounding to whole dollars does not constitute a substantive change or alteration to the return unless the amount differs by more than the above tolerances. All rounding should be accomplished in accordance with the instructions in the Form 1040 tax package.

.03 If the Service determines that a Form 8453 is missing, the ERO must provide the Service with a replacement. The ERO must also provide a copy of the Form(s) W–2, W–2G, 1099R, and all other attachments to Form 8453.

.04 If a substitute Form 8453 is used, it must be approved by the Service prior to use. See Rev. Proc. 96–48, 1996–39 I.R.B. 10.

SECTION 8. INFORMATION AN ELECTRONIC FILER MUST PROVIDE TO THE TAXPAYER

.01 The ERO must furnish the taxpayer with a complete paper copy of the taxpayer's return. A complete copy of a taxpayer's return includes: (1) Form 8453 and other paper documents that cannot be electronically transmitted, and (2) a printout of the electronic portion of the return. See section 2.02 of this revenue procedure. The electronic portion of the return can be contained on a replica of an official form or on an unofficial form. However, on an unofficial form, data entries must be referenced to the line numbers on an official form.

.02 The ERO must advise the taxpayer to retain a complete copy of the return and any supporting material.

.03 The ERO must advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the service center that would handle the taxpayer's paper return.

.04 The ERO must, upon request, provide the taxpayer with the Declaration Control Number and the date the electronic portion of the taxpayer's return was acknowledged as accepted for processing by the Service.

.05 The ERO must advise taxpayers that they can call the local IRS TeleTax number to inquire about the status of their tax refund. The ERO should also advise taxpayers to wait at least three weeks from the acceptance date of the electronic return before calling the TeleTax number.

.06 If a taxpayer chooses to use an address other than his or her home address on the return, the Electronic Filer must inform the taxpayer that the address on the electronic portion of the return, once processed by the Service, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's ''last known address'' under the Internal Revenue Code, and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit).

SECTION 9. DIRECT DEPOSIT OF REFUNDS

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account.

.03 Neither the Service nor Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, Electronic Filer, financial institution, or any of their agents.

.04 An ERO must:

(1) advise taxpayers of the option to receive their refund by paper check or direct deposit;

(2) not charge a separate fee for a Direct Deposit;

(3) accept any Direct Deposit election to any eligible financial institution designated by the taxpayer;

(4) ensure that the taxpayer is eligible to choose Direct Deposit;

(5) verify that the taxpayer has entered the Direct Deposit information requested on Part II of Form 8453 correctly and that the information entered is the information transmitted with the electronic portion of the return;

(6) caution the taxpayer that once an electronic return has been accepted for processing by the Service:

(a) the Direct Deposit election cannot be rescinded;

(b) the Routing Transit Number (RTN) of the financial institution cannot be changed; and

(c) the taxpayer's account number cannot be changed; and

(7) advise the taxpayer that refund information is available by calling the local IRS TeleTax number. See section 8.05 of this revenue procedure.

SECTION 10. REFUND ANTICIPATION LOANS

.01 A Refund Anticipation Loan (RAL) is money borrowed by a taxpayer that is based on a taxpayer's anticipated income tax refund. The Service has no involvement in RALs. A RAL is a contract between the taxpayer and the lender.

.02 Any entity that is involved in the Electronic Filing Program, including a financial institution that accepts direct deposits of income tax refunds, has an obligation to every taxpayer who applies for a RAL to clearly explain to the taxpayer that a RAL is in fact a loan, and not a substitute for or a quicker way of receiving an income tax refund. An Electronic Filer must advise the taxpayer that if a Direct Deposit is not timely, the taxpayer may be liable to the lender for additional interest on the RAL.

.03 An Electronic Filer may assist a taxpayer in applying for a RAL.

.04 An Electronic Filer may charge a flat fee to assist a taxpayer in applying for a RAL. The fee must be identical for all of the Electronic Filer's customers and must not be related to the amount of the refund or a RAL. The Electronic Filer must not accept a fee from a financial institution for any service connected with a RAL that is contingent upon the amount of the refund or a RAL.

.05 The Service has no responsibility for the payment of any fees associated with the preparation of a return, the electronic transmission of a return, or a RAL.

.06 An Electronic Filer may disclose tax information to the lending financial institution in connection with an application for a RAL only with the taxpayer's written consent as specified in § 301.7216–3(b).

.07 An Electronic Filer that is also the return preparer, and the financial institution or other lender that makes an RAL, may not be related taxpayers within the meaning of § 267 or § 707.

.08 Section 6695(f) imposes a $500 penalty on a return preparer who endorses or negotiates a refund check issued to any taxpayer other than the return preparer. However, a bank, as defined in § 581, may accept the full amount of a refund check as a deposit in the taxpayer's account for the benefit of the taxpayer. Section 1.6695–1(f) clarifies § 6695 of the Code by explaining that the prohibition on a return preparer negotiating a refund check is limited to a refund check for a return that the return preparer prepared. A preparer that is also a financial institution, but has not made a loan to the taxpayer on the basis of the taxpayer's anticipated refund, may (1) cash a refund check and remit all of the cash to the taxpayer or accept a refund check for deposit in full to a taxpayer's account, provided the bank does not initially endorse or negotiate the check; or (2) endorse a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer. A preparer bank may also subsequently endorse or negotiate a refund check as part of the check-clearing process through the financial system after initial endorsement. Any income tax return preparer that violates this provision may be suspended from the Electronic Filing Program.

SECTION 11. BALANCE DUE RETURNS

.01 All service centers that accept electronically filed returns will accept electronically filed balance due returns.

.02 The Electronic Filer must furnish Form 1040–V, Electronic Payment Voucher, to a taxpayer who electronically files a balance due return.

.03 To expedite the crediting of a tax payment, a taxpayer who electronically files a balance due return should mail his or her tax payment with either Form 1040–V or the scannable payment voucher that is included in some tax packages. Each of these options has specific mailing instructions.

.04 A taxpayer who electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1997, will result in the imposition of interest and may result in the imposition of penalties.

SECTION 12. ADVERTISING STANDARDS FOR ELECTRONIC FILERS AND FINANCIAL INSTITUTIONS

.01 An Electronic Filer shall comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. In addition, advertising must not imply a special relationship with the Service, FMS, or the Treasury Department. Any claims concerning faster refunds by virtue of electronic filing must be consistent with the language in official Service publications.

.02 An Electronic Filer must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 An Electronic Filer must not use the Service's name, ''Internal Revenue Service'' or ''IRS'', within a firm's name.

.04 An Electronic Filer must not use improper or misleading advertising in relation to the Electronic Filing Program (including the time frames for refunds and RALs).

.05 Use of Direct Deposit name and logo.

(1) The name ''Direct Deposit'' will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.06 Advertising materials shall not carry the FMS, IRS, or other Treasury Seals.

.07 Advertising for a cooperative electronic return project (public/private sector) must clearly state the names of all cooperating parties.

.08 In advertising the availability of a RAL, an Electronic Filer and a financial institution must clearly (and, if applicable, in easily readable print) refer to or describe the funds being advanced as a loan, not a refund; that is, it must be made clear in the advertising that the taxpayer is borrowing against the anticipated refund and not obtaining the refund itself from the financial institution.

.09 If an Electronic Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The Electronic Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.10 If an Electronic Filer uses direct mail or fax communications to advertise, the Electronic Filer must retain a copy of the actual mailing or fax, along with a list or other description of the firms, organizations, or individuals to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.11 Acceptance to participate in the Electronic Filing Program does not imply endorsement by the Service or FMS of the software or quality of services provided.

SECTION 13. MONITORING AND SUSPENSION OF AN ELECTRONIC FILER

.01 The Service will monitor an Electronic Filer for conformity with this revenue procedure. The Service can immediately suspend, without notice, an Electronic Filer from the Electronic Filing Program. However, in most circumstances, a suspension from participation in the Electronic Filing Program is effective as of the date of the letter informing the Electronic Filer of the suspension. Before suspending an Electronic Filer, the Service may issue a warning letter that describes specific corrective action for deviations from this revenue procedure.

.02 If a Principal or Responsible Official is suspended from the Electronic Filing Program, every entity that listed the suspended Principal or Responsible Official on its Form 8633 may also be suspended.

.03 The Service will monitor the timely receipt of Forms 8453, as well as their overall legibility.

.04 The Service will monitor the quality of an Electronic Filer's transmissions throughout the filing season. The Service will also monitor electronic returns and tabulate rejections, errors, and other defects. If quality deteriorates, the Electronic Filer will receive a warning from the Service.

.05 The Service will monitor drop-off collection points and advise a parent of any Electronic Filing Program violations the Service has encountered with a parent's drop-off collection point. If a parent fails to correct a drop-off collection point problem, the parent will be required to eliminate that drop-off collection point. Failure to take corrective action or eliminate a drop-off collection point will cause the Service to suspend the parent. If the Service initiates suspension action, it will apply to all returns filed by the parent.

.06 The Service will monitor complaints about an Electronic Filer and issue a warning or suspension letter as appropriate.

.07 The Service reserves the right to suspend the electronic filing privilege of any Electronic Filer that violates any provision of this revenue procedure. Generally, the Service will advise a suspended Electronic Filer concerning the requirements for reacceptance into the Electronic Filing Program. The following reasons may lead to a warning letter and/or suspension of an Electronic Filer from the Electronic Filing Program (this list is not all-inclusive):

(1) the reasons listed in section 4.19 of this revenue procedure;

(2) deterioration in the format of individual transmissions;

(3) unacceptable cumulative error or rejection rate;

(4) untimely received, illegible, incomplete, missing, or unapproved substitute Forms 8453;

(5) stockpiling returns at any time while participating in the Electronic Filing Program;

(6) failure on the part of a Transmitter to retrieve acknowledgement files within two work days of transmission by the Service;

(7) failure on the part of a Transmitter to initiate the communication of acknowledgement files to clients within two work days of receipt of the acknowledgement files from the Service;

(8) significant complaints about an Electronic Filer's performance in the Electronic Filing Program;

(9) failure on the part of an Electronic Filer to ensure that no other entity uses the Electronic Filer's EFIN and/or ETIN;

(10) having more than one EFIN for the same business entity at the same location (the business entity is generally the entity that reports on its return the income derived from electronic filing), unless the Service has issued more than one EFIN to a business entity. For example, the Service may issue more than one EFIN to accommodate high volumes of returns;

(11) failure on the part of a Transmitter to include a Service Bureau's SBIN in the transmission of a return submitted by a Service Bureau;

(12) failure on the part of an ERO to include a drop-off collection point's CPIN as part of a return collected from a drop-off collection point;

(13) failure on the part of an Electronic Filer to cooperate with the Service's efforts to monitor Electronic Filers and investigate electronic filing abuse;

(14) failure on the part of an Electronic Filer to properly use the standard/non-standard W–2 indicator;

(15) failure on the part of an Electronic Filer to properly use the refund anticipation loan (RAL) indicator;

(16) failure on the part of a Service Bureau or a Transmitter to include the ERO's EFIN as part of a return that the ERO submits to the Service Bureau or the Transmitter;

(17) violation of the advertising standards described in section 12 of this revenue procedure;

(18) failure to maintain and make available records as described in section 5.09(4) of this revenue procedure;

(19) accepting a tax return for electronic filing either directly or indirectly from a firm, organization, or individual (other than the taxpayer who

is submitting his or her return) that is not in the Electronic Filing Program;

(20) submitting the electronic portion of a return with information that is not identical to the information on Form 8453;

(21) failure to timely pay any applicable fees, as implemented by subsequent guidance; or

(22) failure to timely submit a revised Form 8633 notifying the Service of changes described in section 4.03 or 4.04 of this revenue procedure.

.08 The Service may list in the Internal Revenue Bulletin, district office listings, district office newsletters, and the EFS Bulletin Board the name and owner(s) of any entity suspended from the Electronic Filing Program and the effective date of the suspension.

.09 A district director may warn Electronic Filers who are using the services of a rejected or a suspended Electronic Filer that sections 4.19(11) and (12) of this revenue procedure prohibit a business relationship with a rejected or a suspended Electronic Filer. However, in appropriate circumstances, the Service may immediately suspend the Electronic Filer.

.10 If an application for participation in the Electronic Filing Program is denied, the applicant is ineligible to submit a new application for two years from the application date of the denied application.

.11 If an Electronic Filer is suspended from participating in the Electronic Filing Program, the period of suspension includes the remainder of the calendar year in which the suspension occurs plus the next two calendar years. A suspended participant may submit a new application for the application period immediately preceding the end of the suspension.

SECTION 14. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE ELECTRONIC FILING PROGRAM

.01 An applicant that has been denied participation in the Electronic Filing Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form 8633, the appropriate district office will either (1) accept an applicant into the Electronic Filing Program, or (2) issue a proposed letter of denial that explains to the applicant why the district office proposes to reject the application to participate in the Electronic Filing Program.

.03 An applicant that receives a proposed letter of denial may mail or deliver, within 30 calendar days of the date of the proposed letter of denial, a written response to the district office that issued the proposed letter of denial. The applicant's response must address the district office's explanation for proposing the denial to participate.

.04 Upon receipt of an applicant's written response, the district office will reconsider its proposed letter of denial. The district office may (1) withdraw its proposed letter of denial and admit the applicant into the Electronic Filing Program, or (2) finalize its proposed letter of denial and issue it to the applicant.

.05 If an applicant receives a final letter from the district office that denies the applicant participation in the Electronic Filing Program, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be mailed or delivered to the district office that issued the denial letter within 30 calendar days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed. In addition, the applicant must include a copy of the applicant's Form 8633 and a copy of the denial letter.

.07 The district office whose denial is being appealed will, upon receipt of a written appeal to the Director of Practice, forward to the Director of Practice its file on the applicant and the material described in section 14.06 of this revenue procedure that the applicant has submitted to the district office. The district office will forward to the Director of Practice these materials within 15 calendar days of receipt of the applicant's written appeal to the Director of Practice.

.08 Failure to respond within the 30-day periods described in sections 14.03 and 14.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

SECTION 15. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE ELECTRONIC FILING PROGRAM

.01 An Electronic Filer that has been suspended from participation in the Electronic Filing Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If an Electronic Filer receives a proposed suspension letter, the Electronic Filer may mail or deliver, within 30 calendar days of the date of the proposed suspension letter, a detailed written explanation, with supporting documentation, of why the proposed suspension letter should be withdrawn. This written response should be sent to the district office or service center that issued the proposed suspension letter.

.03 Upon receipt of the Electronic Filer's written response, the district office or service center will reconsider its proposed suspension of the Electronic Filer. The district office or service center will either withdraw its proposed suspension letter and reinstate the Electronic Filer or issue a suspension letter to the Electronic Filer.

.04 If an Electronic Filer receives a suspension letter from a district office or a service center, the Electronic Filer is entitled to an appeal, in writing, to the Director of Practice.

.05 The appeal must be mailed or delivered to the district office or service center that issued the suspension letter within 30 calendar days of the date of the suspension letter. The Electronic Filer's written appeal must contain detailed reasons, with supporting documentation, for reversal of the suspension. In addition, the Electronic Filer must include a copy of its Form 8633 and a copy of the suspension letter.

.06 The district office or service center whose decision to suspend is being appealed will, upon receipt of a written appeal to the Director of Practice, forward to the Director of Practice its file on the Electronic Filer and the material described in section 15.05 of this revenue procedure that the Electronic Filer has submitted to the district office or the service center. The district office or the service center will forward to the Director of Practice these materials within 15 calendar days of the receipt of the Electronic Filer's written request for appeal to the Director of Practice.

.07 Failure to appeal within the 30-day period described in section 15.05 of this revenue procedure irrevocably terminates an Electronic Filer's right to an appeal.

SECTION 16. VITA AND TCE SPONSORED ELECTRONIC FILING

.01 This revenue procedure applies to VITA (Volunteer Income Tax Assistance) and TCE (Tax Counselling for the Elderly) sponsors subject to the exceptions and restrictions described in this section.

.02 For purposes of this section, the District Director may be represented by an individual designated by the District Director such as a District Office Electronic Filing Coordinator (DOEFC) or a Taxpayer Education Coordinator.

.03 To be accepted in, or to continue participation in, the Electronic Filing Program, a VITA or TCE sponsor must:

(1) have obtained the District Director's permission (and, in the case of a TCE sponsor, the permission of the Service office that is funding the TCE program) to provide electronic filing; and

(2) have a manual or electronic quality review system for each return to be electronically filed.

.04 The District Director will advise the VITA and TCE sponsor how to submit or transmit returns. Some of the options available to the District Director are:

(1) having the VITA or TCE sponsor submit returns on paper, magnetic disk, or in an electronic transmission to the DOEFC or other locally designated office;

(2) having the VITA or TCE sponsor directly transmit returns to the appropriate service center; or

(3) having the VITA or TCE sponsor use a third party Transmitter.

.05 A VITA or TCE sponsor is not required to manually sign Form 8453 as ERO. However, if the VITA or TCE sponsor chooses not to manually sign Form 8453, the VITA or TCE sponsor must otherwise furnish on Form 8453 its VITA or TCE acronym and, if operating from multiple sites, a site designation number.

.06 A VITA or TCE sponsor can only accept a return for electronic filing that is (1) prepared at the VITA or TCE site by a VITA or TCE volunteer, (2) prepared by a taxpayer that meets the criteria for VITA or TCE assistance, or (3) prepared by a paid preparer that meets the criteria for VITA or TCE assistance.

.07 Only returns and accompanying forms and schedules included in a district, VITA, or TCE training course may be accepted for electronic filing by a VITA or TCE sponsor.

.08 A VITA or TCE sponsor and a District Director may enter into an agreement that provides for the retention of copies of tax returns and Forms 8453 by a District Director. This information must be retained by either the VITA or TCE sponsor or a District Director. This information must not be given to a third party, including a third party Transmitter.

.09 A District Director is responsible for ensuring that Form 8453 is sent to the appropriate Service office or service center. However, a District Director may delegate to the VITA or TCE sponsor the responsibility for mailing Form 8453 to the appropriate office or service center.

.10 A VITA or TCE sponsor may collect a fee only if it is directly related to defraying the actual cost of electronically transmitting a tax return. A VITA or TCE sponsor may also collect this fee on behalf of a third party Transmitter who electronically transmitted a VITA or TCE return.

.11 Before a VITA or TCE sponsor may collect a fee for electronically filing a tax return, the VITA or TCE sponsor must ensure that the taxpayer understands that:

(1) the fee is not for the preparation of the return; and

(2) the VITA or TCE service is offered without regard to either the electronic filing of a return or the collection of a fee.

SECTION 17. EMPLOYER SPONSORED ELECTRONIC FILING

.01 This revenue procedure applies to an employer who chooses to offer electronic filing as an employee benefit to (1) business owners and spouses, (2) employees and spouses, and/or (3) dependents of business owners and employees, subject to the exceptions and restrictions described in this section.

.02 For purposes of this section, the District Director may be represented by an individual designated by the District Director.

.03 An employer may choose to electronically transmit returns or may arrange to have tax returns electronically transmitted through a third party. If an employer chooses to transmit returns from more than one location, the employer must submit a properly completed Form 8633 for each location.

.04 An employer may offer electronic filing as an employee benefit whether the employer chooses to transmit tax returns or contracts with a third party to transmit the tax returns.

.05 If an employer contracts with a third party to transmit tax returns, the employer may collect from participating employees a fee that is directly related to defraying the actual cost of electronically transmitting a tax return.

.06 An employer is not required to manually sign Form 8453 as ERO. However, if the employer chooses not to manually sign Form 8453, the employer must otherwise furnish on Form 8453 its name, address, and the designation ''Employee Benefit,'' and if operating from multiple sites, a site designation number.

.07 An employer and a District Director may enter into an agreement that provides for the retention of copies of tax returns including Forms 8453. In the absence of such an agreement, this information must be retained by the employer. This information is not to be given to a third party, including a third party Transmitter.

SECTION 18. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95–49, 1995–2 C.B. 419, is superseded.

SECTION 19. EFFECTIVE DATE

This revenue procedure is effective December 30, 1996.

SECTION 20. INTERNAL REVENUE SERVICE OFFICE CONTACT

All questions regarding this revenue procedure should be directed to the Internal Revenue Service. The telephone number for this purpose is (202) 283–1010 (not a toll-free number).

SECTION 21. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1512.

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

The collections of information in this revenue procedure are in sections 5, 8,

9, and 12. This information is required to implement the Electronic Filing Program and to enable taxpayers to file their individual income tax returns electronically. The information will be used to ensure that taxpayers receive accurate and essential information regarding the filing of their electronic returns and to identify the persons involved in the filing of electronic returns. The collections of information are required to retain the benefit of participating in the Electronic Filing Program. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and recordkeeping burden is 1,146,272 hours.

The estimated annual burden per respondent/recordkeeper varies from six (6) minutes to 15.5 hours, depending on individual circumstances, with an estimated average of 15.28 hours (or approximately six (6) minutes per electronically filed return). The estimated number of respondents and recordkeepers is 75,000.

The estimated annual frequency of responses is on occasion.

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

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26 CFR 601.602: Tax forms and instructions. (Also Part I, Sections 6012, 6061; 1.6012–5, 1.6061–1.)

Rev. Proc. 96–62

CONTENTS

SECTION 1. PURPOSE

This revenue procedure informs those who participate in the 1997 On-Line Filing Program for Form 1040 and Form 1040A, U.S. Individual Income Tax Return, and Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, of their obligations to the Internal Revenue Service, taxpayers, and other participants. This revenue procedure updates Rev. Proc. 96–20, 1996–4 I.R.B. 88.

SECTION 2. BACKGROUND AND CHANGES

.01 During the 1996 federal income tax filing season, all returns filed through the On-Line Filing Program were filed at the Austin Service Center. For the 1997 federal income tax filing season, the program is being expanded to allow returns filed through the On-Line Filing Program to be filed at all service centers that process electronic returns.

.02 Section 1.6012–5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 C.F.R. Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.03 For purposes of this revenue procedure, an on-line electronically filed Form 1040, Form 1040A, or Form 1040EZ is a composite return consisting of electronically transmitted data and certain paper documents. The non-electronic portion of the return consists of Form 8453–OL, U.S. Individual Income Tax Declaration for On-Line Filing, and other paper documents that cannot be electronically transmitted. Form 8453–OL must be received by the Service before an on-line electronically filed return is complete (See section 5.07 of this revenue procedure). An on-line electronically filed return must contain the same information that a return filed completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453–OL.

.04 The Service will periodically issue a publication that lists the forms and schedules associated with a Form 1040 that can be electronically transmitted.

.05 A Form 1040, a Form 1040A, or a Form 1040EZ cannot be electronically filed after October 15, 1997, notwithstanding the fact that the taxpayer has been granted an extension to file a return beyond that date.

.06 An amended tax return cannot be electronically filed. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.07 A tax return that has a foreign address for the taxpayer cannot be electronically filed. Army/Air Force (APO) and Fleet (FPO) post offices are not considered foreign addresses.

.08 A tax return for a decedent cannot be electronically filed. The decedent's spouse or personal representative must file a paper tax return for the decedent.

.09 This revenue procedure updates Rev. Proc. 96–20, which applied to the On-Line Filing Program for the 1996 filing season. The updates include changes in the On-Line Filing Program for the 1997 filing season, clarifications of prior On-Line Filing Program statements, and additional guidance derived from other Service documents that relate to the On-Line Filing Program. Some of the updates are:

(1) in certain circumstances, a letter may be submitted in lieu of a revised Form 8633 (section 4.04);

(2) the time period to submit a revised Form 8633 is extended to 30 days (section 4.05);

(3) a fee for the electronic transmission of a tax return may not be computed using any amount from the return (section 5.04);

(4) a revised Form 8633 must be filed with the IRS Headquarters On-Line Filing Analyst (section 5.05);

(5) the time period for an On-Line Filer to notify the Service that it is discontinuing its participation in the On-Line Filing Program is extended to 30 days (section 5.06);

(6) a Software Developer must ensure that its software package cannot be used to transmit more than three electronic returns (section 5.10(3));

(7) a Software Developer must ensure that its software package contains a Form 8453–OL format that can be printed and used by a taxpayer to file with the Service (section 5.10(4));

(8) a Software Developer must ensure that its software package contains a consent to disclosure statement (section 5.10(5));

(9) a Software Developer must provide software and accompanying documentation to the IRS Headquarters On-Line Filing Analyst once the software has been successfully tested (section 5.10(6));

(10) a Transmitter must transmit electronic returns to the appropriate service center based on the state code in the taxpayer's return address (section 5.11(3));

(11) a Transmitter must enter the letter ''O'' in Field #15 (Transmission Type Code) when transmitting the electronic portion of an on-line electronically filed return to the Service (section 5.13);

(12) a Transmitter must not combine the electronic portion of an on-line electronically filed return with the electronic portion of any other return within the same transmission to the Service (section 5.14);

(13) a Transmitter must provide a taxpayer with the appropriate service center's address for mailing the Form 8453–OL (section 5.15(5));

(14) a Software Developer that performs a function in the On-line Filing Program other than software development is a tax return preparer under the definition of § 301.7216–1(a) of the Regulations on Procedure and Administration (section 6.01(1));

(15) a taxpayer will mail Form 8453–OL to the appropriate service center (section 7.01);

(16) the effect of suspending a Principal or a Responsible Official, on entities that listed the Principal or Responsible Official on their Forms 8633, is clarified (section 12.02);

(17) the two-year periods for denial and suspension are modified and clarified (sections 12.09 and 12.10);

(18) the time and method to respond to a proposed letter of denial and a denial letter are clarified (sections 13.03 and 13.06); and

(19) the time and method to respond to a proposed suspension letter and a suspension letter are clarified (sections 14.02 and 14.05).

SECTION 3. ON-LINE FILING PARTICIPANTS—DEFINITIONS

.01 After acceptance into the On-Line Filing Program, as described in section 4 of this revenue procedure, a participant is referred to as an ''On-Line Filer.''

.02 An On-Line Filer is categorized as follows:

(1) ON-LINE SERVICE PROVIDER. An ''On-Line Service Provider'' is an on-line information service organization that provides paying subscribers dial-up access to a variety of data bases. For purposes of the On-Line Filing Program, an On-Line Service Provider must also have:

(a) an established subscriber or client base to whom the On-Line Service Provider offers services on a continuing basis and about which the On-Line Service Provider maintains certain minimum information identifying the subscriber. Such information could include the subscriber's name, account number, or credit card or demand deposit account number;

(b) a port capacity of at least 1,000 lines or the ability to simultaneously service 1,000 customers;

(c) a network of personal computers that are linked by modems;

(d) access to a broad spectrum of information and/or entertainment services; and

(e) a client base that has the ability to communicate using electronic mail.

(2) SOFTWARE DEVELOPER. A ''Software Developer'' develops software for the purposes of (a) formatting returns according to the Service's electronic return specifications; and/or (b) transmitting electronic returns directly to the Service. A Software Developer may also sell its software.

(3) TRANSMITTER. A ''Transmitter'' transmits the electronic portion of a return directly to the IRS Data Communications Subsystem. An entity that provides a ''bump-up'' service is a Transmitter. A ''bump-up'' service provider increases the transmission rate or line speed of formatted or reformatted information that is being sent to the Service via a public switched telephone network. For example, a bump-up service provider may increase the transmission rate or line speed of information from 4800 bits per second (BPS) to 9600 BPS. Service specifications for electronic filing require an asynchronous speed of 300 BPS to 38,400 BPS or a bisynchronous speed of 4800 BPS to 19,200 BPS.

.03 The On-Line Filer categories are not mutually exclusive. For example, an On-line Service Provider can, at the same time, be considered a Transmitter or Software Developer depending on the function(s) performed.

SECTION 4. ACCEPTANCE IN THE ON-LINE FILING PROGRAM

.01 The Service will review and process applications received on or before December 2, 1996, for acceptance into the 1997 On-Line Filing Program.

.02 Applicants and On-Line Filers are required to submit a new Form 8633 designated for the On-Line Filing Program (hereinafter ''Form 8633''), with fingerprint cards for appropriate individuals, to the IRS Headquarters On-Line Filing Analyst (see section 17 of this revenue procedure) if:

(1) the applicant has never participated in the On-Line Filing Program;

(2) the On-Line Filer intends to function as an On-Line Service Provider or a Transmitter during the 1997 On-Line Filing Program;

(3) the applicant has previously been denied participation in the On-Line Filing Program; or

(4) the applicant has been suspended from the On-Line Filing Program.

.03 An On-Line Filer must submit a revised Form 8633, signed by all Principals and the Responsible Official, with completed fingerprint cards for the appropriate individuals if:

(1) there is an additional Principal, such as a partner or corporate officer, that must be listed on Form 8633, line 8 (formerly line 1k(1)), ''Principals of Your Firm or Organization'';

(2) there is a ''Principal'' listed on Form 8633, line 1k(1), that should be deleted; or

(3) the ''Responsible Official'' on Form 8633, line 9 (formerly line 1k(2)) changes.

.04 An On-Line Filer must submit either a revised Form 8633 or a letter containing the same information contained in a revised Form 8633 if there is any change to the following:

(1) the Firm name or Doing Business As (DBA) name;

(2) the business or mailing address;

(3) the contact representative or the alternate contact representative's name or telephone number; or

(4) the On-Line Filer's form of organization, as described on Form 8633, line 1k;

A Form 8633 or letter submitted under this section needs to include only the information requested on lines 1a through 1i of Form 8633 and the information being revised and must be submitted within 30 days of the change(s). A Principal or Responsible Official must sign the Form 8633 or the letter.

.05 Revised applications described in section 4.03 or 4.04 of this revenue procedure must be submitted to the IRS Headquarters On-Line Filing Analyst within 30 days of the change(s).

.06 Applicants and On-Line Filers that intend to function as a Transmitter or a Software Developer in the 1997 On-Line Filing Program must first successfully complete the necessary testing at the appropriate service center(s).

.07 Each individual listed as a Principal or a Responsible Official must:

(1) be a United States citizen or an alien lawfully admitted for permanent residence as described in 8 U.S.C. § 1101(a)(20) (1994);

(2) have attained the age of 21 as of the date of application;

(3) submit with Form 8633 one standard fingerprint card with a full set of fingerprints taken by a law enforcement agency, except as provided in subsection 4.08 of this revenue procedure; and

(4) pass a suitability check that includes a credit check and a fingerprint check.

.08 An individual may choose to submit evidence of the individual's professional status in lieu of one standard fingerprint card if the individual is:

(1) an attorney in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not currently under suspension or disbarment from practice before the Service;

(2) a certified public accountant who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia, and is not currently under suspension or disbarment from practice before the Service;

(3) an enrolled agent pursuant to part 10 of 31 C.F.R. Subtitle A;

(4) an officer of a publicly held corporation; or

(5) a banking official who is bonded and has been fingerprinted within the last two years.

.09 The Service will issue credentials for the 1997 On-Line Filing Program to eligible applicants and On-Line Filers (provided they have first satisfactorily completed the testing described in section 4.06 of this revenue procedure). No one may participate in the On-Line Filing Program for the 1997 filing season without the following credentials:

(1) a letter of acceptance into the On-Line Program for the 1997 filing season;

(2) an Electronic Filing Identification Number (EFIN) for each applicable service center; and

(3) if appropriate, an Electronic Transmitter Identification Number (ETIN) for each applicable service center.

.10 If an On-Line Filer is a Software Developer that performs no other function in the On-Line Filing Program but software development, no Principal or Responsible Official needs to pass a suitability check.

.11 The following reasons, which apply to any firm, organization, Principal, or Responsible Official listed on Form 8633, may result in the rejection of an application to participate in the 1997 On-Line Filing Program (this list is not all-inclusive):

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to file timely and accurate tax returns, including returns indicating that no tax is due;

(3) failure to timely pay any tax liabilities;

(4) assessment of tax penalties;

(5) suspension/disbarment from practice before the Service;

(6) other facts or conduct of a disreputable nature that would reflect adversely on the On-Line Filing Program;

(7) misrepresentation on an application;

(8) suspension or rejection from either the Electronic Filing Program or the On-Line Filing Program in a prior year;

(9) unethical practices in return preparation;

(10) stockpiling returns prior to official acceptance into the On-Line Filing Program (see section 5.20 of this revenue procedure);

(11) knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual that is prohibited from applying to participate in the Electronic Filing Program or the On-Line Filing Program, or that is suspended from participating in the Electronic Filing Program or the On-Line Filing Program. This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the Electronic Filing Program or the On-Line Filing Program; or

(12) knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual that is prohibited from applying to participate in the Electronic Filing Program or the On-Line Filing Program, or that is suspended from participating in the Electronic Filing Program or the On-Line Filing Program. This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the Electronic Filing Program or the On-Line Filing Program.

SECTION 5. RESPONSIBILITIES OF AN ON-LINE FILER

.01 To ensure that complete returns are accurately and efficiently filed, an On-Line Filer must comply with all the publications and notices of the Service. Currently, these publications and notices include:

(1) Handbook for Electronic Filers of Individual Income Tax Returns, Publication 1345 and Handbook for Electronic Filers of Individual Income Tax Returns (Supplement), Publication 1345A;

(2) Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns, Publication 1346;

(3) Test Package for Electronic Filing of Individual Income Tax Returns, Publication 1436; and

(4) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board).

.02 An On-Line Filer must maintain a high degree of integrity, compliance, and accuracy.

.03 An On-Line Filer may only accept returns for on-line electronic filing directly from taxpayers or from another On-Line Filer.

.04 If an On-Line Filer charges a fee for the electronic transmission of a tax return, the fee may not be based on a percentage of the refund amount or any other amount from the tax return.

.05 An On-Line Filer must submit a revised Form 8633 to the IRS Headquarters On-Line Filing Analyst within 30 days of when any of the conditions or changes described in section 4.03 or 4.04 of this revenue procedure occur.

.06 An On-Line Filer must notify the IRS Headquarters On-Line Filing Analyst within 30 days of discontinuing its participation in the On-Line Filing Program. This does not preclude reapplication in the future.

.07 An On-Line Filer must ensure that an on-line electronic return is filed on or before the due date of the return. A tax return is not considered filed until the electronic portion of the tax return has been acknowledged by the Service as accepted for processing and a completed and signed Form 8453–OL has been received by the Service. However, if the electronic portion of a return is successfully transmitted on or shortly before the due date and the taxpayer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the electronic portion of a return is initially transmitted on or shortly before the due date and is ultimately rejected, but the taxpayer complies with section 5.17 of this revenue procedure, the return will be deemed timely filed. In the case of a balance due return, see section 10 of this revenue procedure for instructions on how to make a timely payment of tax.

.08 An On-Line Filer must ensure that no other entity uses its EFIN or ETIN. An On-Line Filer must not transfer its EFIN or ETIN by sale, loan, gift, or otherwise to another entity.

.09 An On-Line Filer that functions as an On-Line Service Provider must:

(1) provide assistance to a subscriber in transmitting the electronic portion of a tax return;

(2) ensure that no more than three tax returns are filed electronically by one subscriber;

(3) not provide to a subscriber software that has a Service-assigned production password built into the software;

(4) immediately deliver to a subscriber the information provided by a Transmitter under section 5.16 or 5.17 of this revenue procedure; and

(5) if requested, inform a subscriber that information regarding a refund can be obtained by using the IRS TeleTax system or contacting the appropriate service center's customer service department.

.10 An On-Line Filer that functions as a Software Developer must:

(1) promptly correct any software error which causes an electronic return to be rejected;

(2) promptly distribute any software correction;

(3) ensure that its software package cannot be used to transmit more than three electronic returns;

(4) ensure that its software package contains a Form 8453–OL format that can be printed and used by a taxpayer to file with the Service;

(5) ensure that its software package contains a consent to disclosure statement;

(6) provide software and accompanying documentation provided to a purchaser of its software (a demonstration package is sufficient to satisfy this requirement) to the IRS Headquarters On-Line Filing Analyst, once the software has been successfully tested for the 1997 filing season (see section 4.06 of this revenue procedure); and

(7) not incorporate into its software a Service-assigned production password.

.11 An On-Line Filer that functions as a Transmitter must:

(1) assign (as prescribed in Publication 1345) a Declaration Control Number (DCN) to the electronic portion of each return received from a taxpayer;

(2) include the assigned DCN in the transmission of the electronic portion of a return;

(3) transmit all electronic returns within three calendar days of receipt to the appropriate service center based on the state code in the taxpayer's return address;

(4) retrieve the acknowledgement file within two work days of transmission;

(5) match the acknowledgement file to the original transmission file and notify the taxpayer of the status of a transmitted return as prescribed in section 5.18 of this revenue procedure;

(6) retain, until the end of the calendar year in which a return was filed, an acknowledgement file received from the Service;

(7) retain, until the end of the calendar year in which a return was filed, a complete copy of the electronic portion of the return (may be retained on magnetic media) that can be readily and accurately converted into an electronic transmission that the Service can process;

(8) immediately contact the Electronic Filing Unit at the appropriate service center for further instructions if an acknowledgement of acceptance for processing has not been received by the Transmitter within two work days of transmission or if the Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission;

(9) promptly correct any transmission error that causes an electronic transmission to be rejected;

(10) contact the Electronic Filing Unit at the appropriate service center for assistance if a return has been rejected after three transmission attempts;

(11) ensure the security of all transmitted data;

(12) ensure that it does not transmit or accept for transmission more than three electronic returns originating from one software package;

(13) ensure that the electronic portion of a return contains a completed consent to disclosure statement; and

(14) ensure that it does not use software that has a Service-assigned production password built into the software.

.12 A Transmitter must include an On-Line Service Provider's EFIN on each return that the Transmitter accepts from an On-Line Service Provider.

.13 A Transmitter must enter the letter ''O'' in Field #15 (Transmission Type Code) when transmitting the electronic portion of an on-line electronically filed return to the Service. See Part II, Section 1, page 4, of Publication 1346.

.14 A Transmitter must ensure that it does not combine the electronic portion of an on-line electronically filed return with the electronic portion of any other return within the same transmission to the Service.

.15 If the electronic portion of a taxpayer's return is acknowledged as accepted by the Service, the Transmitter must notify the taxpayer, as prescribed

in section 5.18 of this revenue procedure, of the following:

(1) the date the transmission was accepted;

(2) the DCN;

(3) where to put the DCN on Form 8453–OL;

(4) the requirement to properly complete and timely submit a Form 8453–OL with accompanying paper documents within one work day;

(5) the appropriate service center's address to which Form 8453–OL with accompanying paper documents must be sent;

(6) that a Form 8453–OL must be received by the Service before an on-line electronically filed return is complete; and

(7) the taxpayer's failure to timely submit a Form 8453–OL with accompanying paper documents could result in the Service not allowing the taxpayer to file a tax return through the On-Line Filing Program in the future.

.16 If the electronic portion of a taxpayer's return is acknowledged as rejected by the Service, the Transmitter must notify the taxpayer, as prescribed in section 5.18 of this revenue procedure, of the following:

(1) that the electronic portion of the return submitted by the taxpayer has not been accepted for processing;

(2) the date of the rejection;

(3) what the reject code means;

(4) what steps the taxpayer needs to take to correct the error that caused the rejection; and

(5) the information contained in section 5.17 of this revenue procedure.

.17 If the taxpayer chooses not to have the rejected return retransmitted or if the return cannot be accepted for processing, the taxpayer, in order to file a timely return, must file a paper return by the later of:

(1) the due date of the return; or

(2) within ten calendar days of the Service's acknowledgment that the return is rejected or notification that the return cannot be retransmitted, with an explanation of why the return is being filed after the due date.

.18 A Transmitter that transmits a return of a taxpayer who is a subscriber of an On-Line Service Provider must notify the taxpayer by sending an electronic transmission to the On-Line Service Provider within two work days of retrieving the acknowledgement file. A Transmitter that transmits a return of a taxpayer who is not a subscriber of an On-Line Service Provider must notify the taxpayer by:

(1) sending an electronic transmission to the taxpayer within two work days of retrieving the acknowledgement file; or

(2) mailing a written notification to the taxpayer within one work day of retrieving the acknowledgement file.

.19 A Transmitter must, if requested, make available to the Service all items required by this section to be retained until the end of the calendar year in which a return was filed. The Transmitter must make this material available either at the business address of the Transmitter or from the contact representative named on Form 8633.

.20 A Transmitter is responsible for ensuring that stockpiling does not occur. Stockpiling means collecting returns from taxpayers prior to official acceptance into the On-Line Filing Program, or, after official acceptance into the On-Line Filing Program, waiting more than three calendar days to transmit a return to the Service after receiving the information necessary for an electronic transmission of a tax return.

.21 An On-Line Filer may not offer, nor in any way participate in or facilitate, a Refund Anticipation Loan (RAL) in connection with any return filed under the On-Line Filing Program. A RAL is money borrowed by a taxpayer that is based on a taxpayer's anticipated income tax refund.

.22 An On-Line Filer may not charge a separate fee for a Direct Deposit. See section 9 of this revenue procedure.

.23 In addition to the specific responsibilities described in this section, an On-Line Filer must meet all the requirements in this revenue procedure to keep the privilege of participating in the On-Line Filing Program.

SECTION 6. PENALTIES

.01 *Penalties for Disclosure or Use of Information.*

(1) An On-Line Filer, except a Software Developer that performs no other function in the On-Line Filing Program but software development, is a tax return preparer (Preparer) under the definition of § 301.7216–1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for disclosure or use of tax return information, as described in § 301.7216–1(a). In general, that regulation provides that any preparer who discloses or uses any tax return information for a purpose other than preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of a tax return is guilty of a misdemeanor. In addition, § 6713 of the Internal Revenue Code provides for civil penalties that may be assessed against a preparer who makes an unauthorized disclosure or use of tax return information.

(2) Under § 301.7216–2(h), disclosure of tax return information among accepted On-Line Filers for the purpose of preparing a return is permissible. For example, it is permissible for an On-Line Service Provider to pass on tax return information to a Transmitter for the purpose of having an on-line electronic return formatted and transmitted to the Service. However, if the tax return information is disclosed or used in any other way, an On-Line Filer may be guilty of a misdemeanor as described in section 6.01(1) of this revenue procedure.

.02 *Other Preparer Penalties.*

(1) Preparer penalties may be asserted against an individual or firm who meets the definition of an income tax return preparer under § 7701(a)(36) and § 301.7701–15. Examples of preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701–15(d), an On-Line Filer is not an income tax return preparer for the purpose of assessing most preparer penalties as long as the On-Line Filer's services are limited to ''typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.''

(3) If an On-Line Filer alters the return information in a nonsubstantive way, this alteration will be considered to come under the ''mechanical assistance'' exception described in § 301.7701–15(d)(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within the following tolerances:

(a) the Total Tax amount, Withholding amount, Refund amount, or Amount Owed shown on Form 8453–OL differs from the corresponding amount on the electronic portion of the tax return by no more than $7;

(b) the Total Income amount shown on Form 8453–OL differs from

the corresponding amount on the electronic portion of the tax return by no more than $25; or

(c) dropping cents and rounding to whole dollars.

(4) If an On-Line Filer alters the return information in a substantive way, rather than having the taxpayer alter the return, the On-Line Filer will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If an On-Line Filer goes beyond mechanical assistance, the On-Line Filer may be held liable for income tax return preparer penalties. Rev. Rul. 85–189, 1985–2 C.B. 341, describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties.

.03 In addition to the above specified provisions, the Service reserves the right to assert all appropriate preparer, nonpreparer, and disclosure penalties against an On-Line Filer as warranted under the circumstances.

SECTION 7. FORM 8453–OL, U.S. INDIVIDUAL INCOME TAX DECLARATION FOR ON-LINE FILING

.01 Procedures for Completing Form 8453–OL.

(1) Form 8453–OL must be completed by the taxpayer in accordance with the instructions for Form 8453–OL.

(2) The taxpayer(s)'s name, address, social security number(s), tax return information, and direct deposit of refund information in the electronic transmission must be identical to the information on the Form 8453–OL that the taxpayer(s) signs and will mail to the appropriate service center.

(3) If the electronic portion of a return was filed as a joint return, both spouses' signatures are required on Form 8453–OL.

(4) The taxpayer's Form 8453–OL must be sent to the address of the appropriate service center within one work day after the taxpayer is provided notification that the electronic portion of the taxpayer's return has been accepted for processing. .02 If the Service determines that a Form 8453–OL is missing, the taxpayer must provide the Service with a replacement. A taxpayer must also provide a copy of any Form W–2, Wage and Tax Statement, Form W–2G, Certain Gambling Winnings, Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and all other attachments to Form 8453–OL.

.03 If a substitute Form 8453–OL is used, it must be approved by the Service prior to use. See Rev. Proc. 96–48, 1996–39 I.R.B. 10.

SECTION 8. INFORMATION AN ON-LINE FILER MUST PROVIDE TO THE TAXPAYER

.01 The Transmitter must advise a taxpayer to retain a complete copy of the return and any supporting material.

.02 The Transmitter must advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the service center that would handle the taxpayer's paper return.

.03 The Transmitter must give the taxpayer the Declaration Control Number (DCN) for the taxpayer's Form 8453–OL and instructions to the taxpayer for entering the DCN on Form 8453–OL.

.04 If a taxpayer inquires about the status of a refund, the Transmitter, or On-Line Service Provider if the taxpayer is a subscriber, must advise the taxpayer to use the IRS TeleTax system or contact the appropriate service center's customer service department. The Transmitter or On-Line Service Provider should also advise the taxpayer to wait at least three weeks from the acceptance date of the electronic return before making an inquiry regarding the status of a refund.

.05 The Transmitter must inform the taxpayer that the address on the electronic portion of the return, once processed, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's ''last known address'' under the Internal Revenue Code and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit).

SECTION 9. DIRECT DEPOSIT OF REFUNDS

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account.

.03 Neither the Service nor Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, On-Line Filer, financial institution, or any of their agents.

SECTION 10. BALANCE DUE RETURNS

.01 An electronically filed balance due return is transmitted to the appropriate service center in the same manner that a refund or zero balance return is filed. A balance due return is not complete unless and until the Service receives Form 8453–OL completed and signed by the taxpayer.

.02 The Transmitter must furnish Form 1040–V, Electronic Payment Voucher, to a taxpayer who electronically files a balance due return.

.03 To expedite the crediting of a tax payment, a taxpayer who electronically files a balance due return should mail his or her tax payment with either Form 1040–V or the scannable payment voucher that is included in some tax packages. Each of these options has specific mailing instructions.

.04 A taxpayer who electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1997, will result in the imposition of interest and may result in the imposition of penalties.

SECTION 11. ADVERTISING STANDARDS FOR ON-LINE FILERS

.01 An On-Line Filer shall comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. In addition, advertising must not imply a special relationship with the Service, FMS, or the Treasury Department. Any claims concerning faster refunds by virtue of electronic filing must be consistent with the language in official Service publications.

.02 An On-Line Filer must adhere to all relevant federal, state, and local

consumer protection laws that relate to advertising and soliciting.

.03 An On-Line Filer must not use the Service's name, ''Internal Revenue Service'' or ''IRS'', within a firm's name.

.04 An On-Line Filer must not use improper or misleading advertising in relation to the On-Line Filing Program (including the time frames for refunds).

.05 Use of Direct Deposit name and logo.

(1) The name ''Direct Deposit'' will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.06 Advertising materials shall not carry the FMS, IRS, or other Treasury Seals.

.07 Advertising for a cooperative electronic return project (public/private sector) must clearly state the names of all cooperating parties.

.08 If an On-Line Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The On-Line Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.09 If an On-Line Filer uses direct mail or fax communications to advertise, the On-Line Filer must retain a copy of the actual mailing or fax, along with a list or other description of firms, organization, or individuals to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.10 Acceptance to participate in the On-Line Filing Program does not imply endorsement by the Service or FMS of the software or quality of services provided.

SECTION 12. MONITORING AND SUSPENSION OF AN ON-LINE FILER

.01 The Service will monitor an On-Line Filer for conformity with this revenue procedure. The Service can immediately suspend, without notice, an On-Line Filer from the On-Line Filing Program. However, in most circumstances, a suspension from participation in the On-Line Filing Program is effective as of the date of the letter informing the On-Line Filer of the suspension. Before suspending an On-Line Filer, the Service may issue a warning letter that describes specific corrective action for deviations from this revenue procedure.

.02 If a Principal or Responsible Official is suspended from the On-Line Filing Program, every entity that listed the suspended Principal or Responsible Official on its Form 8633 may also be suspended.

.03 The Service will monitor the timely receipt of Forms 8453–OL.

.04 The Service will monitor the quality of an On-Line Filer's transmissions throughout the filing season. The Service will also monitor electronic returns and tabulate rejections, errors, and other defects. If quality deteriorates, the On-Line Filer will receive a warning from the Service.

.05 The Service will monitor complaints about an On-Line Filer and issue a warning or suspension letter as appropriate.

.06 The Service reserves the right to suspend the electronic filing privilege of any On-Line Filer that violates any provision of this revenue procedure. Generally, the Service will advise a suspended On-Line Filer concerning the requirements for reacceptance into the On-Line Filing Program. The following reasons may lead to a warning letter and/or suspension of an On-Line Filer from the On-Line Filing Program (this list is not all-inclusive):

(1) the reasons listed in section 4.11 of this revenue procedure;

(2) deterioration in the format of individual transmissions;

(3) unacceptable cumulative error or rejection rate;

(4) stockpiling returns at any time while participating in the On-Line Filing Program;

(5) failure on the part of a Transmitter to retrieve acknowledgement files within two work days of transmission by the Service;

(6) failure on the part of a Transmitter to notify the taxpayer, as prescribed in section 5.18 of this revenue procedure, of the status of a transmitted return within two work days of receipt of the acknowledgement files from the Service;

(7) failure on the part of an On-Line Service Provider to ensure that no more than three tax returns are filed electronically by one subscriber;

(8) failure on the part of a Transmitter to ensure that it does not transmit or accept for transmission more than three electronic returns originating from one software package; (

9) significant complaints about an On-Line Filer;

(10) failure on the part of an On-Line Filer to ensure that no other entity uses its EFIN and/or ETIN;

(11) having more than one EFIN for the same business entity at the same location (the business entity is generally the entity that reports on its return the income derived from electronic filing), unless the Service has issued more than one EFIN to a business entity.

(12) failure on the part of an On-Line Filer to cooperate with the Service's efforts to investigate electronic filing abuse;

(13) violation of the advertising standards described in section 11 of this revenue procedure;

(14) failure to maintain and make available records as described in section 5.19 of this revenue procedure;

(15) failure to supply a taxpayer with an accurate DCN;

(16) failure to give effective instructions to a taxpayer concerning the entry of the DCN on Form 8453–OL;

(17) failure to timely pay any applicable fees, as implemented by subsequent guidance; or

(18) failure to timely submit a revised Form 8633 or a letter containing the same information contained in a revised Form 8633 notifying the Service of changes described in section 4.03 or 4.04 of this revenue procedure.

.08 The Service may list in the Internal Revenue Bulletin, district office listings, district office newsletters, and on the EFS Bulletin Board the name and owner(s) of any entity suspended from the On-Line Filing Program and the effective date of the suspension.

.09 If an application for participation in the On-Line Filing Program is denied, the applicant is ineligible to submit a new application for two years from the application date of the denied application.

.10 If a participant is suspended from participating in the On-Line Filing Program, the period of suspension includes the remainder of the calendar year in which the suspension occurs plus the next two calendar years. A suspended participant may submit a new application for the application period immediately preceding the end of the suspension.

SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE ON-LINE FILING PROGRAM

.01 An applicant that has been denied participation in the On-Line Filing Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form 8633, the appropriate district office will either (1) accept an applicant into the On-Line Filing Program, or (2) issue a proposed letter of denial that explains to the applicant why the district office proposes to reject the application to participate in the On-Line Filing Program.

.03 An applicant who receives a proposed letter of denial may mail or deliver, within 30 calendar days of the date of the proposed letter of denial, a written response to the district office that issued the proposed letter of denial. The applicant's response must address the district office's explanation for proposing the denial to participate.

.04 Upon receipt of an applicant's written response, the district office will reconsider its proposed letter of denial. The district office may (1) withdraw its proposed letter of denial and admit the applicant into the On-Line Filing Program, or (2) finalize its proposed letter of denial and issue it to the applicant.

.05 If an applicant receives a final letter from the district office that denies the applicant participation in the On-Line Filing Program, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be mailed or delivered to the district office that issued the denial letter within 30 calendar days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed. In addition, the applicant must include a copy of the applicant's Form 8633 and a copy of the denial letter.

.07 The district office whose denial is being appealed will, upon receipt of a written appeal to the Director of Practice, forward to the Director of Practice its file on the applicant and the material described in section 13.06 of this revenue procedure that the applicant has submitted to the district office. The district office will forward to the Director of Practice these materials within 15 calendar days of receipt of the applicant's written appeal to the Director of Practice.

.08 Failure to respond within the 30-day periods described in sections 13.03 and 13.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

SECTION. 14. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE ON-LINE FILING PROGRAM

.01 An On-Line Filer that has been suspended from participation in the On-Line Filing Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If an On-Line Filer receives a proposed suspension letter, the On-Line Filer may mail or deliver, within 30 calendar days of the date of the proposed suspension letter, a detailed written explanation, with supporting documentation, of why the proposed suspension letter should be withdrawn. This written response should be sent to the district office or service center that issued the proposed suspension letter.

.03 Upon receipt of the On-Line Filer's written response, the district office or service center will reconsider its proposed suspension of the On-Line Filer. The district office or service center will either withdraw its proposed suspension letter and reinstate the On-Line Filer or issue a suspension letter to the On-Line Filer.

.04 If the On-Line Filer receives a suspension letter from a district office or a service center, the On-Line Filer is entitled to an appeal, in writing, to the Director of Practice.

.05 The appeal must be mailed or delivered to the district office or service center that issued the suspension letter within 30 calendar days of the date of the suspension letter. The On-Line Filer's written appeal must contain detailed reasons, with supporting documentation, for reversal of the suspension. In addition, the On-Line Filer must include a copy of its Form 8633 and a copy of the suspension letter.

.06 The district office or service center whose decision to suspend is being appealed will, upon receipt of a written appeal to the Director of Practice, forward to the Director of Practice its file on the On-Line Filer and the material described in section 14.05 of this revenue procedure that the On-Line Filer has submitted to the district office or the service center. The district office or the service center will forward to the Director of Practice these materials within 15 calendar days of the receipt of an On-Line Filer's written request for appeal.

.05 Failure to appeal within the 30-day period described in section 14.05 of this revenue procedure irrevocably terminates an On-Line Filer's right to an appeal.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96–20, 1996–4 I.R.B. 88, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective December 30, 1996.

SECTION 17. INTERNAL REVENUE SERVICE OFFICE CONTACT

All questions regarding the electronic filing aspects of the On-Line Filing Program should be directed to the Electronic Filing Office. The telephone number for this purpose is (202) 283–1010 (not a toll-free number). All questions regarding the on-line aspects of this program should be directed to the IRS Headquarters On-Line Filing Analyst. The telephone number for this purpose is (202) 283–0265 (not a toll-free number).

SECTION 18. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1513.

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

The collections of information in this revenue procedure are in sections 5, 8, and 11 of the revenue procedure. This information is required by the IRS to implement the On-Line Filing Program and to enable taxpayers to file their individual income tax returns electronically through the On-Line Filing Program. The information will be used to ensure that taxpayers receive accurate and essential information regarding the

filing of their return through the On-Line Filing Program and to identify the persons involved in the filing of a return through the On-Line Filing Program. The collections of information are required to retain the benefit of participating in the On-Line Filing Program. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and recordkeeping burden is 5,919 hours.

The estimated annual burden per respondent/recordkeeper varies from eight (8) minutes to 455 hours, depending on individual circumstances, with an estimated average of 423 hours (or approximately two (2) minutes per online electronically filed return). The estimated number of respondents and recordkeepers is 14.

The estimated annual frequency of responses is on occasion.

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

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, Sections 62, 162, 274, 1016; 1.62–2, 1.162–17, 1.274–5T, 1.274(d)–1, 1.1016–3.)

Rev. Proc. 96–63

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 95–54, l995–2 C.B. 450, by providing optional standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs paid or incurred on or after January 1, 1997, of operating a passenger automobile for business, charitable, medical, or moving expense purposes. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under § 1.274–5T of the temporary Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation.

SEC. 2. SUMMARY OF STANDARD MILEAGE RATES

Business (Sec. 5 below)
31.5 cents per mile
Rural Mail Carrier (Sec. 6 below)
47.25 cents per mile
Charitable (Sec. 7 below)
12 cents per mile
Medical and Moving (Sec. 7 below)
10 cents per mile

SEC. 3. BACKGROUND

.01 Section 162(a) of the Internal Revenue Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct the cost of operating a passenger automobile to the extent that it is used in a trade or business. However, under § 262, no portion of the cost of operating a passenger automobile that is attributable to personal use is deductible.

.02 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 with respect to any listed property (as defined in § 280F(d)(4) to include passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.03 Section 1.274(d)–1 in part, grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of local travel and transportation away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of such travel and transportation expenses for purposes of § 1.274–5T(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of such expenses for purposes of § 1.274–5T(f).

.04 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.05 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement. Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.06 Under § 1.62–2(c)(1) a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62–2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274(d)–1 will be treated as substantiation of the amount of such expenses for purposes of § 1.62–2. Under § 1.62–2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance that relates to miles of travel not substantiated.

.07 Section 1.62–2(h)(2)(i)(B) provides that if a payor pays a mileage

allowance under an arrangement that meets the requirements of § 1.62–2(c)(1), the portion, if any, of the allowance that relates to miles of travel substantiated in accordance with § 1.62–2(e), that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under §§ 274(d) and 1.274(d)–1, and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)–3, 31.3231(e)–3, 31.3306(b)–2, and 31.3401(a)–4. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62–2(g) (relating to the return of excess amounts) do not apply to this excess portion.

.08 Under § 1.62–2(h)(2)(i)(B)(4), the Commissioner may, in his or her discretion, prescribe special rules regarding the timing of withholding and payment of employment taxes on mileage allowances.

SEC. 4. DEFINITIONS

.01 *Standard mileage rate.* The term ''standard mileage rate'' means the applicable amount provided by the Service for optional use by employees or self-employed individuals in computing the deductible costs of operating passenger automobiles owned by them (including vans, pickups, or panel trucks) for business purposes, or by taxpayers in computing the deductible costs of operating passenger automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses.* The term ''transportation expenses'' means the expenses of operating a passenger automobile for local travel or transportation away from home.

.03 *Mileage allowance.* The term ''mileage allowance'' means a payment under a reimbursement or other expense allowance arrangement that meets the requirements specified in § 1.62–2(c)(1) and that is

(1) paid with respect to the ordinary and necessary business expenses incurred, or which the payor reasonably anticipates will be incurred, by an employee for transportation expenses in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at the applicable standard mileage rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.04 *Flat rate or stated schedule.* A mileage allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 4.03. Such allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs (including depreciation, insurance, registration and license fees, and personal property taxes) of driving an automobile in connection with the performance of services as an employee of the employer, coupled with a periodic payment at a cents-per-mile rate to cover the operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of using an automobile for such purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locales to cover the costs of driving an automobile in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

SEC. 5. BUSINESS STANDARD MILEAGE RATE

.01 *In general.* The standard mileage rate for transportation expenses paid or incurred on or after January 1, 1997, is 31.5 cents per mile for all miles of use for business purposes. This business standard mileage rate will be adjusted annually (to the extent warranted) by the Service, and any such adjustment will be applied prospectively.

.02 *Use of the business standard mileage rate.* A taxpayer may, on a yearly basis, deduct an amount equal to either the business standard mileage rate times the number of business miles traveled or the actual costs (both operating and fixed) paid or incurred by the taxpayer that are allocable to traveling those business miles.

.03 *Business standard mileage rate in lieu of operating and fixed costs.* A deduction computed using the standard mileage rate for business miles is in lieu of operating and fixed costs of the automobile allocable to business purposes. Such items as depreciation, maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, and registration fees are included in operating and fixed costs.

.04 *Parking fees, tolls, interest, and taxes.* Parking fees and tolls attributable to use of the automobile for business purposes may be deducted as separate items. Likewise, interest relating to the purchase of the automobile as well as state and local taxes (other than those included in the cost of gasoline) may be deducted as separate items, but only to the extent that the interest or taxes are allowable deductions under § 163 or 164 respectively. If the automobile is operated less than 100 percent for business purposes, an allocation is required to determine the business and nonbusiness portion of the taxes and interest deduction allowable. However, § 163-(h)(2)(A) expressly provides that interest is nondeductible personal interest when it is paid or accrued on indebtedness properly allocable to the trade or business of performing services as an employee. Section 164 also expressly provides that state and local taxes that are paid or accrued by a taxpayer in connection with an acquisition or disposition of property will be treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of such property.

.05 *Depreciation.*

For automobiles placed in service for business purposes, and for which the business standard mileage rate has been used for any year, depreciation will be considered to have been allowed at the rate of 11 cents a mile for 1989, 1990, and 1991; 11.5 cents a mile for 1992 and 1993; and 12 cents a mile for 1994, 1995, 1996, and l997, for those years in which the business standard mileage rate was used. If actual costs were used for one or more of those years, the rates above will not apply to any year in which such costs were used. The depreciation described above will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016.

.06 *Limitations.*

(1) The business standard mileage rate may not be used to compute the deductible expenses of (a) vehicles used for hire, such as taxicabs, (b) two or more automobiles used simultaneously (such as in fleet operations), or (c) any vehicle that is leased, rather than owned, by the taxpayer.

(2) The business standard mileage rate may not be used if (a) the automobile has previously been depreciated using a method other than straight-line for its estimated useful life, (b) a § 179 deduction has been claimed, or (c) the taxpayer has used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F for any passenger automobile).

SEC. 6. RURAL MAIL CARRIER SPECIAL MILEAGE RATE

.01 *Special mileage rate.* For taxable years beginning after December 31, 1987, § 6008 of the Technical and Miscellaneous Revenue Act of 1988, 1988–3 C.B. 347, allows employees of the United States Postal Service to use a special mileage rate in computing the amount allowable as a deduction for business use of an automobile in performing qualifying services. Qualifying services are services involving the collection and delivery of mail on a ''rural route,'' as that term is defined by the Postal Service. The special mileage rate is equal to 150 percent of the business standard mileage rate, and is 47.25 cents per mile for transportation expenses paid or incurred on or after January 1, 1997 (150 percent of the business standard mileage rate of 31.5 cents per mile). The special mileage rate applies to all business use of an automobile while performing qualifying services. It will be adjusted annually (to the extent warranted) by the Service to reflect changes in the business standard mileage rate, and any such adjustment will be applied prospectively.

.02 *Depreciation.* In determining the adjusted basis of an automobile used to perform qualifying services, depreciation will be computed as provided in section 5.05, except as provided in section 6.03.

.03 *Special depreciation rules.* The special mileage rate is not available for any automobile if, for any taxable year beginning after December 31, 1987, the employee claims depreciation for such automobile. For this purpose, claiming depreciation means the deduction of any amount under § 167, 168, or 179 (including any such deduction attributable to use in a trade or business that does not involve the performance of qualifying services). The availability of the special mileage rate is not affected by depreciation claimed for taxable years beginning before January 1, 1988. Thus, the special mileage rate is available even if the automobile was fully depreciated in taxable years beginning before January 1, 1988, and regardless of the year the automobile was placed in service.

.04 *Rural mail carrier special mileage rate in lieu of operating and fixed costs.* The rules provided under section 5.03 also apply to use of the special mileage rate.

.05 *Parking fees, tolls, interest, and taxes.* The rules provided under section 5.04 also apply to the use of the special mileage rate.

SEC. 7. CHARITABLE, MEDICAL, AND MOVING STANDARD MILEAGE RATE

.01 *Charitable.* Section 170(i) provides a standard mileage rate of 12 cents per mile for purposes of computing the charitable deduction for use of a passenger automobile in connection with rendering gratuitous services to a charitable organization under § 170.

.02 *Medical and moving.* The standard mileage rate is 10 cents per mile for use of a passenger automobile (a) to obtain medical care described in § 213, or (b) as part of a move for which the expenses are deductible under § 217. The standard mileage rates for medical and moving transportation expenses will be adjusted annually (to the extent warranted) by the Service, and any such adjustment will be applied prospectively.

.03 *Charitable, medical, or moving expense standard mileage rate in lieu of operating expenses.* A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of operating expenses (including gasoline and oil) of the automobile allocable to such purposes. Costs for such items as depreciation, maintenance and repairs, tires, insurance, and registration fees are not deductible, and are not included in such standard mileage rates.

.04 *Parking fees, tolls, interest, and taxes.* Parking fees and tolls attributable to the use of the automobile for charitable, medical, or moving expense purposes may be deducted as separate items. Likewise, interest relating to the purchase of the automobile as well as state and local taxes (other than those included in the cost of gasoline) may be deducted as separate items, but only to the extent that the interest and taxes are allowable deductions under § 163 or 164, respectively.

SEC. 8. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general.*

(1) The ordinary and necessary expenses paid or incurred by an employee in driving an automobile in connection with the performance of services as an employee of the employer will be deemed substantiated (in an amount determined under section 9) when a payor reimburses such expenses with a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of this section (a FAVR allowance).

(2) The amount of a FAVR allowance must be based on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is reasonable and statistically defensible in approximating the actual expenses of employees receiving the allowance.

.02 *Definitions.*

(1) *FAVR allowance.* A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile (or an automobile of the same make and model that is comparably equipped), retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments; however, such optional high mileage payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes when paid. See section 9.05. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles driven and substantiated by the employee for a calendar year in excess of the annual

business mileage for that year. If an employee is covered by the FAVR allowance for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment.* A periodic fixed payment covers the projected fixed costs (including depreciation, insurance, registration and license fees, and personal property taxes) of driving a standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. A periodic fixed payment may be computed by (a) dividing the total projected fixed costs for the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment.* A periodic variable payment covers the projected operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of driving a standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. The rate of a periodic variable payment for a computation period may be computed by dividing the total projected operating costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period can be any period of a year or less. Computation period mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile substantiated by the employee for the computation period, the periodic variable payment must be paid at a rate that does not exceed the rate for that computation period.

(4) *Base locality.* A base locality is the particular geographic locality or region of the United States in which the costs of driving an automobile in connection with the performance of services as an employee of the employer are generally paid or incurred by the employee. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region in which the employee resides. For purposes of determining the amount of operating costs, the base locality is generally the geographic locality or region in which the employee drives the automobile in connection with the performance of services as an employee of the employer.

(5) *Standard automobile.* A standard automobile is the passenger automobile selected by the payor on which a specific FAVR allowance is based.

(6) *Standard automobile cost.* The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes applicable on the purchase of such an automobile. Further, the standard automobile cost may not exceed $26,500.

(7) *Annual mileage.* Annual mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage.* Annual business mileage is the mileage a payor reasonably projects a standard automobile will be driven by an employee in connection with the performance of services as an employee of the employer during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage.* A business use percentage is determined by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness of the business use percentage based on records of total mileage and business mileage driven by the employees annually, a payor may use a business use percentage that is less than or equal to the following percentages for a FAVR allowance that is paid for the following annual business mileage:

Annual business mileage	*Business use percentage*
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period.* A retention period is the period in calendar years selected by the payor during which the payor expects an employee to drive a standard automobile in connection with the performance of services as an employee of the employer before the automobile is replaced. Such period may not be less than two calendar years.

(11) *Retention mileage.* Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value.* The residual value of a standard automobile is the projected amount for which it could be sold at the end of the retention period after being driven the retention mileage. The Service will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

Retention period	*Residual value*
2-year	70 percent
3-year	60 percent
4-year	50 percent

.03 *FAVR allowance in lieu of operating and fixed costs.*

(1) Except as provided in section 8.03(2), a deduction computed using a FAVR allowance is in lieu of all the operating and fixed costs paid or incurred by an employee in driving the automobile in connection with the performance of services as an employee of the employer.

(2) Parking fees and tolls attributable to an employee driving the standard automobile in connection with the performance of services as an employee of the employer are not included in fixed and operating costs and may be deducted as separate items. Similarly, interest relating to the purchase of the standard automobile may be deducted as a separate item, but only to the extent that the interest is an allowable deduction under § 163.

.04 *Depreciation.*

(1) A FAVR allowance may not be paid with respect to an automobile for which the employee has claimed (a) depreciation using a method other than straight-line for its estimated useful life, (b) a § 179 deduction has been claimed, or (c) the taxpayer has used the Acceler-

ated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. If an employee uses actual costs for an automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F for any passenger automobile).

(2) The total amount of the depreciation component for the retention period taken into account in computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of such depreciation component may not exceed the sum of the annual § 280F limitations on depreciation (in effect at the beginning of the retention period) that apply to the standard automobile during the retention period.

(3) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid with respect to an automobile will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. See section 8.07(2) for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations.*

(1) A FAVR allowance may be paid only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in connection with the performance of services as an employee of the employer or, if greater, 80 percent of the annual business mileage of that FAVR allowance. If the employee is covered by the FAVR allowance for less than the entire calendar year, these limits may be prorated on a monthly basis.

(2) A FAVR allowance may not be paid to a control employee (as defined in § 1.61–21(f)(5) and (6), excluding the $100,000 limitation in paragraph (f)(5)(iii)).

(3) At no time during a calendar year may a majority of the employees covered by a FAVR allowance be management employees.

(4) At all times during a calendar year at least 10 employees of an employer must be covered by one or more FAVR allowances.

(5) A FAVR allowance may be paid only with respect to an automobile (a) owned by the employee receiving the payment, (b) the cost of which, when new, is at least 90 percent of the standard automobile cost taken into account for purposes of determining the FAVR allowance for the first calendar year the employee receives the allowance with respect to that automobile, and (c) the model year of which does not differ from the current calendar year by more than the number of years in the retention period.

(6) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without taking into account such rate-increasing factors as poor driving records or young drivers.

(7) A FAVR allowance may be paid only to an employee whose insurance coverage limits on the automobile with respect to which the FAVR allowance is paid are at least equal to the insurance coverage limits used to compute the periodic fixed payment under that FAVR allowance.

.06 *Employee reporting.* Within 30 days after an employee's automobile is initially covered by a FAVR allowance, or is again covered by a FAVR allowance if such coverage has lapsed, the employee by written declaration must provide the payor with the following information: (a) the make, model, and year of the automobile owned by the employee, (b) written proof of the insurance coverage limits on the automobile, (c) the odometer reading of the automobile, (d) the purchase price of the automobile, and (e) whether the employee has claimed depreciation with respect to the automobile using any of the depreciation methods prohibited by section 8.04(1). The information described in (a), (b), and (c) of the preceding sentence also must be supplied by the employee to the payor within 30 days after the beginning of each calendar year that the employee's automobile is covered by a FAVR allowance.

.07 *Payor recordkeeping and reporting.*

(1) The payor or its agent must maintain written records setting forth (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information provided by the employees pursuant to section 8.06.

(2) Within 30 days of the end of each calendar year, the employer must provide each employee covered by a FAVR allowance during that year with a statement listing the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year and explaining that by receiving a FAVR allowance the employee has elected to exclude the automobile from MACRS pursuant to § 168(f)(1).

.08 *Failure to meet section 8 requirements.* If an employee receives a mileage allowance that fails to meet one or more of the requirements of section 8, the employee may not be treated as covered by any FAVR allowance of the payor during the period of such failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 5, 9.01(1), and 9.02 to the extent the requirements of those sections are met.

SEC. 9. APPLICATION

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses incurred or to be incurred by an employee, the amount of the expenses that is deemed substantiated to the payor is either:

(1) for any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the applicable standard mileage rate in section 5.01 or 6.01 multiplied by the number of business miles substantiated by the employee; or

(2) for a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 If the amount of transportation expenses is deemed substantiated under the rules provided in section 9.01, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses in accordance with paragraphs (b)(2) (travel away from home), (b)(6) (listed property, which includes passenger automobiles and any other property used as a means of

transportation), and (c) of § 1.274–5T, the employee is deemed to satisfy the adequate accounting requirements of § 1.274–5T(f), as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274–5T(c). See § 1.62–2(e)(1) for the rule that an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.03 An arrangement providing mileage allowances will be treated as satisfying the requirement of § 1.62–2(f)(2) with respect to returning amounts in excess of expenses as follows:

(1) For a mileage allowance other than a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) any portion of such an allowance that relates to miles of travel not substantiated by the employee, even though the arrangement does not require the employee to return the portion of such an allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance mileage allowance of $70 based on an anticipated 200 business miles at 35 cents per mile (at a time when the applicable business standard mileage rate is 31.5 cents per mile), and the employee substantiates 120 business miles. The requirement to return excess amounts will be treated as satisfied if the employee is required to return the portion of the allowance that relates to the 80 unsubstantiated business miles ($28) even though the employee is not required to return the portion of the allowance ($4.20) that exceeds the amount of the employee's expenses deemed substantiated under section 9.01 ($37.80) for the 120 substantiated business miles. However, the $4.20 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 9.05.

(2) For a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)), (a) the portion (if any) of the periodic variable payment received that relates to miles in excess of the business miles substantiated by the employee, and (b) the portion (if any) of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 9.01, provided the employee substantiates in accordance with section 9.02. See § 1.274–5T(f)(2)(i). In addition, such portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W–2, and is exempt from the withholding and payment of employment taxes. See §§ 1.62–2(c)(2) and (c)(4).

.05 An employee is required to include in gross income only the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 9.01, provided the employee substantiates in accordance with section 9.02. See § 1.274–5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W–2, and is subject to withholding and payment of employment taxes. See §§ 1.62–2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06 If the amount of the expenses deemed substantiated under the rules provided in section 9.01 is less than the amount of the employee's business transportation expenses, the employee may claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business transportation expenses, includes on Form 2106, Employee Business Expenses, the deemed substantiated portion of the mileage allowance received from the payor, and includes in gross income the portion (if any) of the mileage allowance received from the payor that exceeds the amount deemed substantiated. See § 1.274–5T(f)(2)(iii). However, for purposes of claiming this itemized deduction, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the applicable standard mileage rate multiplied by the number of business miles substantiated by the employee minus the amount deemed substantiated under section 9.01. The itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.07 An employee may deduct an amount computed pursuant to section 5.01 or 6.01 only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.08 A self-employed individual may deduct an amount computed pursuant to section 5.01 in determining adjusted gross income under § 62(a)(1).

.09 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, such payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes. See §§ 1.62–2(c)(3), (c)(5), and (h)(2).

SEC. 10. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES.

.01 The portion of a mileage allowance (other than a FAVR allowance), if any, that relates to the miles of business travel substantiated and that exceeds the amount deemed substantiated for those miles under section 9.01(1) is subject to withholding and payment of employment taxes. See § 1.62–2(h)(2)(i)(B).

(1) In the case of a mileage allowance paid as a reimbursement, the excess described in this section 10.01 is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the business miles substantiated. See § 1.62–2(h)(2)(i)(B)(*2*).

(2) In the case of a mileage allowance paid as an advance, the excess described in this section 10.01 is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the business miles with respect to which the advance was paid are substantiated. See § 1.62–2(h)(2)(i)(B)(*3*). If some or all of the business miles with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the

first payroll period following the end of the reasonable period. See § 1.62–2(h)(2)(i)(A).

(3) In the case of a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (e.g., a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 8), the payor must compute the amount, if any, that exceeds the amount deemed substantiated under section 9.01(1) periodically (no less frequently than quarterly) by comparing the total mileage allowance paid for the period to the applicable standard mileage rate in section 5.01 or 6.01 multiplied by the number of business miles substantiated by the employee for the period. Any excess is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62–2(h)(2)(i)(B)(*4*).

(4) For example, assume an employer pays its employees a mileage allowance at a rate of 35 cents per mile (when the business standard mileage rate is 31.5 cents per mile). The employer does not require the return of the portion of the allowance (3.5 cents) that exceeds the business standard mileage rate for the business miles substantiated. In June, the employer advances an employee $175 for 500 miles to be traveled during the month. In July, the employee substantiates to the employer 400 business miles traveled in June and returns $35 to the employer for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is $126 and the employee is not required to return the remaining $14. No later than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the employer must withhold and pay employment taxes on $14.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 9.01(2) is subject to withholding and payment of employment taxes. See § 1.62–2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62–2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

SEC. 11. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95–54, l995–2 C.B. 450, is hereby superseded for mileage allowances paid to an employee on or after January 1, 1997, with respect to transportation expenses paid or incurred on or after January 1, 1997, and, for purposes of computing the amount allowable as a deduction, for transportation expenses paid or incurred on or after January 1, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is G. Channing Horton of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Horton on (202) 622–4920 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 62, 162, 267, 274; 1.62–2, 1.162–17, 1.267(a)–1, 1.274–5T, 1.274(d)–1.)

Rev. Proc. 96–64

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 96–28, l996–1 C.B. 686, by providing rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home will be deemed substantiated under § 1.274–5T of the temporary Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. This revenue procedure also provides an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. Use of a method described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meal and incidental expenses.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 162(a) of the Internal Revenue Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct expenses paid or incurred while traveling away from home in pursuit of a trade or business. However, under § 262, no portion of such travel expenses that is attributable to personal, living, or family expenses is deductible.

.02 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 for any traveling expense (including meals and lodging while away from home) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.03 Section 1.274(d)–1(a) of the regulations, in part, grants the Commissioner the authority to prescribe rules relating to reimbursement arrangements or per diem allowances for ordinary and necessary expenses paid or incurred while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such arrangements or allowances, if in accordance with reasonable business practice, will be regarded (1) as equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of such travel expenses for purposes of § 1.274–5T(c), and (2) as satisfying the requirements of an adequate accounting to the employer of the amount of such travel expenses for purposes of § 1.274–5T(f).

.04 Section 1.274–5T(j) grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for

meals paid or incurred while traveling away from home in lieu of substantiating the actual cost of meals.

.05 For purposes of determining adjusted gross income, § 62(a)(2)(A) allows an employee a deduction for expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.07 Under § 1.62–2(c)(1) a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62–2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274(d)–1(a) or 1.274–5T(j) will be treated as substantiation of the amount of such expenses for purposes of § 1.62–2. Under § 1.62–2(f)(2), the Commissioner may prescribe rules under which an arrangement providing per diem allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance that relates to days of travel not substantiated.

.08 Section 1.62–2(h)(2)(i)(B) provides that if a payor pays a per diem allowance that meets the requirements of § 1.62–2(c)(1), the portion, if any, of the allowance that relates to days of travel substantiated in accordance with § 1.62–2(e), that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under § 274(d) and § 1.274(d)–1(a) or § 1.274–5T(j), and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)–3, 31.3231(e)–3, 31.3306(b)–2, and 31.3401(a)–4. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62–2(g) (relating to the return of excess amounts) do not apply to this portion.

.09 Under § 1.62–2(h)(2)(i)(B)(4), the Commissioner may, in his or her discretion, prescribe special rules regarding the timing of withholding and payment of employment taxes on per diem allowances.

.10 Section 5.04 contains a description of changes to the high-cost localities for purposes of section 5.

.11 Changes to sections 3.01(3), 4.02, and 6.02 clarify that the amount of an employee's expenses of traveling away from home may be deemed substantiated under the revenue procedure if a payor pays a per diem amount for the employee's lodging, meal, and incidental expenses that is equal to *or less than* the amount of the Federal per diem for the locality of travel for the day (or part of the day).

.12 Changes to sections 1, 3.01(1), 6.01, and 6.06 clarify that the revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meal and incidental expenses.

SECTION 3. DEFINITIONS

.01 *Per diem allowance.* The term ''per diem allowance'' means a payment under a reimbursement or other expense allowance arrangement that meets the requirements specified in § 1.62–2(c)(1) and that is

(1) paid with respect to ordinary and necessary business expenses incurred, or which the payor reasonably anticipates will be incurred, by an employee for lodging, meal, and incidental expenses or for meal and incidental expenses for travel away from home in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at or below the applicable Federal per diem rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.02 *Federal per diem rate.*

(1) *General rule.* The Federal per diem rate is equal to the sum of the Federal lodging expense rate and the Federal meal and incidental expense (M&IE) rate for the locality of travel. Each of these rates for a particular locality in the continental United States (''CONUS'') is set forth in Appendix A of 41 C.F.R., Chapter 301, as amended. See 41 C.F.R. Part 301–7 (1996), as amended, for specific rules regarding these Federal rates. Each of these rates is established by the Secretary of Defense for a particular nonforeign locality outside the continental United States (''OCONUS'') (including Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, and the possessions of the United States), and by the Secretary of State for a particular foreign OCONUS locality. Each of these OCONUS rates is published in the Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas). See, e.g., Maximum Travel Per Diem Allowances for Foreign Areas, PD Supplement 382, issued March 1, 1996.

(2) *Locality of travel.* The term ''locality of travel'' means the locality where an employee traveling away from home in connection with the performance of services as an employee of the employer stops for sleep or rest.

(3) *Incidental expenses.* The term ''incidental expenses'' includes, but is not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. The term ''incidental expenses'' does not include taxicab fares or the costs of telegrams or telephone calls.

.03 *Flat rate or stated schedule.*

(1) In general. Except as provided in section 3.03(2), an allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 3.01. Such allowance may be paid with respect to the number

of days away from home in connection with the performance of services as an employee or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, an hourly payment to cover meal and incidental expenses paid to a pilot or flight attendant who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule. Likewise, a payment based on the number of miles traveled (*e.g.*, cents per mile) to cover meal and incidental expenses paid to an over-the-road truck driver who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

(2) *Limitation.* For purposes of this revenue procedure, an allowance that is computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced) does not meet the business connection requirement of § 1.62–2(d), is not a per diem allowance, and is not paid at a flat rate or stated schedule, unless, as of December 12, 1989, (a) the allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the allowance, or (b) an allowance computed on that basis was commonly used in the industry in which the employee is employed. See § 1.62–2(d)(3)(ii).

SECTION 4. PER DIEM SUBSTANTIATION METHOD

.01 *Per diem allowance.* If a payor pays a per diem allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed substantiated for each calendar day (or part of the calendar day, see section 6.04) is equal to the lesser of the per diem allowance for such day or the amount computed at the Federal per diem rate for the locality of travel for such day (or part of such day, see section 6.04).

.02 *Meals only per diem allowance.* If a payor pays a per diem allowance only for meal and incidental expenses in lieu of reimbursing actual expenses for meal and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed substantiated for each calendar day (or part of the calendar day, see section 6.04) is equal to the lesser of the per diem allowance for such day or the amount computed at the Federal M&IE rate for the locality of travel for such day (or part of such day, see section 6.04). A per diem allowance is treated as paid only for meal and incidental expenses if (1) the payor pays the employee for actual expenses for lodging based on receipts submitted to the payor, (2) the payor provides the lodging in kind, (3) the payor pays the actual expenses for lodging directly to the provider of the lodging, (4) the payor does not have a reasonable belief that lodging expenses were or will be incurred by the employee, or (5) the allowance is computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced).

.03 *Optional method for meals only deduction.* In lieu of using actual expenses, employees and self-employed individuals, in computing the amount allowable as a deduction for ordinary and necessary meal and incidental expenses paid or incurred for travel away from home, may use an amount computed at the Federal M&IE rate for the locality of travel for each calendar day (or part thereof, see section 6.04) the employee or self-employed individual is away from home. Such amount will be deemed substantiated for purposes of paragraphs (b)(2) (travel away from home) and (c) of § 1.274–5T, provided the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel expenses in accordance with those regulations.

.04 *Special rules for transportation industry.*

(1) *In general.* This section 4.04 applies to (a) a payor that pays a per diem allowance only for meal and incidental expenses for travel away from home as described in section 4.02 to an employee in the transportation industry, or (b) an employee or self-employed individual in the transportation industry who computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03.

(2) *Rates.* A taxpayer described in section 4.04(1) may treat $36 as the Federal M&IE rate for any locality of travel in CONUS, and/or $40 as the Federal M&IE rate for any locality of travel OCONUS. A payor that uses either (or both) of these special rates with respect to an employee must use the special rate(s) for all amounts subject to section 4.02 paid to that employee for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year. Similarly, an employee or self-employed individual that uses either (or both) of these special rates must use the special rate(s) for all amounts computed pursuant to section 4.03 for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year.

(3) *Periodic rule.* A payor described in section 4.04(1) may compute the amount of the employee's expenses that is deemed substantiated under section 4.02 periodically (not less frequently than monthly), rather than daily, by comparing the total per diem allowance paid for the period to the sum of the amounts computed at the Federal M&IE rate(s) for the localities of travel for the days (or partial days, see section 6.04) the employee is away from home during the period. For example, assume an employee in the transportation industry travels away from home within CONUS on 17 days (including partial days under section 6.04) during a calendar month and receives a per diem allowance only for meal and incidental expenses from a payor that uses the special rule under section 4.04(2). The amount deemed substantiated under section 4.02 is equal to the lesser of the total per diem allowance paid for the month or $612 (17 days at $36 per day).

(4) *Transportation industry defined.* For purposes of this section 4.04, an employee or self-employed individual is ''in the transportation industry'' only if the employee's or individual's work (a) is of the type that directly involves moving people or goods by airplane, barge, bus, ship, train, or truck, and (b) regularly requires travel away from home which, during any single trip away from home, usually involves travel to localities with differing Federal M&IE rates. For purposes of the preceding sentence, a payor must determine that an employee or a group of employees is ''in the transportation industry'' by using a method that is consistently applied and in accordance with reasonable business practice.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

.01 *General rule.* If a payor pays a per diem allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home and the payor uses the high-low substantiation method described in this section 5 for travel within CONUS, the amount of the expenses that is deemed substantiated for each calendar day (or part of the calendar day, see section 6.04) is equal to the lesser of the per diem allowance for such day or the amount computed at the rate set forth in section 5.02 for the locality of travel for such day (or part of such day, see section 6.04). This high-low substantiation method may be used in lieu of the per diem substantiation method provided in section 4.01, but may not be used in lieu of the meals only substantiation method provided in section 4.02 or 4.03.

.02 *Specific high-low rates.* The per diem rate set forth in this section 5.02 is $166 for travel to any ''high-cost locality'' specified in section 5.03, or $109 for travel to any other locality within CONUS. Whichever per diem rate applies, it is applied as if it were the Federal per diem rate for the locality of travel. For purposes of applying the high-low substantiation method, the Federal M&IE rate shall be treated as $40 for a high-cost locality and $32 for any other locality within CONUS.

.03 *High-cost localities.* The following localities have a Federal per diem rate of $138 or more for all or part of the calendar year, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parenthesis under the key city name:

Key city	*County and other defined location*
Arizona	
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County
Phoenix/Scottsdale (October 1–May 14)	Maricopa
California	
Gualala/Point Arena	Mendocino
Los Angeles	Los Angeles, Kern, Orange, and Ventura Counties; Edwards Air Force Base; Naval Weapons Center and Ordnance Test Station, China Lake
Palo Alto/San Jose	Santa Clara
San Francisco	San Francisco
South Lake Tahoe	El Dorado
Yosemite Nat'l Park (April 1–October 31)	Mariposa
Colorado	
Aspen (January 15–March 31)	Pitkin
Keystone/Silverthorne	Summit
Steamboat Springs (December 1–March 31)	Routt
Telluride	San Miquel
Vail (November 1–March 31)	Eagle
District of Columbia	
Washington, D.C.	Washington, D.C.; the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland
Florida	
Key West	Monroe
Illinois	
Chicago	Du Page, Cook, and Lake
Indiana	
Nashville (June 1–October 31)	Brown
Maine	
Bar Harbor (July 1–September 14)	Hancock
Maryland	
Ocean City (May 1–September 30)	Worcester

Key city	*County and other defined location*
Saint Michaels	Talbot
Massachusetts	
Boston	Suffolk
Cambridge/Lowell	Middlesex
Hyannis (July 1–September 30)	Barnstable
Martha's Vineyard/Nantucket	Dukes and Nantucket
Michigan	
Leland (May 1–September 30)	Leelanau
Mackinac Island (June 1–September 30)	Mackinac
Nevada	
Incline Village	Incline Village
Stateline	Douglas
New Jersey	
Atlantic City (April 1–November 30)	Atlantic
Ocean City/Cape May (May 15–September 30)	Cape May
New Mexico	
Santa Fe (May 1–October 31)	Santa Fe
New York	
New York City	The boroughs of Bronx, Brooklyn, Manhattan, Queens, and Staten Island; Nassau and Suffolk Counties
White Plains	Westchester
North Carolina	
Duck/Outer Banks (May 1–September 30)	Dare
Ohio	
Sandusky (May 1–September 30)	Erie
Pennsylvania	
Chester/Radnor	Delaware
Philadelphia	Philadelphia; city of Bala Cynwyd in Montgomery County
Rhode Island	
Newport/Block Island (May 1–October 14)	Newport and Washington
Utah	
Bullfrog (April 1–October 31)	Garfield
Park City (December 1–March 31)	Summit
Virginia	
Virginia Beach (May 1–September 30)	Virginia Beach, Norfolk, Portsmouth and Chesapeake
Wintergreen	Nelson
Wisconsin	
Wisconsin Dells (June 1–September 14)	Columbia
Wyoming	
Jackson (June 1–October 14)	Teton

.04 *Changes in high-cost localities.* The list of high-cost localities in section 5.03 of this Revenue Procedure differs from the list of high-cost localities in section 5.03 of Rev. Proc. 96–28. The following localities have been added to the list of high-cost localities: Saint Michaels, Maryland; Chester/Radnor, Pennsylvania; and Block Island, Rhode Island. The portion of the year for which the following are high-cost localities has been changed: Yosemite National Park, California (April 1–October 31); Steamboat Springs, Colorado (December 1–March 31); Telluride, Colorado (all year); Vail, Colorado (November 1–March 31); Ocean City/Cape May, New Jersey (May 15–September 30); Santa Fe, New Mexico (May 1–October 31). The following localities have been removed from the list of high-cost localities: Gulf Shores, Alabama; Santa Barbara, California; Boulder, Colorado, and Denver, Colorado; Bridgeport/Danbury, Connecticut; Naples, Florida; Rockport, Maine; Annapolis, Maryland, and Baltimore, Maryland; Detroit, Michigan, and Traverse City, Michigan; Newark, New Jersey, Parsippany/Dover, New Jersey, and Princeton/Trenton, New Jersey; Lake Placid, New York; Crater Lake/Klamath Falls, Oregon; Valley Forge/Malvern, Pennsylvania; Providence, Rhode Island; Myrtle Beach, South Carolina.

.05 *Specific limitation.* A payor that uses the high-low substantiation method with respect to an employee must use that method for all amounts paid to that employee for travel away from home within CONUS during the calendar year. However, with respect to that employee, the payor may still reimburse actual expenses or use the meals only per diem method described in section 4.02 for any travel away from home, and may use the per diem substantiation method described in section 4.01 for any OCONUS travel away from home.

SECTION 6. LIMITATIONS AND SPECIAL RULES

.01 *In general.* The Federal per diem rate and the Federal M&IE rate described in section 3.02 for the locality of travel will be applied in the same manner as applied under the Federal Travel Regulations, 41 C.F.R. Part 301–7 (1996), except as provided in sections 6.02 through 6.04.

.02 *Federal per diem rate.* A receipt for lodging expenses is not required in determining the amount of expenses deemed substantiated under section 4.01 or 5.01.

.03 *Federal per diem or M&IE rate.* A payor is not required to reduce the Federal per diem rate or the Federal M&IE rate for the locality of travel for meals provided in kind, provided the payor has a reasonable belief that meal and incidental expenses were or will be incurred by the employee.

.04 *Proration of the Federal per diem or M&IE rate.* Pursuant to the Federal Travel Regulations, in determining the Federal per diem rate or the Federal M&IE rate for the locality of travel, the full applicable Federal M&IE rate is available for a full day of travel from 12:01 a.m. to 12:00 midnight. For purposes of determining the amount deemed substantiated under section 4 or 5 with respect to partial days of travel away from home, either of the following methods may be used to prorate the Federal M&IE rate to determine the Federal per diem rate or the Federal M&IE rate for the partial days of travel:

(1) Such rate may be prorated using the method prescribed by the Federal Travel Regulations. Currently the Federal Travel Regulations allow one-fourth of the applicable Federal M&IE rate for each 6-hour quarter of the day (i.e., midnight to 6 a.m., 6 a.m. to noon, noon to 6 p.m., and 6 p.m. to midnight) during any portion of which the employee or self-employed individual is traveling away from home in connection with the performance of services as an employee or self-employed individual; or

(2) Such rate may be prorated using any method that is consistently applied and in accordance with reasonable business practice. For example, if an employee travels away from home from 9 a.m. one day to 5 p.m. the next day, a method of proration that results in an amount equal to 2 times the Federal M&IE rate will be treated as being in accordance with reasonable business practice (even though only 1½ times the Federal M&IE rate would be allowed under the Federal Travel Regulations). Similarly, if a self-employed individual travels away from home from 7 p.m. one day to 9 p.m. the next day, a method of proration that results in an amount equal to 1½ times the Federal M&IE rate will be treated as being in accordance with reasonable business practice (even though only 1¼ times the Federal M&IE rate would be allowed under the Federal Travel Regulations).

.05 *Application of the 50-percent limitation on meal expenses.* When a per diem allowance is paid only for meal and incidental expenses or when an amount for meal and incidental expenses is computed pursuant to section 4.03, an amount equal to the lesser of the per diem allowance for each calendar day (or part of the calendar day, see section 6.04) or the Federal M&IE rate for the locality of travel for such day (or part of such day, see section 6.04) is treated as an expense for food and beverages. When a per diem allowance is paid for lodging, meal, and incidental expenses, the payor must treat an amount equal to the Federal M&IE rate for the locality of travel for each calendar day (or part of the calendar day, see section 6.04) the employee is away from home as an expense for food and beverages. For purposes of the preceding sentence, when a per diem allowance for lodging, meal, and incidental expenses for a full day of travel is paid at a rate that is less than the Federal per diem rate for the locality of travel, the payor may treat an amount equal to 40 percent of such per diem allowance for a full day of travel as the Federal M&IE rate for the locality of travel.

.06 *No double reimbursement or deduction.* If a payor pays a per diem allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses or for meal and incidental expenses in accordance with section 4 or 5, any additional payment with respect to such expenses is treated as paid under a nonaccountable plan, is included in the employee's gross income, is reported as wages or other compensation on the employee's Form W–2, and is subject to withholding and payment of employment taxes. Similarly, if an employee or self-employed individual computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03 or 4.04, no other deduction is allowed to the employee or self-employed individual with respect to such expenses. For example, assume an employee receives a per diem allowance from a payor for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home. During that trip, the employee pays for dinner for the employee and two business associates. The payor reimburses as a business entertainment meal expense the

meal expense for the employee and the two business associates. Because the payor also pays a per diem allowance to cover the cost of the employee's meals, the amount paid by the payor for the employee's portion of the business entertainment meal expense is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W–2, and is subject to withholding and payment of employment taxes.

.07 *Related parties.* Sections 4.01, 4.02, 4.04 (to the extent it relates to section 4.02), and 5 of this revenue procedure will not apply in any case in which a payor and an employee are related within the meaning of § 267(b), but for this purpose the percentage of ownership interest referred to in § 267(b)(2) shall be 10 percent.

SECTION 7. APPLICATION

.01 If the amount of travel expenses is deemed substantiated under the rules provided in section 4 or 5, and the employee actually substantiates to the payor the elements of time, place, and business purpose of the travel expenses in accordance with paragraphs (b)(2) (travel away from home) and (c) (other than subparagraph (2)(iii)(A) thereof) of § 1.274–5T, the employee is deemed to satisfy the adequate accounting requirements of § 1.274–5T(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274–5T(c). See § 1.62–2(e)(1) for the rule that an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.02 An arrangement providing per diem allowances will be treated as satisfying the requirement of § 1.62–2(f)(2) with respect to returning amounts in excess of expenses if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) any portion of such an allowance that relates to days of travel not substantiated, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance per diem allowance for meal and incidental expenses of $200, based on an anticipated 5 days of business travel at $40 per day to a locality for which the Federal M&IE rate is $34, and the employee substantiates 3 full days of business travel. The requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) the portion of the allowance that is attributable to the 2 unsubstantiated days of travel ($80), even though the employee is not required to return the portion of the allowance ($18) that exceeds the amount of the employee's expenses deemed substantiated under section 4.02 ($102) for the 3 substantiated days of travel. However, the $18 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 7.04.

.03 An employee is not required to include in gross income the portion of a per diem allowance received from a payor that is less than or equal to the amount deemed substantiated under the rules provided in section 4 or 5 if the employee substantiates the business travel expenses covered by the per diem allowance in accordance with section 7.01. See § 1.274–5T(f)(2)(i). In addition, such portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W–2, and is exempt from the withholding and payment of employment taxes. See § 1.62–2(c)(2) and (c)(4).

.04 An employee is required to include in gross income only the portion of the per diem allowance received from a payor that exceeds the amount deemed substantiated under the rules provided in section 4 or 5 if the employee substantiates the business travel expenses covered by the per diem allowance in accordance with section 7.01. See § 1.274–5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W–2, and is subject to withholding and payment of employment taxes. See § 1.62–2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.05 If the amount of the expenses that is deemed substantiated under the rules provided in section 4.01, 4.02, or 5 is less than the amount of the employee's business expenses for travel away from home, the employee may claim an itemized deduction for the amount by which the business travel expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business travel expenses, includes on Form 2106, Employee Business Expenses, the deemed substantiated portion of the per diem allowance received from the payor, and includes in gross income the portion (if any) of the per diem allowance received from the payor that exceeds the amount deemed substantiated. See § 1.274–5T(f)(2)(iii). However, for purposes of claiming this itemized deduction with respect to meal and incidental expenses, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the amount computed under section 4.03 minus the amount deemed substantiated under section 4.02 and section 7.01. The itemized deduction is subject to the 50-percent limitation on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.06 An employee who does not receive a per diem allowance for meal and incidental expenses may deduct an amount computed pursuant to section 4.03 only as an itemized deduction. This itemized deduction is subject to the 50-percent limitation on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.07 A self-employed individual may deduct an amount computed pursuant to section 4.03 in determining adjusted gross income under § 62(a)(1). This deduction is subject to the 50-percent limitation on meal and entertainment expenses provided in § 274(n).

.08 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, such payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes. See § 1.62–2(c)(3), (c)(5), and (h)(2).

SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES.

.01 The portion of a per diem allowance, if any, that relates to the days of business travel substantiated and that exceeds the amount deemed substantiated for those days under section 4.01, 4.02, or 5 is subject to withholding and

payment of employment taxes. See § 1.62–2(h)(2)(i)(B).

.02 In the case of a per diem allowance paid as a reimbursement, the excess described in section 8.01 is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days of travel substantiated. See § 1.62–2(h)(2)(i)(B)(*2*).

.03 In the case of a per diem allowance paid as an advance, the excess described in section 8.01 is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the days of travel with respect to which the advance was paid are substantiated. See § 1.62–2(h)(2)(i)(B)(*3*). If some or all of the days of travel with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those days within a reasonable period of time, the portion of the allowance that relates to those days is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62–2(h)(2)(i)(A).

.04 In the case of a per diem allowance only for meal and incidental expenses for travel away from home paid to an employee in the transportation industry by a payor that uses the rule in section 4.04(3), the excess of the per diem allowance paid for the period over the amount deemed substantiated for the period under section 4.02 (after applying section 4.04(3)), is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62–2(h)(2)(i)(B)(*4*).

.05 For example, assume that an employer pays an employee a per diem allowance to cover business expenses for meals and lodging for travel away from home at a rate of 120 percent of the Federal per diem rate for the localities to which the employee travels. The employer does not require the employee to return the 20 percent by which the reimbursement for those expenses exceeds the Federal per diem rate. The employee substantiates 6 days of travel away from home: 2 days in a locality in which the Federal per diem rate is $100 and 4 days in a locality in which the Federal per diem rate is $125. The employer reimburses the employee $840 for the 6 days of travel away from home (2 × (120% × $100) + 4 × (120% × $125)), and does not require the employee to return the excess payment of $140 ((2 days × $20 ($120−$100) + 4 days × $25 ($150−$125)). For the payroll period in which the employer reimburses the expenses, the employer must withhold and pay employment taxes on $140. See section 8.02.

SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 96–28 is hereby superseded for per diem allowances paid to an employee on or after January 1, 1997 with respect to lodging, meal, and incidental expenses or with respect to meal and incidental expenses paid or incurred for travel while away from home on or after January 1, 1997 and, for purposes of computing the amount allowable as a deduction, for meal and incidental expenses paid or incurred by an employee or self-employed individual for travel while away from home on or after January 1, 1997.

DRAFTING INFORMATION

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

Social Security Contribution and Benefit Base

Under authority contained in the Social Security Act (''the Act''), the Commissioner, Social Security Administration, has determined and announced (61 F.R. 55346, dated October 25, 1996) that the contribution and benefit base for remuneration paid in 1997, and self-employment income earned in taxable years beginning in 1997 is $65,400.

"Old-Law" Contribution and Benefit Base

General. The 1997 ''old-law'' contribution and benefit base is $48,600. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Part IV. Items of General Interest

Employee Plans and Exempt Organizations; Requests for Certain Determination Letters and Applications for Recognition of Exemption

Announcement 96–133

PURPOSE

This is to announce new ''Where to File'' instructions for applications for employee plan determination and other letters, as well as exempt organization applications for recognition of exemption from federal income tax, previously submitted to the Chicago and Dallas Key District Offices of Internal Revenue.

BACKGROUND

The Internal Revenue Service is in the process of centralizing the filing of requests for determination and other letters and applications for recognition of tax exemption. Currently, plan sponsors and organizations file with a designated district office depending on the geographic location of the plan's or organization's principal office or place of business. Announcement 95–51, published in Internal Revenue Bulletin 1995–25 at page 132, announced that centralization will be phased in by district. Announcement 96–92, published in Internal Revenue Bulletin 1996–38 at page 151, announced that beginning September 1, 1996, requests formerly sent to the key district offices in Atlanta, Georgia, and Baltimore, Maryland, should be sent to the Internal Revenue Service Center in Covington, Kentucky.

The Service is also consolidating the employee plan volume submitter and regional prototype programs that are presently maintained by each individual key district office. Plans previously approved by a key district office, whose determination letter processing program is being transferred to Cincinnati, will be reviewed using the same criteria and procedures used by the original district office. New guidelines are being developed that will combine the best features and procedures currently in use by the districts. Guidelines for the revised volume submitter and regional prototype programs will be explained in a future announcement.

INSTRUCTIONS

Beginning January 1, 1997, letter requests and applications previously submitted to the key district offices in Chicago, Illinois, and Dallas, Texas, should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below. (For a period of time, requests and applications mistakenly sent to the Chicago and Dallas Key District Offices will be forwarded.) The new address applies to requests for determination letters, regional prototype notification letters and volume submitter advisory letters, on the qualified status of employee plans under sections 401, 403(a), and 409, and the exempt status of any related trust under section 501 of the Internal Revenue Code, applications for recognition of tax exemption on Form 1023, Form 1024, and Form 1028 and other applications for recognition of qualification or exemption. The affected plan sponsors and organizations are those whose principal office or place of business is located in Arizona, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wisconsin, and Wyoming. These requests or applications, as well as those formerly submitted to the Atlanta, Baltimore, and Cincinnati Key Districts, should be sent to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012–0192

Until further notice, plans and organizations in all other locations will continue to file their requests or applications in accordance with the applicable user fee instructions, currently in Section 7 of Revenue Procedure 96–8, published in Internal Revenue Bulletin 1996–1 at page 187, and the instructions for Form 8717, User Fee for Employee Plan Determination Letter Request, or Form 8718, User Fee for Exempt Organization Determination Letter Request.

Comments or concerns regarding the centralization of the determination process or applications submitted to the Covington address, may be directed to the EP/EO Customer Service Unit in Cincinnati at (513) 684–3957 (not a toll-free number).

New Codes for the 1997 Form W–2, Box 13

Announcement 96–134

On the 1997 Form W–2, three new codes must be used to designate amounts reported in box 13. Descriptions of the amounts to be designated by the codes are given below. See Publication 553, Highlights of 1996 Tax Changes, and the 1997 Instructions for Form W–2, for more information.

Code R—Medical Savings Account (MSA)

Employer contributions to a medical savings account for an employee.

Code S—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) Retirement Account

Salary reduction contributions to a SIMPLE.

Code T—Adoption Assistance Benefits

Employer payments under an adoption assistance plan for qualified adoption expenses.

Tax on Certain Imported Substances; Filing of Petitions

Announcement 96–135

This announces the acceptance, under Notice 89–61, 1989–1 C.B. 717, of a petition requesting that diglycidyl ether of bisphenol-A be added to the list of taxable substances in § 4672(a)(3). Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified. Any modification of the list of taxable substances based upon this petition would be effective April 1, 1992.

Before a determination is made, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Written comments and requests for a public hearing relating to these petitions must be received by February 4, 1997. Send submissions to: CC:DOM:CORP:R (Petition), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Petition), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. 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 written comments. If a public hearing is scheduled, notice of the date,

time, and place for the hearing will be published in the Federal Register.

The petition was received on July 1, 1991. The petitioner is Dow Chemical Company, a manufacturer and exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 3907.3
CAS number: 025085–99–8

Diglycidyl ether of bisphenol-A (DGEBA) is derived from the taxable chemicals benzene, propylene, chlorine, and sodium hydroxide and produced predominantly from epichlorohydrin and bisphenol-A via a two-step reaction.

The stoichiometric material consumption formula for this substance is:
2 C_6H_6 (benzene) + 4 C_3H_6 (propylene) + 4 Cl_2 (chlorine) + 6 NaOH (sodium hydroxide) + 2 O_2 (oxygen) $----->$ $(CH_3)_2C(C_6H_4OC_3H_50)_2$ (DGEBA) + CH_3COCH_3 (acetone) + 2 HCl (hydrogen chloride) + 6 NaCl (sodium chloride) + 5 H_2O (water)

According to the petition, taxable chemicals constitute 92.95 percent by weight of the materials used to produce this substance. The rate of tax for this substance would be $7.08 per ton. This is based upon a conversion factor for benzene of 0.459, a conversion factor for propylene of 0.494, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.705.

The principal author of this announcement is Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this announcement contact Ruth Hoffman on (202) 622–3130 (not a toll-free number).

Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

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

Name	Address	Designation	Date of Suspension
Sherman, Richard M.	Crystal Lake, IL	CPA	October 18, 1996 to July 17, 1997
Hunter, Lewis	Jacksonville, FL	CPA	October 25, 1996 to January 24, 1997
Hisken, Donald	Red Bluff, CA	CPA	November 1, 1996 to March 31, 1997
Byrne, Steven P.	Arcadia, CA	Attorney	November 1, 1996 to January 31, 1997
Mulrey, Robert M.	Milton, MA	CPA	November 1, 1996 to October 31, 1997
Edwards, Ronald A.	Plymouth, MI	CPA	November 1, 1996 to April 30, 1998
Hart Jr., Charles E.	Wilmington, OH	Attorney	November 1, 1996 to October 31, 1998
Willner, Peter D.	Stowe, VT	CPA	November 1, 1996 to April 30, 1997
May, Gary	Madison, WI	Attorney	November 1, 1996 to October 31, 1998
Josephson, Elliott	Northbrook, IL	CPA	November 1, 1996 to October 31, 1998
Capwill Jr., James A.	Solon, OH	CPA	November 1, 1996 to February 28, 1997
Hazel, John J.	Ridgefield, CT	Enrolled Agent	November 1, 1996 to January 31, 1997
Jacobs, Patrick	St. Paul, MN	CPA	November 1, 1996 to December 31, 1996
Lau, William	Crete, IL	CPA	November 1, 1996 to June 30, 1997
Franklin, Gene L.	Lees Summit, MO	Enrolled Agent	November 1, 1996 to January 31, 1997
Winterhalter, Charles L.	Cincinnati, OH	CPA	November 1, 1996 to April 30, 1998
Cremer, Patricia L.	Roundup, MT	CPA	November 5, 1996 to May 4, 1997
Gardner, Stephen A.	Dallas, TX	Attorney	November 7, 1996 to May 6, 1999
Masini, David	Wheat Ridge, CO	CPA	November 12, 1996 to November 11, 1997
Cunningham, Michael	Lafayette, IN	CPA	November 12, 1996 to August 11, 1997
Smith, Robert	Chicago, IL	CPA	January 1, 1997 to December 31, 1997

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

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

Name	Address	Designation	Date of Suspension
Pacchiana, Paul	Chappaqua, NY	Attorney	Indefinite from October 9, 1996
Rosenberger, David H.	Centerville, OH	Enrolled Agent	Indefinite from October 21, 1996
Gudes, Gerald	W. Bloomfield, MI	CPA	Indefinite from October 22, 1996
Donnelly, Richard S.	Asheville, NC	CPA	Indefinite from October 22, 1996
Burrows, William D.	Dallas, TX	Attorney	Indefinite from November 13, 1996
Klausner, Julius	Scarsdale, NY	CPA	Indefinite from November 13, 1996
Glessner, Randy	Omak, WA	CPA	Indefinite from November 13, 1996
Aspland, Frieda R.	Greenville, SC	CPA	Indefinite from November 13, 1996

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[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

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[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.