Internal Revenue bulletin

Bulletin No. 2012-37
September 10, 2012

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.

EMPLOYMENT TAX

Rev. Rul. 2012–25, page 337.

Wage recharacterization. This ruling provides guidance for employers under section 62(c) of the Code and the applicable regulations. The ruling clarifies that an arrangement that recharacterizes taxable wages as nontaxable reimbursements or allowances does not satisfy the business connection requirement of the accountable plan rules under section 62(c) and the applicable regulations. Specifically, this ruling includes four situations. Three of the situations illustrate arrangements that impermissibly recharacterize wages, such that the arrangements are not accountable plans. The fourth situation illustrates an arrangement that does not impermissibly recharacterize wages, where an employer prospectively alters its compensation structure to include a reimbursement arrangement.

ADMINISTRATIVE

Rev. Proc. 2012–35, page 341.

This procedure provides instructions and information on the Internal Revenue Service's letter-forwarding program. Rev. Proc. 94–22 modified and superseded.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled 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 Other Related Items, and Subpart B, Legislation and Related Committee Reports.

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

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

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

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

Section 62.—Adjusted Gross Income Defined

An arrangement that recharacterizes taxable wages as nontaxable reimbursements or allowances does not satisfy the business connection requirement of the accountable plan rules under section 62(c) and the applicable regulations. See Rev. Rul. 2012-25, page 337.

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

Wage recharacterization. This ruling provides guidance for employers under section 62(c) of the Code and the applicable regulations. The ruling clarifies that an arrangement that recharacterizes taxable wages as nontaxable reimbursements or allowances does not satisfy the business connection requirement of the accountable plan rules under section 62(c) and the applicable regulations. Specifically, this ruling includes four situations. Three of the situations illustrate arrangements that impermissibly recharacterize wages, such that the arrangements are not accountable plans. The fourth situation illustrates an arrangement that does not impermissibly recharacterize wages, where an employer prospectively alters its compensation structure to include a reimbursement arrangement.

Rev. Rul. 2012–25

ISSUE

Whether an arrangement that recharacterizes taxable wages as nontaxable reimbursements or allowances satisfies the business connection requirement of the accountable plan rules under § 62(c) and the applicable regulations.

FACTS

Situation 1.

Employer A, a company contracting with cable providers, employs technicians to install cable television systems at residential locations on behalf of different cable providers. Employee technicians are required to provide the tools and equipment necessary to complete the various installation jobs to which they are assigned.

Employer A compensates its employees on an hourly basis, which takes into account the fact that technicians are required to provide their own tools and equipment. Employer A decides to begin reimbursing its technicians for their tool and equipment expenses through a tool reimbursement arrangement (tool plan).

Under Employer A's tool plan, a technician provides Employer A with an amount equivalent to the technician's tool and equipment expenses incurred in connection with providing services to Employer A. Employer A takes the technician's total expenses for the year and divides the total amount by the number of hours a technician is expected to work over the course of a year to arrive at an hourly tool rate. Once Employer A has determined the hourly tool rate amount for a technician, it pays the technician a reduced hourly compensation rate and an hourly tool rate. Employer A treats the reduced hourly compensation as taxable wages. Employer A treats the hourly tool rate as a nontaxable reimbursement. The hourly tool rate plus the reduced hourly compensation rate approximately equal the pre-tool plan compensation rate. The tool plan tracks the hourly tool rate up to the amount of substantiated tool and equipment expenses. Once a technician has received tool plan payments for the total amount of his or her tool and equipment expenses, Employer A ceases paying the technician an hourly tool rate but increases the technician's hourly compensation to the pre-tool plan hourly compensation rate.

Situation 2.

Employer B, a staffing contractor, employs nurses and provides their services to hospitals throughout the country for short-term assignments. Employer B compensates all of the nurses on an hourly basis and the hourly compensation amount does not vary depending on whether the hospital is located away from the assigned nurse's tax home.

When Employer B sends nurses on assignment to hospitals that require them to travel away from their tax home and incur deductible expenses in connection with Employer B's business, Employer B treats a portion of the nurses' hourly compensation as a nontaxable *per diem* allowance for lodging, meals, and incidental expenses under Employer B's *per diem* plan; Employer B treats the remaining portion of the nurses' hourly compensation as taxable wages. When Employer B sends the nurses on assignment to hospitals within commuting distance of their tax home, Employer B treats all of the nurses' compensation as taxable wages. In each case, the nurses receive the same total compensation per hour.

Situation 3.

Employer C, a construction firm, employs workers to build commercial buildings throughout a major metropolitan area. As part of their duties, some of Employer C's workers are required to travel between construction sites or otherwise use their personal vehicles for business purposes. These workers incur deductible business expenses in operating their personal vehicles in connection with their employment with Employer C. Employer C compensates all of its workers for their services on an hourly basis, which Employer C treats as taxable wages. Employer C also pays all of its workers, including those who are not required to travel or otherwise use their personal vehicles for Employer C's business, a flat amount per pay period that Employer C treats as a nontaxable mileage reimbursement.

Situation 4.

Employer D, a cleaning services company, employs cleaning professionals to perform house cleaning services for Employer D's clients. Employee cleaning professionals are required to provide the cleaning products and equipment necessary to complete the cleaning service jobs to which they are assigned.

Employer D compensates its employees on an hourly basis, which takes into account that employees are required to provide their own cleaning products and equipment. Employer D decides to begin reimbursing its employees for their cleaning and equipment expenses through a reimbursement arrangement.

Employer D prospectively alters its compensation structure by reducing the hourly compensation paid to all employees. Under Employer D's new reimbursement arrangement, employees can substantiate to Employer D the actual amount of deductible expenses incurred in purchasing their cleaning products and equipment in connection with performing services for Employer D. Employer D reimburses its employees for substantiated expenses incurred in performing services for Employer D. Any reimbursement paid under Employer D's reimbursement arrangement is paid in addition to the hourly compensation paid for the employees' services. Employees who do not incur expenses for cleaning products and equipment in connection with their jobs for Employer D, or who do not properly substantiate such expenses to Employer D, continue to receive the lower hourly compensation and do not receive any reimbursement and are not compensated in another way (for example, with a bonus) to substitute for the reduction in the hourly compensation. Employer D treats the hourly compensation as taxable wages. Employer D treats reimbursements for cleaning and equipment expenses as nontaxable reimbursements.

LAW AND ANALYSIS

Section 61 of the Internal Revenue Code (Code) defines gross income as all income from whatever source derived. Section 62(a) defines adjusted gross income as gross income minus certain deductions. Section 62(a)(2)(A) provides that, for purposes of determining adjusted gross income, an employee may deduct certain business expenses paid by the employee in connection with the performance of services as an employee of the employer under a reimbursement or other expense allowance arrangement. Section 62(c) provides that, for purposes of § 62(a)(2)(A), an arrangement will not be treated as a reimbursement or other expense allowance arrangement if (1) the arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or (2) the arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Under section 1.62–2(c) of the Income Tax Regulations, if a reimbursement or other expense allowance arrangement meets the requirements of business connection, substantiation, and returning amounts in excess of substantiated expenses, all amounts paid under the arrangement are treated as paid under an accountable plan. Amounts treated as paid under an accountable plan are excluded from an employee's gross income, are exempt from withholding and payment of employment taxes, and are not reported as wages on the employee's Form W–2. If the arrangement fails any one of these requirements, amounts paid under the arrangement are treated as paid under a nonaccountable plan, must be included in the employee's gross income for the taxable year, are subject to withholding and payment of employment taxes, and must be reported as wages or other compensation on the employee's Form W–2.

Section 1.62–2(d)(1) provides that an arrangement satisfies the business connection requirement if it provides advances, allowances, or reimbursements only for business expenses that are allowable as deductions by part VI, subchapter B, chapter 1 of the Code, and that are paid or incurred by the employee in connection with the performance of services as an employee of the employer. Thus, not only must an employee actually pay or incur a deductible business expense, but the expense must arise in connection with the employment for that employer.

Section 1.62–2(d)(3)(i) provides that the business connection requirement will not be satisfied if a payor pays an amount to an employee regardless of whether the employee incurs or is reasonably expected to incur deductible business expenses. Failure to meet this reimbursement requirement of business connection is referred to as wage recharacterization because the amount being paid is not an expense reimbursement but rather a substitute for an amount that would otherwise be paid as wages.

Section 1.62–2(j) *Example 1* provides an illustration of a case in which the reimbursement requirement is not satisfied. In this example, Employer S pays its engineers $200 a day. On those days that an engineer travels away from home on business for Employer S, Employer S designates $50 of the $200 as paid to reimburse the engineer's travel expenses. On all other days, the engineer receives the full $200 as taxable wages. Because Employer S would pay an engineer $200 a day regardless of whether the engineer was traveling away from home, the $50 Employer S redesignates as travel expense reimbursement on days the engineer is away from home on business is not a reimbursement and the arrangement does not satisfy the reimbursement requirement of § 1.62–2(d)(3)(i). Thus, no part of the $50 Employer S designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Employer S must report the entire $200 as wages or other compensation on the employees' Forms W–2, and must withhold and pay employment taxes on the entire $200 when paid.

Section 1.62–2(j) *Example 3* also illustrates a failure to satisfy the reimbursement requirement. In this example, Corporation R pays all its salespersons a salary. Corporation R also pays a travel allowance under an arrangement that otherwise meets the requirements of business connection, substantiation, and returning amounts in excess of substantiated expenses. The allowance is paid to all salespersons, including salespersons that Corporation R knows, or has reason to know, do not travel away from their offices on Corporation R business and would not be reasonably expected to incur travel expenses. Because the allowance is not paid only to those employees who incur (or are reasonably expected to incur) expenses of the type described in § 1.62–2(d)(1) or (d)(2), the arrangement does not satisfy the reimbursement requirement of § 1.62–2(d)(3)(i). Thus, no part of the allowance Corporation R designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Corporation R must report all payments under the arrangement as wages or other compensation on the employees' Forms W–2 and must withhold and pay employment taxes on the payments when paid.

In Rev. Rul. 2004–1, 2004–1 C.B. 325, drivers of a courier company were paid a mileage allowance for local transportation expenses. In situation 1 of the ruling, the employer paid the couriers a commission equal to X percent of the per package charge (based on location, time of day, type of service, mileage between pickup and delivery, and other factors), known as the tag rate, and a mileage allowance equal to Y percent of the tag rate. In situation 2, the employer paid the couriers a commission equal to Z percent of the tag rate reduced by a mileage allowance equal to the number of miles traveled multiplied by the standard mileage rate. The revenue ruling concludes that the reimbursement arrangement in situation 1, which pays a mileage allowance as a fixed percentage of the tag rate, meets the business connection requirement. In contrast, the revenue ruling concludes that the reimbursement arrangement in situation 2, which subtracts a mileage allowance (calculated at the standard business mileage rate) from the driver's set commission rate and treats only the remaining commission as wages, fails the business connection requirement. The variable allocation between commission and mileage allowance in situation 2 ensures that each driver always receives the same gross amount regardless of the amount of deductible employee business expenses incurred by the courier by varying the amount treated as wages in light of the mileage allowance paid. Accordingly, the arrangement effectively recharacterizes amounts otherwise payable as a taxable commission as a non-taxable mileage allowance. The ruling provides that a *bona fide* reimbursement arrangement must preclude the recharacterization as a mileage allowance of amounts otherwise payable as commission. *See Shotgun Delivery v. United States*, 269 F.3d 969 (9th Cir. 2001) (holding that a plan guaranteeing that employee drivers always received 40% of the tag rate with a variable allocation between taxable wages and nontaxable mileage reimbursement was nonaccountable, and noting that "the evidence suggests that the plan's primary purpose was to treat the least amount possible of the driver's commission as taxable wages").

The legislative history of § 62(c) indicates that a taxpayer should not be able to recharacterize an amount that would have been paid as wages as a nontaxable reimbursement in order to avoid the two-percent of adjusted gross income limitation (two-percent floor), enacted by the Tax Reform Act of 1986, for deducting most employee business expenses. Specifically, the Tax Reform Act of 1986 significantly changed rules for deduction of employee business expenses by converting most of these expenses into itemized deductions that an employee could only deduct if the aggregate of such expenses exceeded the two-percent floor. However, the 1986 Act left in place the ability of a taxpayer to deduct from gross income and without regard to the two-percent floor, pursuant to § 62(a)(2)(A), employee business expenses incurred by a taxpayer as part of a reimbursement or other expense allowance arrangement with his or her employer. After enactment of the 1986 Act, tax practitioners proposed that employers could use reimbursement and expense allowance arrangements to (1) eliminate the effect of the two-percent floor on deductible employee expenses, and (2) save both employer and employee employment taxes by restructuring their compensation packages to convert a portion of an employee's compensation into a nontaxable reimbursement. This restructuring would permit employers to pay a lesser total amount while increasing employees' after-tax compensation.

Congress responded by enacting § 62(c) in § 702 of the Family Support Act of 1988, 100 P.L. 485, 102 Stat. 2343 (1988). In describing the conference agreement, the House-Senate Conference Committee Report on that Act states that "[i]f an above-the-line deduction is allowed for expenses incurred pursuant to a nonaccountable plan, the two-percent floor enacted in the [Tax Reform Act of 1986] could be circumvented solely by restructuring the form of the employee's compensation so that the salary amount is decreased, but the employee receives an equivalent nonaccountable expense allowance." H.R. Rep. No. 100–998, at 203, 100th Cong., 2nd Sess. (Sept. 28, 1988). Section 62(c) was enacted to prevent such restructuring of compensation arrangements and permit an above-the-line deduction only for expenses reimbursed under what legislative history referred to as an accountable plan.

Consistent with legislative history, the preamble to Treasury Decision 8324, 55 FR 51688, 1991–1 C.B. 20, 21 (1990), states:

> Some practitioners have asked whether a portion of an employee's salary may be recharacterized as being paid under a reimbursement arrangement. The final regulations clarify that if a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) deductible business expenses or other *bona fide* expenses related to the employer's business that are not deductible, the arrangement does not meet the business connection requirement of § 1.62–2(d) of the regulations and all amounts paid under the arrangement are treated as paid under a nonaccountable plan.... Thus, no part of an employee's salary may be recharacterized as being paid under a reimbursement arrangement or other expense allowance arrangement.

While an employer may establish or modify its compensation structure to include nontaxable reimbursement under an accountable plan, recharacterizing as nontaxable reimbursements amounts that would otherwise be paid as wages violates the business connection requirement of § 1.62–2(d), and more specifically the reimbursement requirement of § 1.62–2(d)(3)(i). This is true even if an employee actually incurs a deductible expense in connection with employment with the employer.

The presence of wage recharacterization is based on the totality of facts and circumstances. Generally, wage recharacterization is present when the employer structures compensation so that the employee receives the same or a substantially similar amount whether or not the employee has incurred deductible business expenses related to the employer's business. Wage recharacterization may occur in different situations. For example, an employer recharacterizes wages if it temporarily reduces taxable wages, substituting the reduction in wages with a payment that is treated as a nontaxable reimbursement and then, after total expenses have been reimbursed, increases taxable wages to the prior wage level. Similarly, an employer recharacterizes wages if it pays a higher amount as wages to an employee only when the employee does not receive an amount treated as nontaxable reimbursement and pays a lower amount as wages to an employee only when the employee also receives an amount treated as nontaxable reimbursement. An employer also recharacterizes wages if it routinely pays an amount treated as a nontaxable reimbursement to an employee who has not incurred *bona fide* business expenses.

HOLDINGS

Situation 1.

Employer A's tool plan does not satisfy the business connection requirement of the accountable plan rules because the employer pays the same gross amount to a technician regardless of whether the technician incurs (or is reasonably expected to incur) expenses related to Employer A's business. Specifically, Employer A's tool plan ensures that a technician receives approximately the same gross hourly amount by substituting a portion of what was paid as taxable wages with a tool rate amount that is treated as nontaxable reimbursement, and then increasing the wages again once all tool expenses have been reimbursed. Accordingly, the purported tool reimbursements are merely a recharacterization of wages because approximately the same amount is paid in all circumstances. The fact that a technician actually incurs a deductible expense in connection with employment does not cure the incidence of wage recharacterization. The arrangement fails to satisfy the business connection requirement of § 1.62–2(d). Therefore, without regard to whether it meets the other requirements of an accountable plan as set forth in § 1.62–2, Employer A's tool plan is not an accountable plan under § 62(c) and the applicable regulations.

Situation 2.

Employer B's *per diem* plan does not satisfy the business connection requirement of the accountable plan rules because Employer B pays the same gross amount to nurses regardless of whether the nurses incur (or are reasonably expected to incur) travel expenses related to Employer B's business. Specifically, Employer B pays the same gross compensation to nurses, but a portion of the hourly compensation is treated as nontaxable *per diem* when a nurse is traveling away from his or her tax home on assignment. For nurses traveling away from their tax home on assignment, Employer B reduces the amount of the nurses' compensation treated as taxable wages and treats an amount equal to the reduction in compensation as a nontaxable *per diem*. For nurses assigned to hospitals within commuting distance of their tax homes, Employer B treats all compensation as taxable wages. Accordingly, the purported *per diem* payments are merely recharacterized wages because nurses receive the same gross compensation per hour regardless of whether travel expenses are incurred (or are reasonably expected to be incurred). The fact that a nurse traveling away from his or her tax home actually incurs a deductible expense in connection with employment does not cure the incidence of wage recharacterization. The arrangement fails to satisfy the business connection requirement of § 1.62–2(d). Therefore, without regard to whether it meets the other requirements of an accountable plan as set forth in § 1.62–2, Employer B's *per diem* plan is not an accountable plan under § 62(c) and the applicable regulations.

Situation 3.

Employer C's mileage reimbursement plan does not satisfy the business connection requirement of the accountable plan rules because it operates to routinely pay an amount as a mileage reimbursement to workers who have not incurred (and are not reasonably expected to incur) deductible business expenses in connection with Employer C's business. The purported mileage reimbursement is merely recharacterized wages because all workers receive an amount as a mileage reimbursement regardless of whether they incur (or are reasonably expected to incur) mileage expenses. The arrangement fails to satisfy the business connection requirement of § 1.62–2(d). Therefore, without regard to whether it meets the other requirements of an accountable plan as set forth in § 1.62–2, Employer C's mileage reimbursement plan is not an accountable plan under § 62(c) and the applicable regulations.

Situation 4.

Employer D's reimbursement arrangement satisfies the business connection requirement of the accountable plan rules. Employer D's plan only reimburses employees when a deductible business expense has been incurred in connection with performing services for Employer D and the reimbursement is not in lieu of wages that the employees would otherwise receive. Although Employer D has reduced the amount of compensation it pays all of its employees, the reduction in compensation is a substantive change in Employer D's compensation structure. Under Employer D's arrangement, reimbursement amounts are not guaranteed and employees who do not incur expenses in connection with Employer D's business, or who do not properly substantiate such expenses, continue to receive the reduced hourly compensation amount. These employees do not receive any reimbursement and are not compensated in another way to make up for the reduction in the hourly compensation. Employer D's reimbursement arrangement does not operate to pay the same or a substantially similar gross amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) expenses related to Employer D's business. The reimbursement is paid in addition to the employees' wages rather than as a substitute for wages that would otherwise be paid. Accordingly, Employer D's reimbursement arrangement satisfies the business connection requirement of § 1.62–2(d). Therefore, as long as the substantiation and return of excess amounts requirements are also met, Employer D's reimbursement arrangement is an accountable plan under § 62(c) and the applicable regulations.

DRAFTING INFORMATION

The principal author of this revenue ruling is Kelly Morrison-Lee of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue ruling, contact Kelly Morrison-Lee at (202) 622–0047 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.

Rev. Proc. 2012–35

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Revenue Procedure 94–22, 1994–1 C.B. 608, and provides instructions and information on the Internal Revenue Service's (Service's) letter-forwarding program. This program is available to private individuals, as well as state and federal agencies, who are attempting to locate missing individuals.

SECTION 2. CHANGES

01. This revenue procedure has been modified to remove language from the "Purpose," "Background," and "Scope" Sections of Revenue Procedure 94–22 that provide that the Service will forward letters on behalf of an individual, company or organization that controls assets that may be due a taxpayer, including Plan Administrators, sponsors of qualified retirement plans, or qualified termination administrators ("QTAs") of abandoned plans under the Department of Labor's Abandoned Plan Program who are attempting to locate missing plan participants. Since the release of this revenue procedure in 1994, several alternative missing person locator resources, including the Internet, have become available. Accordingly, the Service will no longer consider locating a missing taxpayer who may be entitled to a retirement plan payment or other financial benefit from an individual, company or organization to be a humane purpose for which the Service will provide letter-forwarding services.

02. The "Procedure" section is updated to reflect the correct address to which an individual requesting letter forwarding service must send the written request.

SECTION 3. BACKGROUND

Under Policy Statement P–1–187, the Service established a program whereby the Service will forward a letter to a missing individual on behalf of a private individual or government agency if this action is for a humane purpose and there is no other way to relay the information to the individual. Revenue Procedure 94–22 allowed an individual, company, or organization that controls assets that may be due a taxpayer, including Plan Administrators, sponsors of qualified retirement plans, or QTAs of abandoned plans under the Department of Labor's Abandoned Plan Program attempting to locate missing plan participants, to make a written request to the Service to use its letter forwarding program. Under this revenue procedure, the Service will no longer provide letter-forwarding services to locate a taxpayer that may be owed assets from an individual, company, or organization. The letter-forwarding program is now limited to situations in which a person is trying to locate a taxpayer to convey a message for a humane purpose as defined in Section 4 or in an emergency situation.

SECTION 4. SCOPE

01. The Service will forward letters that serve a "humane purpose." A humane purpose is one in which a person is seeking to find a missing person to convey a message of an urgent or compelling nature, or is seeking to find a missing person because of an emergency situation. For example, the Service will forward letters to notify a person of a serious illness, imminent death or the death of a close relative, to locate a missing relative to convey an urgent or compelling message, or to help locate persons being sought for a medical study to detect and treat medical defects or diseases.

02. Examples of matters that are not considered to be for a humane purpose include tracing a family tree or attempting to locate individuals for reunion purposes. Likewise, the Service will not forward letters seeking reparation and will not forward letters from individuals, companies or organizations that control assets that may be due taxpayers, including Plan Administrators, sponsors of qualified retirement plans, or QTAs of abandoned plans under the Department of Labor's Abandoned Plan Program attempting to locate missing plan participants. Letter-forwarding requests that do not serve a humane purpose, such as requests that merely provide a financial benefit, will not be processed.

03. The Service will perform this letter-forwarding service only if the Service determines that it will not interrupt other Service activities or conflict with prior Service commitments. Under no circumstances will the Service disclose to the requester confidential tax information, such as an address or even the fact that an address exists in Service files.

SECTION 5. PROCEDURE

01. The requester must submit a written request that briefly explains the requester's need for letter-forwarding, the social security number (SSN) for the individual being sought, and a copy of the letter to be forwarded. The SSN is the key element used to access the appropriate tax account and retrieve a mailing address. If the requester does not furnish a SSN, the Service cannot process the request. Therefore, the SSN for the missing individual must be furnished by the requester.

02. If the Service locates an address for the recipient, it will forward the letter in an envelope bearing the Service's return address. The Service will tell the recipient that: (1) the Service is forwarding the letter in accordance with current policy; (2) the Service has not divulged the recipient's address, any other tax information, or the fact that the letter has even been forwarded; (3) the Service has no involvement in the matter aside from forwarding the letter; and (4) the decision of whether to respond is entirely up to the recipient.

03. The Service will not provide the requester with information concerning the results of the Service's efforts. The Service will tell the requester only that it will attempt to forward the letter if it locates an address for the individual. If the requester provides the most current address for a recipient, and it is the same address that appears in the Service's files, the Service will not forward the letter. All undeliverable letters will be destroyed.

04. Requests for letter forwarding assistance should be directed to the Disclosure Scanning Unit in Chamblee, GA, at the following address:

Internal Revenue Service
Disclosure Scanning Operation —
Stop 93A
Chamblee, GA 30341

The Disclosure Scanning Unit will handle these requests as its workload permits (see Sec. 4.03. Scope). There is no charge for this service, except as provided in Section 5.05.

05. Requests involving 50 or more potential recipients, including multiple requests from a single individual or entity that can reasonably be aggregated to meet the 50 recipient threshold, will be processed under Project 753, Computerized Mailout Program. Project 753 is performed on a first-in first-out request basis. Mailouts are "queued" at service centers for processing. Generally, it will take 90 days from the Service's acknowledgement of the request before the mailout can be performed. The requester will be charged for this service. The charge for Project 753 requests is subject to change but currently is approximately $1,750.00 plus $.50 per record. A more precise cost estimate will be given upon request. The Project 753 mailout program is only available for humane purposes as described in section 4 of this revenue procedure.

06. The request must contain (1) a brief explanation of the need for letter forwarding, and (2) one copy of the letter to be forwarded. In addition, the following statement should be conspicuously placed in the letter to immediately catch the attention of the recipient:

"In accordance with current policy the Internal Revenue Service has agreed to forward this letter because we do not have your current address. The Service has not disclosed your address or any other tax information and has no involvement in the matter aside from forwarding this letter."

SECTION 6. EFFECTIVE DATE

This revenue procedure applies to requests postmarked on and after August 31, 2012.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 94–22 is modified and superseded.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie Sasarak of the Office of Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Ms. Sasarak at (202) 622–4570 (not a toll-free call).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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