Internal Revenue
bulletin

Bulletin No. 2005-46
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HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENT

Announcement 2005–80, page 967.

This announcement provides a settlement initiative under which taxpayers and the Internal Revenue Service may resolve the tax treatment of certain tax transactions. Taxpayers have until January 23, 2006, to file an election indicating their intent to participate in this initiative.

INCOME TAX

Notice 2005–77, page 951.

This notice announces that Treasury and the Service will amend the regulations under section 6012 of the Code to create a new exception to the filing requirement for nonresident alien individuals who are required to file a return under the present regulations solely because they earn wages that are effectively connected with a United States trade or business.

EMPLOYEE PLANS

Rev. Rul. 2005–72, page 944.

2006 covered compensation tables; permitted disparity. The covered compensation tables under section 401 of the Code for the year 2006 are provided for use in determining contributions to defined benefit plans and permitted disparity.

Notice 2005–84, page 959.

Minimum funding standards; disaster relief. As a result of the enactment of section 403(b) of the Katrina Emergency Tax Relief Act of 2005, the Internal Revenue Service, the Employee Benefits Security Administration of the Department of Labor, and the Pension Benefit Guaranty Corporation are providing additional disaster relief pertaining to the minimum funding standards of certain employee benefit plans. Notice 2005–60 superseded.

EMPLOYMENT TAX

Notice 2005–76, page 947.

This notice provides new rules for determining the amount of income tax employers must withhold under section 3402 of the Code from wages paid for services performed by nonresident alien employees within the United States. The notice also provides new rules for use by nonresident alien employees in completing Form W-4, *Employee's Withholding Allowance Certificate*. The rules are effective with respect to wages paid on or after January 1, 2006.

Notice 2005–85, page 961.

2006 social security contribution and benefit base; domestic employee coverage threshold. The Commissioner of the Social Security Administration has announced (1) the OASDI contribution and benefit base for remuneration paid in 2006 and self-employment income earned in taxable years beginning in 2006, and (2) the domestic employee coverage threshold amount for 2006.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 962.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXCISE TAX

Notice 2005–79, page 952.

This notice supersedes Notice 2004–57, 2004–2 C.B. 376, while confirming that the Service will continue to assess and collect the tax under section 4251 of the Code on all taxable communications services, including communications services similar to those at issue in *American Bankers Insurance Group v. United States,* 408 F.3d 1328 (11th Cir. 2005), *rev'g* 308 F. Supp. 2d 1360 (S.D. Fla. 2004). Notice 2004–57 superseded.

Notice 2005–80, page 953.

This notice provides guidance on certain excise tax provisions that were added or affected by the Energy Policy Act of 2005 and the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). This notice also provides additional guidance relating to mechanical dye injection of diesel fuel and kerosene. Notice 2005–4 modified.

ADMINISTRATIVE

Notice 2005–78, page 952.

South Asia earthquake; designation as a qualified disaster. The South Asia earthquake that struck Pakistan, India, and Afghanistan on October 8, 2005, is designated a qualified disaster for purposes of section 139 of the Code.

The IRS Mission

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

Introduction

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

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

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

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(l)–1: Permitted disparity in employer-provided contributions or benefits.

2006 covered compensation tables; permitted disparity. The covered compensation tables under section 401 of the Code for the year 2006 are provided for use in determining contributions to defined benefit plans and permitted disparity.

Rev. Rul. 2005–72

This revenue ruling provides tables of covered compensation under § 401(l)(5)(E) of the Internal Revenue Code (the "Code") and the Income Tax Regulations, thereunder, for the 2006 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee, as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act (the "Act") for each year in the 35-year period ending with the year in which the employee attains social security retirement age.

Section 401(l)(5)(E)(ii) of the Code states that the determination for any year preceding the year in which the employee attains social security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains social security retirement age.

Section 1.401(l)–1(c)(34) defines the taxable wage base as the contribution and benefit base under section 230 of the Act.

Section 1.401(l)–1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) social security retirement age. A 35-year period is used for all individuals regardless of the year of birth of the individual. In determining an employee's covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee's covered compensation for a plan year beginning after the 35-year period applicable under §1.401(l)–1(c)(7)(i) is the employee's covered compensation for a plan year during which the 35-year period ends. An employee's covered compensation for a plan year beginning before the 35-year period applicable under §1.401(l)–1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)–1(c)(7)(ii) provides that, for purposes of determining the amount of an employee's covered compensation under §1.401(l)–1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the 2006 year, the taxable wage base is $94,200.

The following tables provide covered compensation for 2006:

2006 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2006 COVERED COMPENSATION TABLE II
1907	1972	$4,488
1908	1973	4,704
1909	1974	5,004
1910	1975	5,316
1911	1976	5,664
1912	1977	6,060
1913	1978	6,480
1914	1979	7,044
1915	1980	7,692
1916	1981	8,460
1917	1982	9,300
1918	1983	10,236
1919	1984	11,232
1920	1985	12,276
1921	1986	13,368
1922	1987	14,520
1923	1988	15,708
1924	1989	16,968
1925	1990	18,312
1926	1991	19,728

2006 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2006 COVERED COMPENSATION TABLE II
1927	1992	21,192
1928	1993	22,716
1929	1994	24,312
1930	1995	25,920
1931	1996	27,576
1932	1997	29,304
1933	1998	31,128
1934	1999	33,060
1935	2000	35,100
1936	2001	37,212
1937	2002	39,444
1938	2004	43,992
1939	2005	46,344
1940	2006	48,816
1941	2007	51,252
1942	2008	53,628
1943	2009	55,944
1944	2010	58,236
1945	2011	60,492
1946	2012	62,712
1947	2013	64,896
1948	2014	66,936
1949	2015	68,880
1950	2016	70,728
1951	2017	72,492
1952	2018	74,160
1953	2019	75,780
1954	2020	77,340
1955	2022	80,268
1956	2023	81,672
1957	2024	82,992
1958	2025	84,216
1959	2026	85,380
1960	2027	86,484
1961	2028	87,540
1962	2029	88,500
1963	2030	89,436
1964	2031	90,336
1965	2032	91,164
1966	2033	91,896
1967	2034	92,520
1968	2035	93,024
1969	2036	93,420
1970	2037	93,684
1971	2038	93,900
1972	2039	94,080
1973 and later	2040	94,200

2006 Rounded Covered Compensation Table

Year of Birth	Covered Compensation
1937	39,000
1938–1939	45,000
1940	48,000
1941	51,000
1942	54,000
1943–1944	57,000
1945	60,000
1946	63,000
1947–1948	66,000
1949	69,000
1950–1951	72,000
1952–1953	75,000
1954	78,000
1955–1956	81,000
1957–1959	84,000
1960–1961	87,000
1962–1965	90,000
1966–1969	93,000
1970 and later	94,200

Drafting Information

The principal author of this revenue ruling is Lawrence Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans taxpayer assistance telephone service at 1–877–829–5500, between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Isaacs's telephone number is (202) 283–9710 (not a toll-free number).

Part III. Administrative, Procedural, and Miscellaneous

Withholding on Wages of Nonresident Alien Employees Performing Services Within the United States

Notice 2005–76

I. PURPOSE

This notice provides new rules for determining the amount of income tax employers must withhold under section 3402 of the Internal Revenue Code (Code) from wages paid for services performed by nonresident alien employees within the United States. This notice also provides new rules for use by nonresident alien employees in completing Form W–4, *Employee's Withholding Allowance Certificate*. The rules for employers and employees are effective with respect to wages paid on or after January 1, 2006.

Because certain nonresident alien employees were experiencing overwithholding of income tax on their wages for services performed within the United States, the Internal Revenue Service has reconsidered the requirements for determining the amount of income tax to be withheld under section 3402 from the wages of nonresident alien employees. These new rules are designed to provide for withholding on the wages of a nonresident alien employee that more closely approximates the income tax liability of the nonresident alien.

II. BACKGROUND

A. Income Tax Withholding on Wages of Nonresident Alien Employees

Pursuant to the statutory provisions and regulations set forth below, employers are generally liable for the withholding of income tax on remuneration for services performed within the United States by a nonresident alien employee.

Section 3402(a)(1) of the Code provides that, except as otherwise provided in section 3402, every employer making a payment of wages shall deduct and withhold from such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. Section 3402(a)(1) further provides that any tables or procedures prescribed under section 3402(a)(1) shall be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be appropriate to carry out the purposes of chapter 1 (imposition of individual income tax).

Section 3401(a) of the Code provides that generally the term "wages" includes all remuneration for services performed by an employee for his employer. Section 3401(a)(6) provides an exception from wages for remuneration paid for such services performed by a nonresident alien individual as may be designated by regulations prescribed by the Secretary.

Pursuant to the authority granted under section 3401(a)(6), section 31.3401(a)(6)–1(b) of the Employment Tax Regulations provides that remuneration paid to a nonresident alien individual for services performed *outside* the United States is excepted from wages and hence is not subject to withholding under section 3402. Section 31.3401(a)(6)–1(a) conversely provides that, unless otherwise excepted, remuneration paid for services performed by a nonresident alien individual as an employee constitutes wages if such remuneration is effectively connected with the conduct of a trade or business within the United States.

Section 864(b) of the Code defines the term "trade or business within the United States" to include the performance of personal services within the United States at any time during the taxable year. Section 864(b)(1) provides an exception to this definition for the performance of personal services (A) for a nonresident alien individual, foreign partnership or foreign corporation not engaged in a trade or business within the United States; or (B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or corporation, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed $3,000 in the aggregate.

Assuming the nonresident alien individual engages in a United States trade or business under section 864(b) because he performs personal services in the United States during the tax year, section 1.864–4(c)(6)(ii) of the Income Tax Regulations provides that wages, salaries, compensations, or other remunerations received by the nonresident alien individual for performing those personal services in the United States constitute income that is effectively connected for the taxable year with the conduct of the trade or business in the United States by that individual.

Thus, employers, regardless of whether they are U.S. persons, are generally liable for the withholding of income tax on remuneration for services paid to nonresident alien employees to the extent the remuneration is attributable to services performed in the United States.

Section 3402(f)(2)(A) of the Code provides that every employee who receives wages shall provide his or her employer with a signed withholding exemption certificate relating to the number of withholding exemptions which the employee claims, which number shall in no event exceed the number to which he or she is entitled.

Section 3402(f)(5) of the Code provides that withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe. Section 31.3402(f)(5)–1(a) of the Employment Tax Regulations prescribes the form of the certificate as the Form W–4.

Although section 3402(f)(1) of the Code provides that an employee receiving wages shall on any day be entitled to certain listed withholding exemptions, nonresident alien employees are generally entitled to claim only one withholding exemption on Form W–4. Section 3402(f)(1)(A) provides an exemption for the employee unless the employee is an individual described in section 151(d)(2), regarding certain dependents. Section 3402(f)(6) provides that notwithstanding the provisions of section 3402(f)(1), a nonresident alien individual (with certain exceptions) shall be entitled to only one withholding exemption.

Section 3402(l)(3)(A)(ii) provides that for purposes of determining whether to claim married status when furnishing a

withholding exemption certificate, an otherwise married employee shall on any day be considered as not married if either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien. See also section 31.3402(l)–1(c)(1) of the regulations to the same effect.

Section 63(c)(6)(B) provides that in the case of a nonresident alien individual, the standard deduction shall be zero.

B. Reason for Change to Withholding Procedures for Nonresident Alien Employees

The income tax withholding tables in Publication 15 (Circular E), *Employer's Tax Guide* (January 2005 revision), for use with the percentage method of withholding and the wage bracket method of withholding assume that an employee will be entitled to a standard deduction in determining the employee's federal income tax liability. Under the withholding tables, an employer does not withhold any amount of income tax until the employee has received an amount (for example, $2,650 for an annual payroll period) that will be subject to tax after taking into account the standard deduction and the employee's claimed withholding allowance(s). However, because a nonresident alien individual is not permitted to claim the standard deduction, nonresident alien employees have been given special instructions for completing their withholding exemption certificates in an effort to offset the assumed standard deduction built into the withholding tables. These instructions were intended to prevent underwithholding.

Specifically, Publication 15 (January 2005 revision) directs that when completing Form W–4, a nonresident alien employee is required to request an additional income tax withholding amount, depending on the payroll period. A chart is provided in Publication 15 setting forth the additional income tax withholding amount that is required to be requested by the nonresident alien employee for each type of payroll period. Nonresident alien students and business apprentices from India are not subject to the requirement to request additional income tax withholding.

The current withholding rules result in overwithholding on wages of nonresident alien employees who have small amounts of remuneration from services within the United States because the additional amount that the nonresident alien employee must request for withholding purposes is withholding liability that will apply from the first dollar of wages. Thus, even if the amount of the nonresident alien employee's total annual wages for services performed in the United States is less than the personal exemption amount, the current withholding rules require income tax to be withheld. A nonresident alien in this situation must file a return and request a refund to get back the amount withheld.

III. WITHHOLDING RULES THAT WILL BE EFFECTIVE FOR WAGES PAID TO NONRESIDENT ALIEN EMPLOYEES ON OR AFTER JANUARY 1, 2006

A. Nonresident Alien Employees Completing Form W–4

When completing Form W–4 to provide information with respect to withholding on wages to be paid on or after January 1, 2006, nonresident alien employees are required to:

(1) Not claim exemption from withholding;

(2) Request withholding as if they are single, regardless of the actual marital status;

(3) Claim only one allowance; and

(4) Write "Nonresident Alien" or "NRA" above the dotted line on line 6 of Form W–4.

With respect to the third requirement, if the nonresident alien is a resident of Canada, Mexico, or South Korea, he or she may claim more than one allowance.

When completing a Form W–4 that will apply to wages paid on or after January 1, 2006, nonresident alien employees will no longer be required to request an additional withholding amount. However, like all other employees, nonresident aliens may request additional withholding at their option.

B. Employer Calculation of Withholding on Wages of Nonresident Alien Employees

Beginning with wages paid on or after January 1, 2006, employers are required to calculate income tax withholding under section 3402 of the Code on wages of nonresident alien employees (except for students and business apprentices from India) using a new procedure. Under this procedure the employer will add an amount to the wages of the nonresident alien employee solely for purposes of calculating the income tax withholding for each payroll period; the specific amount depends on the payroll period. Employers will determine the income tax to be withheld by applying the tables to the sum of the wages paid for the payroll period plus the additional amount. Adding this amount will offset the assumed standard deduction that is incorporated into the tables without requiring income tax to be withheld from wages that will fall below the personal exemption when annualized. The added amount is not income or wages to the employee, does not affect income, Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) tax liability for the employer or the employee, and is not to be reported as income or wages.

The amounts added under this procedure as set forth in the chart below are added purely for purposes of calculating the amount of the income tax withholding on the wages of the nonresident alien employee. These chart amounts should not be included in any box on the Form W–2, *Wage and Tax Statement*.

The amount required to be added to the wages of a nonresident alien employee for purposes of calculating income tax withholding is the highest wage amount to which a zero withholding rate applies as shown in the Table for the Percentage Method of Withholding for a single person (including a head of household) for each payroll period. The tables are published periodically in Publication 15.

For 2006, the amount required to be added to the wages of a nonresident alien employee for purposes of calculating income tax withholding, for each length of payroll period is as follows:

Payroll period	*Add additional*
Weekly	$ 51
Biweekly	$ 102
Semimonthly	$ 110
Monthly	$ 221
Quarterly	$ 663
Semiannually	$ 1,325
Annually	$ 2,650
Daily or Miscellaneous (each day of the payroll period)	$ 10.20

Updated tables are published each year in Publication 15. If intra-year changes in the tables are released, they may be in other IRS publications.

Thus, in determining the amount of income tax withholding on wages of nonresident alien employees, employers will calculate the amount of wages to be used in applying the applicable income tax withholding tables as follows: Employers will add to gross wages (to be included on Form W–2) the additional amount pursuant to the procedure described above (not included on Form W–2). If the employer uses the percentage method, the employer then should subtract an amount for withholding allowances for the payroll period, and then apply the percentage method withholding tables to the remainder. If the employer uses the wage bracket method, the employer should not subtract an amount for withholding allowance(s), because withholding allowances are reflected in the wage bracket withholding tables. Under the wage bracket method, the employer will apply the wage bracket tables to the sum of the gross wages and the additional amount added pursuant to the chart.

Thus, for example, if a nonresident alien employee is receiving wages on an annual payroll period in 2006, the employer is required to add $2,650 to the wages to determine the amount of income tax withholding. Then, if the employer is using the percentage method of withholding, the employer would subtract the applicable amount for withholding allowance(s) and apply the applicable percentage method withholding table for an annual payroll period for single employees. The $2,650 addition would not be included on Form W–2. The amount to be added to wages for a payroll period in calculating income tax withholding is the same for each payroll period as long as the employee retains the same payroll period.

C. Example Comparing 2005 Withholding Rules with 2006 Withholding Rules

A nonresident alien employee earns $250 per month for services performed in the United States and has a monthly payroll period. The employee has no other U.S. source income. The employer uses the wage bracket method of withholding.

(1) 2005 Withholding.

As a nonresident alien, the employee is required to complete Form W–4 claiming single status and no more than one withholding allowance. The employee is also required to request on Form W–4 that an additional $33.10 be withheld from his/her wages for each monthly payroll period. The nonresident alien employee completes Form W–4, claiming single status and one withholding allowance and requesting additional withholding of $33.10. In calculating the amount of withholding for the employee, the employer applies the wage bracket withholding table applicable for a single employee receiving $250 of wages for a monthly payroll period and claiming one withholding allowance. The employee has no withholding under the withholding tables. However, because the employee has requested $33.10 of additional withholding, the employer will withhold $33.10 each pay period. If the employee's wages are the same for each month in the year, the employer will withhold a total of $397.20 for the year ($33.10 times 12). The employee's total gross income from U.S. sources for the year will be $3,000. After subtraction of $3,200 for the personal exemption amount, the employee will have no taxable income and no income tax liability. The employee will have to file an income tax return to claim a refund of the $397.20 that was withheld.

(2) 2006 Withholding.

As a nonresident alien, the employee is required to complete Form W–4 claiming single status and no more than one withholding allowance, but the employee is not required to request an additional amount of withholding. The employee is required to write "nonresident alien" or "NRA" above the dotted line on line 6 of Form W–4. The nonresident alien employee completes Form W–4, claiming single status, one withholding allowance, and writing "nonresident alien" above the dotted line on line 6 of Form W–4. Because the employee has a monthly payroll period, the employer adds $221 to the $250 of wages for the monthly payroll period solely for purposes of calculating the amount of withholding under the applicable table. This $221 would not be reflected on the Form W–2 of the employee. The employer applies the wage bracket withholding table applicable for a single employee receiving $471 of wages (the total of $250 actual wages and $221 additional amount) for a monthly payroll period and claiming one withholding allowance. Under the applicable table, the employee would have no withholding. If the employee's wages are the same for every month in the year, the employee will have $3,000 of gross income from U.S. sources. After subtraction of $3,300 for the personal exemption amount, the employee will have no taxable income and no income tax liability.

D. What Employers and Employees Should Do to Implement the New Withholding Requirements

Employers hiring new nonresident alien employees who will receive remuneration for services performed in the United States for the first time on or after January 1, 2006, should instruct the new employees to complete Form W–4 in accordance with the instructions provided in this notice. An employer who already has one or more nonresident alien employees with Forms W–4 on file requesting additional withholding pursuant to the current instructions in Publication 15 should advise such employees to file new Forms W–4 with the employer at an appropriate time such that the new Forms W–4 will be effective for wages paid on or after January 1, 2006. Forms W–4 furnished by employees in place of Forms W–4 in effect with an employer shall take effect at the beginning of the first payroll period (or the first payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such Form W–4 is furnished. The employer may elect to make the replacement Form W–4 effective on or after the day the replacement Form W–4 is furnished by the employee and before the 30th day after the day on which the replacement Form W–4 is furnished.

The new Form W–4 must reflect single status and only the number of withholding allowances the employee is entitled to claim (generally one) with the employer. The nonresident alien employee is not required to request additional withholding on the new Forms W–4. However, depending on the employee's circumstances, the employee may want to request additional withholding. To assist the employer in applying the correct withholding procedure to the employee's wages, the Form W–4 filed by the nonresident alien employee should also be marked to indicate nonresident alien status by the employee. The nonresident alien employee should write "nonresident alien" or "NRA" above the dotted line after the words "Additional amount, if any, you want withheld from each paycheck" and before the box on line 6 of Form W–4. Employers maintaining electronic Form W–4 systems should make an appropriate modification in their systems that would allow employees to identify themselves as nonresident aliens. Also, employers using permissible substitute forms should make an appropriate modification to their forms.

An employee may submit a new Form W–4 to his employer at any time. The new form automatically supersedes the previous form provided to the employer. However, if a nonresident alien employee submits a new Form W–4 to his employer following the instructions in this notice and eliminating the request for withholding an additional amount, and the employer is not yet prepared to implement the new procedures for calculating the amount of income tax to be withheld at the time the new Form W–4 goes into effect, the nonresident alien employee may be subject to underwithholding. (See section III of this notice for the length of the employer's transitional relief period.)

E. Students and Business Apprentices from India

The new procedure described in Part III of this notice does not apply if the nonresident alien employee is a student or business apprentice who is or was a resident of the Republic of India immediately before visiting the United States and who is present in the United States principally for the purpose of his or her education or training. This exception only applies for such period of time as may be reasonable or customarily required to complete the education or training undertaken. See Article 21 of the Tax Convention with the Republic of India (generally effective January 1, 1991).

F. Effect on Supplemental Wage Payments that the Employer is Subjecting to a Flat Rate of Withholding

This notice has no effect in determining the amount of withholding on supplemental wages if the supplemental wages are subject to mandatory flat rate withholding (currently 35 percent) or the employer is applying an optional flat rate of income tax withholding (currently 25 percent) on such supplemental wages. See section 904(b) of the American Jobs Creation Act of 2004, Pub. L. 108–357, establishing a mandatory flat rate for withholding on supplemental wages (currently 35 percent) to the extent that the employee's total supplemental wages from the employer exceed one million dollars during the calendar year, and section 31.3402(g)–1 of the regulations, providing that employers generally have an option of withholding at a flat rate (currently 25 percent) on supplemental wage payments that are not subject to the mandatory flat rate of withholding.

G. Effect on the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA)

This notice has no effect in determining FICA and FUTA taxation on remuneration for services performed by nonresident alien employees.

H. Effect on Nonresident Alien Individuals Who Have No Wages subject to Federal Income Tax Withholding under Section 3402

This notice has no effect on nonresident alien individuals who have no wages subject to federal income tax withholding under section 3402. For example, if a nonresident alien employee is eligible for a tax treaty withholding exemption and has a valid Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, in effect with the employer, this notice has no application to remuneration paid by the employer to the employee that is exempt from income tax withholding under the treaty.

IV. EFFECTIVE DATE

This notice is effective with respect to wages paid to nonresident alien employees on or after January 1, 2006. However, with respect to wages paid prior to January 1, 2007, the Internal Revenue Service will not assert an employer's liability for underpayments of income tax withholding and related interest and penalties resulting solely from the failure to apply the new withholding procedure in this notice to payments of wages made to nonresident alien employees, provided the employer has made a good faith effort to implement the withholding requirements in this notice as soon as possible. The transitional relief in the previous sentence does not affect the liability of employees for federal income tax.

V. DRAFTING INFORMATION

The principal author of this notice is Alfred G. Kelley of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Mr. Kelley at (202) 622–6040 (not a toll-free call).

Elimination of Filing Requirement for Nonresident Alien Individuals With United States Source Effectively Connected Wages Below the Personal Exemption Amount

Notice 2005–77

SECTION 1. PURPOSE

This notice announces that Treasury and the Internal Revenue Service (the Service) will amend Treas. Reg. §1.6012–1(b)(2) by adding a new exception from the filing requirement for nonresident alien individuals. Subject to the limitation described below, the new exception will eliminate the filing requirement for nonresident alien individuals who are required to file a return under the present regulations solely because they earn wages that are effectively connected with a United States trade or business in the tax year. This new exception will only apply to those nonresident alien individuals who earn wages that are less than the amount of one personal exemption under section 151 of the Internal Revenue Code (the Code).

SECTION 2. BACKGROUND

In general, section 6012(a)(1)(A) requires every individual having gross income in the taxable year that equals or exceeds the exemption amount to make a return with respect to income taxes under subtitle A of the Code. Flush language at the end of section 6012(a) provides that, subject to certain conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 of the Code may be exempted from the requirement of making returns under section 6012.

Under §1.6012–1(b) of the regulations, every nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year must make a return on Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. For this purpose, it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, a nonresident alien individual who is engaged in a trade or business in the United States at any time during the taxable year is required to file a return on Form 1040NR, even though (a) he has no income that is effectively connected with the conduct of a trade or business in the United States, (b) he has no income from sources within the United States, or (c) his income is exempt by reason of an income tax convention or any section of the Code.

Section 864(b) of the Code defines the term "trade or business within the United States" to include the performance of personal services within the United States at any time during the taxable year. Section 864(b)(1) provides an exception to this definition for the performance of personal services (A) for a nonresident alien individual, foreign partnership or foreign corporation not engaged in a trade or business within the United States; or (B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or corporation, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed $3,000 in the aggregate.

Assuming the nonresident alien individual engages in a United States trade or business under section 864(b) because he performs personal services in the United States during the tax year, §1.864–4(c)(6)(ii) of the Income Tax Regulations provides that wages, salaries, compensations, or other remunerations received by the nonresident alien individual for performing those personal services in the United States constitute income that is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

Section 871(b) of the Code provides that a nonresident alien individual engaged in a trade or business within the United States during the taxable year is taxable as provided in sections 1 or 55 of the Code, on his taxable income that is effectively connected with the conduct of a trade or business within the United States.

Section 873(b)(3) of the Code allows a nonresident alien individual a deduction under section 151 of the Code for only one personal exemption, unless the individual is a resident of a contiguous country or a national of the United States. The personal exemption amount under section 151 for tax year 2006 is $3,300.

SECTION 3. DISCUSSION

Treasury and the Service will amend the regulations under §1.6012–1(b)(2) to eliminate the Form 1040NR filing requirement for a nonresident alien individual who earns less than the amount of one personal exemption as United States source wages that are effectively connected with a United States trade or business (effectively connected wages) and who is required to file a United States income tax return because of those wages. All nonresident alien individuals who earn effectively connected wages are entitled to at least one personal exemption under section 151. Therefore, by amending the regulations, the new exception would treat nonresident alien individuals who earn effectively connected wages in an amount that is less than the amount of one personal exemption more similarly to United States citizens and residents who earn wages of less than the exemption amount. The exception would apply even if the nonresident alien individual also has United States source fixed or determinable annual or periodical gains, profits, or income (FDAP), provided that his United States tax liability for such income is fully satisfied by the withholding of tax at source.

The amendment to the regulations, however, will not affect the filing requirements of a nonresident alien individual who seeks a refund of an overpayment of United States tax, has a United States income tax liability with respect to FDAP that is not fully satisfied by withholding at source, or who has income exempt or partially exempt by reason of an income tax convention or any section of the Code.

SECTION 4. EFFECTIVE DATE

Regulations incorporating the guidance set forth in this notice will apply to tax years beginning on or after January 1, 2006. Until such regulations are issued, nonresident alien individuals may rely on this notice.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Paul J. Carlino of the Office of Chief Counsel (International). For further information regarding this notice, contact Mr. Carlino at (202) 622–3840 (not a toll-free call).

South Asia Earthquake Occurring on October 8, 2005, Designated as a Qualified Disaster Under § 139 of the Internal Revenue Code

Notice 2005–78

This notice designates the South Asia earthquake occurring on October 8, 2005, as a qualified disaster for purposes of § 139 of the Internal Revenue Code, and describes the affected areas.

SOUTH ASIA EARTHQUAKE

A magnitude 7.6 earthquake struck Pakistan, India, and Afghanistan on October 8, 2005, with resulting aftershocks. The earthquake inflicted enormous damage in South Asia. Published reports currently estimate that in Pakistan and India, more than 54,000 people were killed, over 82,000 were injured, and almost 3 million were displaced from their homes. *USAID Fact Sheet No. 14* (October 24, 2005). This notice provides U.S. tax relief that will facilitate assistance to certain victims of the South Asia earthquake.

QUALIFIED DISASTER RELIEF PAYMENTS EXCLUDED FROM RECIPIENT'S GROSS INCOME

Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides that a qualified disaster relief payment includes any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses (not otherwise compensated for by insurance or otherwise) incurred as a result of a qualified disaster, or

(2) to reimburse or pay reasonable and necessary expenses (not otherwise compensated for by insurance or otherwise) incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

Under § 139(c)(3) the term "qualified disaster" includes a disaster resulting from an event that is determined by the Secretary to be of a catastrophic nature.

DESIGNATION AS QUALIFIED DISASTER

The Commissioner of Internal Revenue, pursuant to delegation by the Secretary, has determined that the South Asia earthquake occurring on October 8, 2005, is an event of a catastrophic nature under § 139(c)(3). Therefore, the South Asia earthquake is designated as a qualified disaster under § 139 in the affected areas of these countries: Pakistan, India, and Afghanistan.

SECTION 501(c)(3) ORGANIZATIONS

Because this notice designates the South Asia earthquake as a qualified disaster under § 139, employer-sponsored private foundations may choose to provide disaster relief to employee victims of the earthquake. Like all organizations described in § 501(c)(3), private foundations should exercise due diligence when providing disaster relief as set forth in Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*.

DRAFTING INFORMATION

The principal author of this notice is Shareen S. Pflanz of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Shareen S. Pflanz at (202) 622–4920 (not a toll-free call).

Communications Excise Tax; Section 4251

Notice 2005–79

The government's recent loss in *American Bankers Ins. Group v. United States*, 408 F.3d 1328 (11th Cir. 2005), *rev'g* 308 F. Supp. 2d 1360 (S.D. Fla. 2004), has caused some to question the continued applicability of the communications excise tax imposed by § 4251 of the Internal Revenue Code.

The government did not seek review by the United States Supreme Court in *American Bankers Insurance Group*. Nevertheless, the government will continue to litigate this important issue. The government is prosecuting appeals in five different circuits. The appeal in *Office Max v. United States*, 309 F. Supp. 2d 984 (N.D. Ohio 2004), has been briefed and argued, and the parties are awaiting a decision.

This notice confirms that the Service will continue to assess and collect the tax under § 4251 on all taxable communications services, including communications services similar to those at issue in the cases. Collectors should continue to collect the tax, including from taxpayers within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit.

Persons paying for taxable communications services (taxpayers) are required to pay the tax to a collecting agent (the person receiving the payment on which tax is imposed), and collecting agents are required to pay over the tax to the United States Treasury and to file the required returns. Taxpayers may preserve any claims for overpayments by filing administrative claims for refund with the Service pursuant to § 6511. Taxpayers are advised, however, that these claims, including claims for which appellate venue would lie in the United States Court of Appeals for the Eleventh Circuit, will not be processed while there are pending cases in other United States Courts of Appeals.

EFFECT ON OTHER DOCUMENTS

Notice 2004–57, 2004–2 C.B. 376, is superseded.

DRAFTING INFORMATION

The principal author of this notice is Barbara B. Franklin of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Cynthia A. McGreevy at (202) 622–3130 (not a toll-free call).

Excise Tax Changes Under SAFETEA and the Energy Act; Dye Injection

Notice 2005–80

Section 1. PURPOSE

This notice modifies Notice 2005–4, 2005–2 I.R.B. 289, as modified by Notice 2005–24, 2005–12 I.R.B. 757, and Notice 2005–62, 2005–35 I.R.B. 443 (Notice 2005–4), by providing guidance on certain excise tax provisions in the Internal Revenue Code (Code) that were added or affected by the Energy Policy Act of 2005 (Pub. L. 109–58) (Energy Act) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59) (SAFETEA). These provisions relate to the Leaking Underground Storage Tank Trust Fund (LUST) tax, treatment of kerosene for use in aviation, credit card sales of taxable fuel to certain exempt entities, and diesel-water fuel emulsions. This notice also provides additional guidance relating to mechanical dye injection of diesel fuel and kerosene.

Notice 2005–4 provides guidance on certain excise tax provisions in the Code that were added or affected by the American Jobs Creation Act of 2004 (Pub. L. 108–357) (AJCA).

Except as provided in sections 4 and 5, references to Code provisions in this notice are to the Code as in effect on October 1, 2005. References to regulations are to the Manufacturers and Retailers Excise Tax Regulations.

Section 2. LUST

(a) *In general*—(1) This section describes the changes made by § 1362 of the Energy Act to the LUST tax.

(2) Except as provided in paragraph (b) of this section, tax is imposed at the LUST financing rate of $0.001 per gallon on removals, entries, and sales of gasoline, diesel fuel, and kerosene that are described as exempt transactions in §§ 48.4081–4(b) and (d) (relating to certain uses of gasoline blendstocks), 48.4082–1 (relating to dyed fuel), 48.4082–5 (relating to diesel fuel and kerosene in Alaska), 48.4082–7 (relating to kerosene used for feedstock purposes), and § 4 of Notice 2005–4 (relating to kerosene used in aircraft). Thus, for example, the LUST tax applies to removals of dyed diesel fuel for use as heating oil or use on a farm for farming purposes and to removals of kerosene for use in foreign trade or in military aircraft.

(3) Section 6430 of the Code provides that no refund, credit, or payment under §§ 6411–6430 shall be made for the LUST tax, except in the case of fuels destined for export.

(4) Under this notice, the position holder is liable for the LUST tax imposed on removals of kerosene directly into the fuel supply tank of an aircraft for a use exempt from tax under § 4041(c). See § 3(c)(1)(iii) of this notice. Thus, for example, for kerosene removed directly into the fuel tank of an aircraft for use in foreign trade or for use in military aircraft, the position holder is liable for tax of $0.001 per gallon. For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation other than foreign trade, the aircraft operator continues to be liable for tax of $0.044 per gallon (the sum of the $0.043-per-gallon rate under § 4081(a)(2)(C) and the $0.001-per-gallon LUST tax). See § 4(d) of Notice 2005–4 (relating to § 4081(a)(4)).

(b) *Removals for export*—(1) *In general*. The LUST tax is not imposed on the removal, entry, or sale of diesel fuel or kerosene for export if—

(i) The conditions of § 48.4082–1 (relating to the exemption for dyed fuel) are met; and

(ii) The person otherwise liable for tax has an unexpired export certificate (described in paragraph (b)(2) of this section) from the buyer of the fuel and has no reason to believe any information in the certificate is false.

(2) *Export certificate*. The export certificate is a statement that is signed under penalties of perjury by a person with authority to bind the buyer and contains—

(i) The name, address, and employer identification number of the buyer;

(ii) The name, address, and employer identification number of the person otherwise liable for tax;

(iii) The number of gallons and type of fuel; and

(iv) A statement that the fuel is for export.

(c) *Effective date*. This section is effective October 1, 2005.

Section 3. TREATMENT OF KEROSENE FOR USE IN AVIATION

(a) *Overview*. This section describes the changes made by § 11161 of SAFETEA to the tax on kerosene used in aviation. Section 4 of Notice 2005–4 is modified in accordance with these changes, as explained in this section.

(b) *Kerosene for use in aviation*. SAFETEA replaced the $0.219-per-gallon tax on "aviation-grade kerosene" with rules taxing all "kerosene" at a rate of $0.244 per gallon unless a reduced rate applies as described in paragraph (c) of this section. "Kerosene" has the meaning given to the term by § 48.4081–1(b).

(c) *Reduced rates of tax on kerosene used in aviation*—(1) *In general*—(i) For kerosene removed directly from a terminal into the fuel tank of an aircraft for use in noncommercial aviation, the rate of tax is $0.219 per gallon. See section 4081(a)(2)(C)(ii), as added by SAFETEA. Except as provided in paragraph (c)(1)(ii) or (iii) of this section, a tax rate of $0.219 per gallon also applies if kerosene is removed into any aircraft from a refueler truck, tanker, or tank wagon that is loaded with kerosene from a terminal that is located within an airport (without regard to whether the terminal is located within a secured area of an airport) and the other requirements of § 4081(a)(3)(A) and (B) are met. Section 4081(a)(3). The other requirements of § 4081(a)(3)(A) and (B) relate to the characteristics of the refueler trucks, tankers, and tank wagons, the fueling operations at the terminal, and the restriction against loading kerosene into vehicles registered for highway use at such terminal.

(ii) For kerosene removed directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax is $0.044 per gallon and the rules relating to refueler trucks, tankers, and tank wagons at secured airport terminals were not affected by the

SAFETEA changes. Thus, in the case of kerosene removed into an aircraft from a refueler truck, tanker or tank wagon, the $0.044 rate applies only if the truck, tanker, or tank wagon is loaded at a terminal located in a secured area of the airport. See § 4(d) of Notice 2005–4.

(iii) For kerosene removed directly into the fuel tank of an aircraft for a use exempt from tax under § 4041(c) (such as use in foreign trade or in an aircraft for the exclusive use of a state or local government), including removals from a qualifying refueler truck, tanker, or tank wagon loaded at a terminal located within a secured area of an airport, the rate of tax is $0.001 per gallon.

(2) *Secured airport terminals*. The list of qualifying airport terminals located within secured areas of airports identified in § 4(d)(2)(ii) of Notice 2005–4 is modified by adding the following airport terminals: Los Angeles International Airport, T–95–CA–4812; and Federal Express Corporation Memphis Airport, T–62–TN–2220.

(3) *Exigent circumstances*—(i) Section 4081(a)(3)(A)(iv) provides that, except in the case of exigent circumstances identified by the Secretary in regulations, the rule treating refueler trucks, tankers, and tank wagons as part of a terminal located within an airport applies only if no vehicle registered for highway use is loaded with kerosene at the terminal. If, in such exigent circumstances, a highway vehicle is loaded with kerosene at a terminal located within an airport, tax is imposed on the removal at a rate of $0.244 per gallon.

(ii) This notice identifies as an exigent circumstance the refueling of the off-airport storage tanks used exclusively by the governmental public safety agencies in Oahu. Accordingly, kerosene may be removed from the terminal located within Honolulu International Airport, T–91–HI–4570, into a vehicle registered for highway use for this purpose only without affecting the treatment of refueler trucks, tankers, and tank wagons as part of the terminal.

(iii) This notice identifies as an exigent circumstance the fuel shortages caused by Hurricane Katrina and its aftermath. Accordingly, kerosene may be removed at the following terminals into vehicles registered for highway use without affecting the treatment of refueler trucks, tankers, and tank wagons as part of the terminal. Effective September 2, 2005 and remaining in effect through November 1, 2005: Louis Armstrong New Orleans International Airport, T–72–LA–2356; Memphis International Airport, T–62–TN–2212; Dallas Love Field Airport, T–75–TX–2663; Dallas Fort Worth International Airport, T–75–TX–2673; and George Bush Intercontinental Airport, Houston, T–76–TX–2818. See IR–2005–95 (September 7, 2005). Effective October 1, 2005 and remaining in effect through November 1, 2005: Federal Express Corporation Memphis Airport, T–62–TN–2220.

(d) *Full rate buyers*. The registration requirement for full rate buyers in sections 4(f)(3) and (4) of Notice 2005–4 is not applicable after September 30, 2005.

(e) *Claims for kerosene used in commercial aviation (other than foreign trade)*—(1) Before October 1, 2005, § 6427(l)(4)(B) provided that if an ultimate purchaser of aviation-grade kerosene used for a nontaxable use waived its right to an income tax credit or payment, in the form and manner prescribed by the Secretary, and assigned such right to the registered ultimate vendor, then the ultimate vendor, and not the ultimate purchaser, could claim a payment or income tax credit. Section 4(h) of Notice 2005–4 provides rules regarding the conditions to allowance of a credit or payment, the form of the claim, the content of the claim, and a model waiver. Before October 1, 2005, these rules were applicable with respect to aviation-grade kerosene used in domestic commercial aviation and aviation-grade kerosene used in foreign trade, for export, for use in certain helicopter and fixed-wing air ambulance uses, for the exclusive use of a nonprofit educational organization, for use in an aircraft owned by an aircraft museum, for use in a military aircraft, and for other nontaxable uses such as use as heating oil.

(2) Effective October 1, 2005, the rules in § 4(h) of Notice 2005–4 are applicable only with respect to kerosene used in commercial aviation (as defined in § 4083(b)) and, even in the case of commercial aviation, the rules do not apply to kerosene used as supplies for vessels or aircraft within the meaning of § 4221(d)(3). Thus, after September 30, 2005, an aircraft operator may continue to claim a credit or payment for kerosene used in domestic commercial aviation or may waive such right to the ultimate vendor, but the operator may not claim a credit or payment under § 6427(l)(4)(B) for fuel used in foreign trade or other nontaxable uses.

(3) If an aircraft operator buys kerosene partly for use in commercial aviation and partly for use in noncommercial aviation, the following rules apply:

(i) The operator may identify, either at the time of the purchase or after the kerosene has been used, the amount of kerosene that will be (or has been) used in commercial aviation and either claim or waive the right to any credit or payment under paragraph (e)(2) of this notice with respect to such kerosene. The credit or payment related to the amount that will be (or has been) used in noncommercial aviation may be claimed under paragraph (f) of this section (relating to use in noncommercial aviation).

(ii) Alternatively, if the operator does not identify the amount of kerosene that will be (or has been) used in commercial aviation, the operator may provide a certificate under paragraph (f) of this section with respect to the kerosene (including the portion of the kerosene that will (or may) be used in commercial aviation). In such a case, "for a nonexempt use in noncommercial aviation" should be checked on the certificate. To the extent the kerosene purchased under the certificate is used in commercial aviation, the certificate will be treated, in the case of kerosene taxed at a rate of $0.244 per gallon, as a waiver of the right to claim a credit or payment under paragraph (e)(2) of this section with respect to $0.025 of the tax imposed on such kerosene. The operator may claim the remainder of the income tax credit or payment ($0.175 per gallon) with respect to such kerosene but may not waive the right to the credit or payment after providing a certificate with respect to the kerosene under paragraph (f) of this section.

(f) *Claims for kerosene used in noncommercial aviation and foreign trade*—(1) *In general*. Under § 6427(l)(5)(B), as added by SAFETEA, only the registered ultimate vendor may claim a credit or payment for kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. For claims related to kerosene used by states and local governments in noncommercial aviation,

see § 4 of this notice. Noncommercial aviation means any use of an aircraft not described in § 4083(b). An ultimate vendor is a person that sells kerosene to an ultimate purchaser for use in noncommercial aviation or foreign trade.

(2) *Conditions to allowance of credit or payment*. A claim for an income tax credit or payment with respect to kerosene is allowable under § 6427(l)(5)(B) if—

(i) Tax was imposed on the kerosene under § 4081;

(ii) The claimant sold the kerosene to the ultimate purchaser for use in noncommercial aviation or foreign trade;

(iii) The claimant is a registered ultimate vendor;

(iv) The ultimate purchaser has provided a Certificate of Ultimate Purchaser of Kerosene for Use in Foreign Trade or Use (Other than by State or Local Government) in Noncommercial Aviation to the ultimate vendor as provided in paragraph (f)(4) of this section; and

(v) The claimant has filed a timely claim for a credit or payment and the claim contains all the information required in paragraph (f)(3) of this section.

(3) *Form of claim; content of claim*. Rules similar to the rules in § 4(h)(4) and (5) of Notice 2005–4 are applicable to claims for credit or payment under § 6427(l)(5)(B), except that the claimant is not required to satisfy § 4(h)(5)(iv) of Notice 2005–4 (relating to possession of a waiver by the ultimate purchaser).

(4) *Certificate*—(i) *In general*. The certificate to be provided to the ultimate vendor for purposes of § 6427(l)(5)(B) consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate in paragraph (f)(4)(ii) of this section and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The claimant must have the certificate at the time the credit or payment is claimed under § 6427(l)(5)(B). The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(A) The date one year after the effective date of the certificate.

(B) The date a new certificate is provided.

(ii) *Model certificate*.

CERTIFICATE OF ULTIMATE PURCHASER OF KEROSENE FOR USE IN FOREIGN TRADE OR USE (OTHER THAN BY STATE OR LOCAL GOVERNMENT) IN NONCOMMERCIAL AVIATION

(To support vendor's claim for a credit or payment under § 6427(l)(5)(B) of the Internal Revenue Code.)

_____

_____

_____

Name, address, and employer identification number of ultimate vendor

The undersigned ultimate purchaser ("Buyer") hereby certifies the following under the penalties of perjury:

The kerosene to which this certificate relates is purchased (check one): _____ for use on a farm for farming purposes; _____ for use in foreign trade (reciprocal benefits required for foreign registered airlines); _____ for use in certain helicopter and fixed-wing air ambulance uses; _____ for the exclusive use of a nonprofit educational organization; _____ for use in an aircraft owned by an aircraft museum; _____ for use in military aircraft; or _____ for a nonexempt use in noncommercial aviation.

This certificate applies to the following (complete as applicable):

_____ This is a single purchase certificate:

1. _____ Invoice or delivery ticket number

2. _____ Number of gallons

_____ This is a certificate covering all purchases under a specified account or order number:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account number _____

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the kerosene to which this certificate relates for a use other than the nontaxable use stated above, Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

Signature and date signed

(iii) *Transition rules*. A Waiver for Use by Ultimate Purchasers of Aviation-Grade Kerosene Used in Nontaxable Uses executed before October 1, 2005, as described in § 4(h)(6) of Notice 2005–4, will be treated as a certificate described in this section, and a new certificate will not have to be given until such waiver expires. In addition, for kerosene sold for a nonexempt use in noncommercial aviation, the business records used to document sales occurring before November 1, 2005, will be treated as a certificate described in this section (unless the records clearly establish that the kerosene will be used on the highway).

(5) *Registration*. Claims under this paragraph (f) may be made only by a registered ultimate vendor. Registration rules similar to those in § 4(h)(7) of Notice 2005–4 are applicable to ultimate vendors of kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. A person that is registered under § 4101 under Activity Letter "UA" (Ultimate vendor that sells aviation-grade kerosene for a nontaxable use or any use in commercial aviation) is treated as registered for purposes of claims filed with respect to kerosene used in foreign trade or used (other than by a state or local government) in noncommercial aviation. In addition, for claims relating to sales before January 1, 2006, for a nonexempt use in noncommercial aviation, an ultimate vendor that has obtained a valid TIN will be treated as registered.

(g) *Claims for kerosene used by states and local governments*. For rules relating to claims by registered ultimate vendors of kerosene used in aviation by state and local governments, see § 4 of this notice and § 48.6427–9.

(h) *Effective date*. Except as otherwise noted, this section is effective October 1, 2005, and applies to kerosene on which tax is imposed after September 30, 2005. A person making a claim for credit or payment under paragraph (e) or (f) of this section may use any reasonable method and assumptions to establish that tax was imposed after September 30, 2005, on the kerosene to which the claim relates.

Section 4. TAXABLE FUEL; CLAIMS BY CREDIT CARD ISSUERS

(a) *Overview*. This section describes the changes made by § 11163 of SAFETEA under which a person extending credit on a credit card (credit card issuer) may claim a credit, refund, or payment with respect to taxable fuel sold to a state or local government for its exclusive use or to a nonprofit educational organization for its exclusive use (exempt users). Section 7 of Notice 2005–4 is modified in accordance with these changes, as explained in this section.

(b) *Identity of the claimant*—(1) *Gasoline*—(i) Section 6416(b)(2) generally provides that the tax paid on gasoline is deemed to be an overpayment if the gasoline was sold to an exempt user. Section 6402(a) generally allows credits or refunds of overpayments to the person that made the overpayment (that is, the person that paid the tax to the government).

(ii) If gasoline is purchased with a credit card issued to an exempt user, § 6416(a)(4)(B) provides that the credit card issuer is treated as the person that paid the tax if prescribed conditions are met. Among other conditions, the credit card issuer must be registered by the Service.

(iii) If gasoline is purchased by an exempt user without the use of a credit card, § 6416(a)(4)(A) provides that the ultimate vendor of the gasoline is treated as the person (and the only person) that paid the tax, but only if the vendor is registered by the Service.

(iv) Guidance for claims made by ultimate vendors under § 6416(a)(4) and (b)(2) is set forth in § 7 of Notice 2005–4. The guidance set forth in § 7(a)(1)(ii) of Notice 2005–4 and § 2 of Notice 2005–24 (relating to oil company credit cards) does not apply to sales after December 31, 2005.

(v) If the conditions of § 6416(a)(4) are not met, a claim under § 6416 may not be made by the person that actually paid the tax to the government. Instead, the exempt user may make a claim under § 6421(c). For any particular transaction, a claim may not be made under § 6421(c) if the tax is credited or refunded under § 6416 to the credit card issuer or the ultimate vendor.

(2) *Diesel fuel and kerosene*—(i) If taxed diesel fuel or kerosene is purchased with a credit card issued to a state, § 6427(l)(6)(D) provides that the credit card issuer may, under prescribed conditions, claim a credit or payment related to the tax. Among other conditions, the credit card issuer must be registered by the Service.

(ii) If diesel fuel or kerosene is purchased by a state without the use of a credit card, § 6427(l)(6)(C) provides that the ultimate vendor of the diesel fuel or kerosene may claim a credit or payment related to the tax, but only if the vendor is registered by the Service and other prescribed con-

ditions are met. Under § 6427(l)(6)(A), the state may not claim a credit or payment related to the tax paid on diesel fuel or kerosene purchased without the use of a credit card. Claims made by ultimate vendors under § 6427(l)(6)(A) are described in § 48.6427–9.

(iii) If diesel fuel or kerosene is purchased with a credit card issued to a state, but the credit card issuer is not registered by the Service (or does not meet certain other conditions), the credit card issuer must collect the amount of the tax and the state is the proper claimant under § 6427(l)(6)(D).

(c) *Definitions*.

State has the meaning given to the term by § 48.4081–1(b).

Nonprofit educational organization has the meaning given to the term in § 4221(d)(5).

(d) *Registration*—(1) *In general*. Application for registration is made on Form 637, *Application for Registration (For Certain Excise Tax Activities)*, in accordance with the instructions for that form. Form 637 will be revised to include an activity letter for credit card issuers.

(2) *Requirements*. The Service will register an applicant as a credit card issuer only if the Service—

(i) Determines that the applicant is engaged in business as a credit card issuer and in that business extends credit to state and local governments or nonprofit educational organizations by means of a credit card used for the purchase of taxable fuel; and

(ii) Is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person (as defined in § 48.4101–1(b)(5)).

(3) *Separate entity not required*. Section 48.4101–1(a)(4) provides that each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. The Service will not require a credit card issuer to form a separate business entity for the issuance of credit cards to qualify for registration under § 4101 or to claim a refund, credit, or payment under § 6416(a)(4)(B) or 6427(l)(6)(D).

(4) *Current UV and UP registrants*. A person that is registered under § 4101 under Activity Letter "UV" or "UP" is treated as registered for purposes of claims under this section related to the tax on fuels that are purchased without the use of a credit card and will not have to be reregistered unless notified to do so by the Service.

(e) *Conditions to allowance of a credit, refund or payment*. A claim for credit, refund, or payment is allowable under § 6416(a)(4)(B) or § 6427(l)(6)(D) if—

(1) The claimant is a registered credit card issuer;

(2) The claim relates to the tax on taxable fuel sold to a state for its exclusive use or gasoline sold to a nonprofit educational organization for its exclusive use;

(3) The fuel was purchased with a credit card issued by the claimant;

(4) Tax was imposed on the fuel under § 4041 or 4081; and

(5) The claimant has filed a timely claim for credit, refund, or payment and the claim contains all of the information required in paragraph (g) of this section.

(f) *Form of claim*—(1) *Gasoline claims*. For taxes paid on gasoline, claims for credit or refund under § 6416(a)(4) are made on Form 8849, *Claim for Refund of Excise Taxes*.

(2) *Diesel fuel or kerosene claims*. For taxes imposed on diesel fuel or kerosene, claims for payment under § 6427(l)(6) are made on Form 8849, *Claim for Refund of Excise Taxes*, and claims for income tax credit under §§ 34 and 6427(l)(6) are made on Form 4136, *Credit for Federal Tax Paid on Fuels*.

(g) *Content of claim*. Each claim under § 6416(a)(4)(B) or § 6427(l)(6)(D) for a credit, refund, or payment must contain the following information with respect to the gasoline, diesel fuel or kerosene covered by the claim:

(1) The total number of gallons.

(2) The claimant's registration number.

(3) A statement that the claimant—

(i) Has not collected the amount of the tax from the person who purchased the taxable fuel; or

(ii) Has obtained written consent from the ultimate purchaser to the allowance of the credit or refund.

(4) A statement that the claimant—

(i) Has repaid or agreed to repay the amount of the tax to the ultimate vendor;

(ii) Has obtained the written consent of the ultimate vendor to the allowance of the credit or refund; or

(iii) Has otherwise made arrangements which directly or indirectly provide the ultimate vendor with reimbursement of such tax.

(5) A statement that the claimant has in its possession an unexpired certificate described in paragraph (h) of this section and has no reason to believe any information in the certificate is false.

(h) *Certificate*—(1) *In general*. The certificate to be provided to the credit card issuer consists of a statement that is signed under penalties of perjury by a person with authority to bind the state or nonprofit educational organization that purchased the fuel with the issuer's credit card, is in substantially the same form as the model certificate in paragraph (h)(2) of this section, and contains all of the information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(i) The date two years after the effective date of the certificate.

(ii) The date a new certificate is provided.

(2) *Model certificate*.

CERTIFICATE OF BUYER OF TAXABLE FUEL FOR USE BY A STATE OR NONPROFIT EDUCATIONAL ORGANIZATION

(To support credit card issuer's claim for a credit, refund, or payment under § 6416(a)(4)(B) or § 6427(l)(6)(D) of the Internal Revenue Code.)

_____

_____

_____

Name, address, and employer identification number of credit card issuer.

The undersigned ultimate purchaser ("Buyer") hereby certifies the following under the penalties of perjury (check one):

_____ Buyer will use the taxable fuel to which this certificate relates for the exclusive use of a state; or

_____ Buyer will use the gasoline to which this certificate relates for the exclusive use of a nonprofit educational organization.

This certificate applies to all purchases made with the credit card identified below during the period specified:

1. Buyer's account number _____.

2. Effective date of certificate _____.

3. Expiration date of certificate _____ (period not to exceed 2 years after the effective date).

Buyer will provide a new certificate to the credit card issuer if any information in this certificate changes.

Buyer understands that by signing this certificate, Buyer gives up its right to claim a credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

Buyer acknowledges that it has not and will not claim any credit or payment for the taxable fuel purchased with the credit card to which this certificate relates.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(3) *Current certificates held by credit card issuers.* A certificate also meets the conditions of this paragraph (h) if it is similar to the certificate described in paragraph (h)(2) of this section and was obtained by the credit card issuer for purposes of processing a claim under § 6416 or 6427 as in effect before January 1, 2006. These certificates expire on the earlier of January 1, 2007, or the expiration date on the certificate.

(i) *Effective date.* This section is effective January 1, 2006, and applies to claims relating to fuel sold to its ultimate purchaser on or after that date.

Section 5. DIESEL-WATER FUEL EMULSIONS

This section describes the changes made by § 1343 of the Energy Act regarding diesel-water fuel emulsion. Effective January 1, 2006, the rate of tax imposed by § 4081 is reduced for diesel-water fuel emulsion that meets the requirements described in § 4081(a)(2)(D). These requirements include the registration under § 4101 of the person liable for tax on the removal or sale of the diesel-water fuel emulsion. Section 6427(m) provides that a credit or payment is allowable if a person uses diesel fuel taxed at the full rate to produce diesel-water fuel emulsion

described in § 4081(a)(2)(D) that is sold or used in such person's trade or business. The amount of the credit is equal to the excess of the tax imposed on the diesel fuel in the diesel-water fuel emulsion over the amount of tax that would have been imposed on a taxable removal of the diesel-water fuel emulsion. Under this notice, each person that is claiming a credit or payment for a diesel-water fuel emulsion also must be registered by the Service. A person that is registered under Activity Letter "S" or "M" will be treated as being registered for purposes of applying §§ 4081(a)(2)(D) and 6427(m) to any removal, sale, or use occurring before January 1, 2007.

Section 6. DIESEL FUEL AND KEROSENE; DYE INJECTION

(a) *Background*. As amended by AJCA, § 4082(a) generally provides that the exemption for dyed diesel fuel and dyed kerosene will not apply unless, among other conditions, the fuel is indelibly dyed "by mechanical injection" in accordance with regulations that the Secretary shall prescribe. This requirement for mechanical injection is effective on the 180th day after the date on which these regulations are issued. Temporary regulations implementing this requirement were issued on April 26, 2005 (T.D. 9199, 2005–19 I.R.B 1003 [70 FR 21332]). Thus, the effective date of the temporary regulations is October 24, 2005.

(b) *Transition rules*. Treasury and the Service are concerned that many taxpayers, particularly those in areas affected by Hurricanes Katrina and Rita, may not be able to comply with the specific requirements of the temporary regulations by October 24. In addition, some of these requirements may be modified in final regulations. Accordingly, the following transition rules will apply between October 24, 2005, and the date that is 180 days after the date of publication of final regulations in the Federal Register:

(1)(i) Any means of dyeing by mechanical injection will be deemed to meet the "mechanical injection" requirements of § 4082(a) if the dyeing system includes measures to resist tampering that are consistent with customary business security practices. Thus, mechanical injection systems at a terminal are not required to meet the specific requirements of § 48.4082–1T(d) and no penalty will be imposed under § 6715A(a)(2) for a failure to meet those specific requirements.

(ii) In the case of a malfunction of a system described in section (b)(1)(i) of this section, fuel dyed by manual dyeing will be deemed to meet the requirements of § 4082(a) if the interval between the first occurrence of manual dyeing and the last does not exceed 72 hours (excluding any Saturday, Sunday, or legal holiday that is within the interval) and the facility operator keeps adequate records describing the circumstances surrounding the malfunction. The Service may withdraw an operator's right to dye by manual dyeing if the Service cannot verify the accuracy of such dyeing.

(2) A mixture containing diesel fuel or kerosene will be treated as being dyed by mechanical injection if—

(i) The mixture consists of at least 80 percent diesel fuel or kerosene and the remaining portion is a liquid, such as biodiesel, ("other liquid") that is not diesel fuel or kerosene;

(ii) The diesel fuel or kerosene in the mixture was dyed by mechanical injection;

(iii) The diesel fuel or kerosene and the other liquid are combined at a facility that is not a terminal; and

(iv) The mixture meets the specifications of § 48.4082–1(b) (relating to dye type and concentration) when it is removed from the facility where the diesel fuel or kerosene and the other liquid are combined.

Section 7. EFFECT ON OTHER DOCUMENTS

Notice 2005–4 is modified as described in this notice.

Section 8. PAPERWORK REDUCTION ACT

The Office of Management and Budget has waived application of the Paperwork Reduction Act with respect to the collections of information contained in this notice.

Section 9. DRAFTING INFORMATION

The principal authors of this notice are Deborah Karet, Taylor Cortright, Susan Athy, and William Blodgett of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Ms. Karet (concerning LUST and kerosene for use in aviation), Ms. Cortright (concerning credit cards), or Ms. Athy (concerning diesel water fuel emulsions) at (202) 622–3130. Mr. Blodgett (concerning dye injection) can be reached at (202) 622–3090. These are not toll-free calls.

Additional Relief for Certain Employee Benefit Plans as a Result of Hurricane Katrina

Notice 2005–84

I. PURPOSE

The Internal Revenue Service, the Department of Labor's Employee Benefits Security Administration ("EBSA") and the Pension Benefit Guaranty Corporation ("PBGC") are providing relief in connection with certain employee benefit plans because of damage caused by Hurricane Katrina ("Katrina"). The relief provided by this notice is in addition to the relief already provided by the Service, the EBSA and the PBGC to victims of Katrina. This relief is provided in accordance with section 403(b) of the Katrina Emergency Tax Relief Act of 2005 ("KETRA"), Pub. L. No. 109–73.

II. BACKGROUND

Section 412(a) of the Internal Revenue Code ("Code") and § 302(a) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93–406 ("ERISA") provide that, in order for a plan to meet the minimum funding standards of the Code and ERISA, the plan must not have an accumulated funding deficiency as of the end of each plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any contributions for a plan year made by an employer by the end of the 8½-month period following the end of such plan year are deemed to have been made on the last day of the year.

Section 412(d) of the Code and § 303 of ERISA provide for waivers of the minimum funding requirements in the event of temporary substantial business hardship. In order for a plan other than a multiemployer plan to receive such a waiver, § 412(d)(4) of the Code and § 303(d)(1) of ERISA provide that an application for such a waiver must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Thus, for example, in order for a plan to receive a waiver of the minimum funding requirements for the plan year ending on June 30, 2005, the sponsor of the plan must have submitted an application by September 15, 2005.

Section 412(m)(1) of the Code and § 302(e)(1) of ERISA require that, with respect to certain plans with a funded current liability percentage of less than 100 percent, a higher rate of interest be charged on any unpaid required quarterly installments. Section 412(m)(5) of the Code and § 302(e)(5) of ERISA increase the required quarterly installments to the amount needed to prevent a liquidity shortfall (as defined in those sections). For a plan with a calendar-year plan year, the due dates for the required installments for the 2005 calendar year are April 15, 2005, July 15, 2005, October 15, 2005, and January 15, 2006.

Section 412(n)(1) of the Code and § 302(f)(1) of ERISA provide that, with respect to certain plans with a funded current liability percentage of less than 100 percent, if the required installments or any other payment required under those sections are not made to the plan before the due date for such installment or other payment, and if the aggregate unpaid balance of such installments or other payments exceeds $1,000,000, then there shall be a lien in favor of the plan. The lien may be perfected by the PBGC.

Section 7508A(b) of the Code provides that, in the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster or a terroristic or military action, the Secretary of the Treasury may prescribe a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed. No plan shall be treated as failing to be operated in accordance with its terms solely because the plan disregards any period by reason of such relief. Parallel provisions are in Titles I and IV of ERISA.

Under the PBGC's premium regulations, contributions may be taken into account for determining a plan's unfunded vested benefits for a premium payment year or a plan's entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year if the contributions (1) are for a plan year before the premium payment year and (2) are made on or before the earlier of (a) the due date for payment of the variable-rate premium or (b) the date the variable-rate premium is paid (29 CFR §§ 4006.4(b)(2)(iv) and 4006.5(a)(5)). In addition, there are Title IV reporting and disclosure requirements arising from certain late contributions (*e.g.*, 29 CFR § 4043.25, 29 CFR § 4011.10(b)(6)).

Section 403(b) of KETRA provides that, in the case of any taxpayer determined to be affected by the Presidentially declared disaster relating to Hurricane Katrina, any relief provided under § 7508A of the Code is extended to a period ending not earlier than February 28, 2006. In Notice 2005–60, 2005–39 I.R.B. 606, which was issued on September 2, 2005, the date for performing certain acts was extended to October 31, 2005.

III. RELIEF

As a result of the enactment of KETRA on September 23, 2005, the October 31, 2005, date described in Notice 2005–60 for compliance with specified Code requirements was extended to February 28, 2006. This notice provides corresponding extensions to February 28, 2006, for compliance with the ERISA requirements for which extensions were provided under Notice 2005–60. Accordingly, for any plan that is affected by Katrina (an "Affected Plan"), if the date described in § 412(c)(10) or 412(m) of the Code and § 302(c)(10) or 302(e) of ERISA for making contributions falls within the period beginning on August 29, 2005, and ending on February 27, 2006, the date such contributions must be made is postponed to February 28, 2006. Additionally, if the date described in § 412(d)(4) of the Code and § 303(d)(1) of ERISA for applying for a waiver for an Affected Plan falls within the period beginning on August 29, 2005, and ending on February 27, 2006, then the date such waiver must be applied for is postponed to February 28, 2006.

The definition of an Affected Plan for purposes of this notice is the same as for purposes of Notice 2005–60. Thus, a plan is an Affected Plan only if any of the following were located at the time of Katrina in any of the parishes or counties declared by the President to be eligible for individual assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Pub. L. No. 93–288: the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of § 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of § 414(b) and (c)); the office of the plan or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of the enrolled actuary or other advisor that had been retained by the plan or the employer at the time of Katrina to determine the funding requirements for which the due date falls between the period beginning on August 29, 2005, and ending on February 27, 2006. For purposes of the preceding sentence, the term "office" includes only the worksite of those individuals, and the location of any records, necessary to determine the plan's funding requirements for the relevant period.

The following rule applies under Title IV of ERISA for purposes of determining a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable-rate premium for a premium payment year. For any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions for any plan year before the premium payment year may be taken into account if they are made on or before the earlier of (1) the extended § 412(c)(10)/§ 302(c)(10) date under this notice or (2) the date of the plan's variable-rate premium filing (or, if applicable, amended variable-rate premium filing) for the premium payment year. In addition,

for any plan for which this notice extends a date described in § 412(c)(10) of the Code and § 302(c)(10) of ERISA, contributions are treated as timely for purposes of any Title IV reporting and disclosure requirement if they are made on or before the extended § 412(c)(10)/§ 302(c)(10) date under this notice.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2005–60 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500, between the hours of 8:30 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free number). Mr. Rubin may be reached at (202) 283–9588 (not a toll-free number).

Social Security Contribution and Benefit Base for 2006

Notice 2005–85

Under authority contained in the Social Security Act ("the Act"), the Commissioner, Social Security Administration, has determined and announced (70 F.R. 61677, dated October 25, 2005) that the contribution and benefit base for remuneration paid in 2006, and self-employment income earned in taxable years beginning in 2006 is $94,200.

"Old-Law" Contribution and Benefit Base

General

The "old-law" contribution and benefit base for 2006 is $69,900. This is the base that would have been effective under the Act without the enactment of 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 Social Security 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.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2006, this threshold is $1,500. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2006 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2004 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2004 ($35,648.55) to that for 1993 ($23,132.67) produces the amount of $1,541.05. We then round this amount to $1,500. Accordingly, the domestic employee coverage threshold amount is $1,500 for 2006.

(Filed by the Office of the Federal Register on October 24, 2005, 8:45 a.m., and published in the issue of the Federal Register for October 25, 2005, 70 F.R. 61677)

Part IV. Items of General Interest

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2005-76

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the 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.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 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 or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Reagan, John	Cortland, NY	CPA	Indefinite from June 24, 2005
Harris, Alexander W.	Chicago, IL	Attorney	July 1, 2005 to December 31, 2005
Belush, Glen J.	Monroe, CT	CPA	Indefinite from July 15, 2005
Lamont, Alice	Atlanta, GA	CPA	Indefinite from July 15, 2005
Morse, Kyle K.	Bedford, TX	CPA	Indefinite from July 22, 2005

Name	Address	Designation	Date of Suspension
Duggan Jr., Joseph A.	Jacksonville, OR	Enrolled Agent	Indefinite from August 1, 2005
Harper, Ivan	Brooklyn, NY	CPA	Indefinite from August 15, 2005
Bandy, Robert M.	Tyler, TX	Attorney	Indefinite from August 24, 2005
Peterson, Stanley	Springfield, PA	CPA	Indefinite from August 26, 2005
Shorten, Judy	Vacaville, CA	Enrolled Agent	Indefinite from September 1, 2005
Watkins, David E.	Shelbyville, IN	Enrolled Agent	Indefinite from September 1, 2005

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, 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 certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Leong, Thomas S.	Honolulu, HI	Attorney	Indefinite from July 11, 2005
Clark, Mark S.	Tucson, AZ	Attorney	Indefinite from July 11, 2005
Hudspeth, George E.	St. Louis, MO	Attorney	Indefinite from July 11, 2005
Dodd, Alan F.	Westborough, MA	Attorney	Indefinite from July 11, 2005
Crews, James F.	Tipton, MO	Attorney	Indefinite from July 11, 2005

Name	Address	Designation	Date of Suspension
Luparella, Joseph	Hoboken, NJ	CPA	Indefinite from July 13, 2005
Deutchman, Murray	Barnesville, MD	Attorney	Indefinite from July 13, 2005
Cozier, Clifford G.	Englewood, CO	Attorney	Indefinite from July 13, 2005
Segall, Steven M.	Denver, CO	Attorney	Indefinite from July 14, 2005
Richardson, Bruce	Reisterstown, MD	Attorney	Indefinite from July 15, 2005
Parsley, Jeffrey A.	Englewood, CO	Attorney	Indefinite from July 15, 2005
Wyrick, Richard L.	Hanford, CA	Attorney	Indefinite from July 15, 2005
Coates, Marsden S.	Baltimore, MD	Attorney	Indefinite from July 15, 2005
McCampbell, Daniel	Chico, CA	Attorney	Indefinite from July 15, 2005
Ralston, Ronald G.	Fairmount, GA	CPA	Indefinite from July 18, 2005
Friemann, Robert F.	Huntington Bay, NY	CPA	Indefinite from July 18, 2005
Friedman, Milton G.	Ft. Lauderdale, FL	CPA	July 25, 2005 to January 24, 2007
Acheampong, Robert	Columbus, OH	CPA	Indefinite from July 26, 2005
Elias, Robert F.	Canfield, OH	Attorney	Indefinite from July 27, 2005
Stover, Kathy A.	Topeka, KS	Attorney	Indefinite from July 29, 2005

Name	Address	Designation	Date of Suspension
Leffler, Fredric D.	Columbia, MD	Attorney	Indefinite from July 29, 2005
Harmon, Anthony N.	Batavia, IL	Attorney	Indefinite from July 29, 2005
Hames, David H.	Dallas, TX	CPA	Indefinite from August 2, 2005
Au, Ronald G.S.	Honolulu, HI	Attorney	Indefinite from August 9, 2005
Tilton Jr., George H.	Denver, CO	Attorney	Indefinite from August 12, 2005
Spalsbury Jr., Clark	Estes Park, CO	Attorney	Indefinite from August 12, 2005
Brockman, Louis R.	Dallas, TX	CPA	Indefinite from August 12, 2005
Hill, Richard B.	Kernersville, NC	CPA	Indefinite from August 12, 2005
Rosenberg, Jeffrey P.	Morgan Hill, CA	Attorney	Indefinite from August 12, 2005
Link, Robert A.	Waupaca, WI	CPA	Indefinite from August 15, 2005
Halcrow, David S.	Taft, CA	CPA	Indefinite from September 9, 2005
Lieber, Daniel M.	Edna, MO	Attorney	Indefinite from September 9, 2005
Kirchoff, William W.	Jefferson City, MO	Attorney	Indefinite from September 9, 2005
Lauby, Gregory C.	Lexington, NE	Attorney	Indefinite from September 9, 2005
Early, Michael J.	Newburyport, MA	Attorney	Indefinite from September 9, 2005
Mickiewicz, Robert	Dorchester, MA	Attorney	Indefinite from September 9, 2005

Name	Address	Designation	Date of Suspension
Conant, Jon F.	Gloucester, MA	Attorney	Indefinite from September 9, 2005
Pennington, Jill	Chevy Chase, MD	Attorney	Indefinite from September 9, 2005
Randolph, Robert E.	Denham Springs, LA	Attorney	Indefinite from September 9, 2005
Carillo, Donald	Chicago, IL	Attorney	Indefinite from September 9, 2005
Sloan Jr., Dewey	Sioux City, IA	Attorney	Indefinite from September 9, 2005
Vogel, Garrett	Dallas, TX	CPA	Indefinite from September 13, 2005
Becker, Joseph	Houston, TX	CPA	Indefinite from September 13, 2005
Winick, Robert M.	Sarasota, FL	Attorney	Indefinite from September 19, 2005
Hunsaker Jr., William	Golden, CO	Attorney	Indefinite from September 19, 2005
Wheatley, Jay D.	Boca Raton, FL	Attorney	Indefinite from September 19, 2005
Clark, Carroll A.	Mesa, AZ	Attorney	Indefinite from September 19, 2005

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Sobel, Herbert L.	Elkins Park, PA	CPA	May 4, 2005 to February 3, 2007

Name	Address	Designation	Effective Date
Rubesh, Leland	Gillette, WY	CPA	August 1, 2005 to January 31, 2007
Gregory, Carolyn S.	Cathedral City, CA	Enrolled Agent	August 12, 2005 to November 11, 2007

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Pugno, Thomas	Rockwood, MI	Enrolled Agent	June 29, 2005
Barrett, Richard	Tyler, TX	CPA	August 1, 2005
Kelly, Michael G.	Odessa, TX	Attorney	August 1, 2005
Volstad, Paul S.	Plymouth, MN	CPA	August 18, 2005
Quackenbush, Gary A.	San Diego, CA	Attorney	September 2, 2005
Flores, Fred A.	Laredo, TX	CPA	September 2, 2005
Velasquez, Felix	Laredo, TX	CPA	September 2, 2005

Settlement Initiative

Announcement 2005–80

Section 1. Overview

This announcement provides a settlement initiative under which taxpayers and the Internal Revenue Service (Service) may resolve the tax treatment of certain tax transactions. Section 2 describes who is eligible to participate. Section 3 describes eligible transactions. Section 4 describes the settlement terms. Section 5 sets out the settlement procedures. Taxpayers have until January 23, 2006, to notify the Service of their intent to participate in this settlement initiative.

Section 2. Eligible Taxpayers

A person that claimed a federal tax benefit from a transaction described in section 3, including a person that filed an amended return claiming a federal tax benefit from such a transaction, may participate in this initiative unless the person is an ineligible person as determined in this section. However, a person described in paragraph 1, 2, or 3 that would like to settle under this initiative may file an Election that identifies each reason the person is an ineligible person, and request that the Service permit settlement under this initiative.

1. *Promoters*. A person who (i) organized, managed or sold the transaction; (ii) participated in the organization, management, or sale of the transaction; or (iii) received fees in connection with the organization, management, or sale of the transaction is an ineligible person.

2. *Persons related to promoters*. A partner in a partnership that is described in paragraph 1 of this section, a five percent or more shareholder of a corporation that is described in paragraph 1, or a person otherwise related to a person described in paragraph 1 within the meaning of § 267(b) (other than § 267(b)(1)) or § 707(b) is an ineligible person.

3. *TEFRA partners of promoters*. A partner in a disqualified entity in which (a) an ineligible partner claimed more than two percent of the improper tax benefits from the transaction at issue, or (b) ineligible partners in the aggregate claimed five percent or more of the improper tax benefits from the transaction, is an ineligible person. An "ineligible partner" is a person who is an ineligible person other than by reason of this paragraph 3. A "disqualified entity" is an entity that (i) is subject to the unified partnership audit and litigation provisions of §§ 6221 through 6234, as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA partnership), (ii) engaged in a transaction described in section 3 of this announcement, and (iii) includes one or more ineligible partners. However, a partner who is

not an ineligible partner may settle if the ineligible partners that cause the TEFRA partnership to be described in this paragraph 3 execute a waiver under § 6224(b) of their right under § 6224(c)(2) to a consistent settlement agreement, as provided in Form 13751, *Waiver of Right to Consistent Agreement of Partnership Items and Partner-level Determinations as to Penalties, Additions to Tax, and Additional Amounts*.

4. *Persons who engaged in a transaction that has been designated for litigation*. A person who directly or indirectly engaged in a transaction and, before the date on which the Election is filed, the Service has informed the person (or the tax matters partner or notice group of the TEFRA partnership of which the person was a partner) that the Service has designated or is considering designating the transaction for litigation is an ineligible person.

5. *Persons in litigation*. A person who, individually or as a partner in a TEFRA partnership, is a party in a court proceeding to determine the tax treatment of any aspect of the transaction is an ineligible person.

6. *Fraud*. A person against whom the Service has imposed the fraud penalty under § 6663, or a person that has been notified before the date on which the Election is filed that the Service is considering imposing the fraud penalty against that person, is an ineligible person.

7. *Persons under criminal investigation*. A person under tax-related criminal investigation by the Service or the Department of Justice, or a person that has been notified, before the date on which the Election is filed, that the Service or the Department of Justice intends to commence a tax-related criminal investigation of that person is an ineligible person.

Section 3. Eligible Transactions

The following transactions are eligible for settlement under this initiative. Stated by each transaction is the accuracy-related penalty on the underpayment attributable to the transaction that a person will be required to pay, unless one of the exceptions listed in paragraph E of section 4 applies.

1. Notice 2002–21, 2002–1 C.B. 730 (Tax Avoidance Using Inflated Basis) (20%).

2. Notice 2001–16, 2001–1 C.B. 730 (Intermediary Transactions Tax Shelter) (20%).

3. Notice 2003–55, 2003–2 C.B. 395 (Accounting for Lease Strips and Other Stripping Transactions (10%), and transactions involving losses reported from inflated basis assets from lease strips (20%)).

4. Notice 2003–54, 2003–2 C.B. 363 (Common Trust Fund Straddle Tax Shelters) (10%), but excluding transactions described in Notice 2002–50, 2002–2 C.B. 98, and Notice 2002–65, 2002–2 C.B. 690.

5. Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts) (10%).

6. Notice 99–59, 1999–2 C.B. 761 (Tax Avoidance Using Distributions of Encumbered Property) (10%).

7. Rev. Rul. 2004–98, 2004–2 C.B. 664 ("Reimbursements" for parking expenses previously paid by an employer or previously paid by an employee through salary reduction) (5%).

8. Rev. Rul. 2004–20, 2004–1 C.B. 546, Situation 1 (Pension plan fails to satisfy § 412(i) where amounts accumulated under life insurance contracts and annuities held by the plan exceed benefits payable under plan terms) and Situation 2 (Employer contributions to pension plan are not currently deductible when used to pay premiums on life insurance contracts that provide for death benefits in excess of the participant's death benefit under the terms of the plan), and Rev. Rul. 2004–21, 2004–1 C.B. 544 (Pension plan fails to satisfy nondiscrimination requirements due to differences in the value of participants' rights to purchase life insurance contracts from the plan) (5%).

9. Notice 2004–8, 2004–1 C.B. 333 (Abusive Roth IRA Transactions) (5%).

10. Rev. Rul. 2004–4, 2004–1 C.B. 414 (Transactions that involve segregating the business profits of an employee stock ownership plan (ESOP)-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP) (5%).

11. Notice 2003–77, 2003–2 C.B. 1182 (Transfers to Trusts to Provide for the Satisfaction of Contested Liabilities) (5%).

12. Notice 2003–24, 2003–1 C.B. 853 (Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exception for Collectively Bargained Welfare Benefit Funds under § 419A(f)(5)) (5%).

13. Rev. Rul. 2003–6, 2003–1 C.B. 286 (Certain arrangements involving the transfer of ESOPs that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p)) (5%).

14. Rev. Rul. 2002–3, 2002–1 C.B. 316; Rev. Rul. 2002–80, 2002–2 C.B. 925 ("Reimbursements" of employees for salary reduction amounts previously excluded from gross income under § 106; "Advance reimbursements" or "loans" without regard to whether an employee has incurred medical expenses) (5%).

15. Notice 2000–60, 2000–2 C.B. 568 (Stock Compensation Corporate Tax Shelter) (5%).

16. Rev. Rul. 2000–12, 2000–1 C.B. 744 (Certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions) (5%).

17. Notice 95–34, 1995–1 C.B. 309 (Tax Problems Raised by Certain Trust Arrangements Seeking to Qualify for Exemption from § 419) (5%).

18. Treas. Reg. § 1.643(a)–8 (Certain Distributions by Charitable Remainder Trusts) (5%).

19. Certain abusive charitable contributions and conservation easements (Deductions under § 170 improperly claimed as a result of: (a) open space easements where the easement has no, or *de minimis*, value; (b) historic land or façade easements that have no, or *de minimis*, value; and (c) so-called conservation buyer transactions where the charitable organization purchases property, places an easement on it and then "sells" the property with the easement to a buyer at a price substantially less than that paid for it and the buyer also makes a charitable contribution that approximates the price differential. *See* Notice 2004–41, 2004–2 C.B. 31.) (5%).[1]

20. Certain abusive charitable contributions of patents and other intellectual property (Transfers of patents or other intellectual property to charitable organizations where the property transferred has no, or *de minimis*, value. *See* Notice 2004–7, 2004–1 C.B. 310.) (5%).[1]

21. Management S Corporation ESOP Transactions (Transactions where the taxpayer has claimed that it is entitled to exclude income of an operating business by asserting, incorrectly, that the taxpayer had established, on or before March 14, 2001, an employee stock ownership plan entitled to an exemption from unrelated business income and an S corporation that is a management corporation, and whatever actions that were taken to attempt to establish an employee stock ownership plan and a management S corporation were taken on or before March 14, 2001) (5%).

Section 4. Settlement Terms

A. *General Tax Adjustments.*

The Service will settle with persons under this initiative by disallowing the improperly claimed tax benefits associated with the transaction in a manner consistent with relevant published guidance providing the Service's view of the transaction, the terms set forth in this announcement, and the facts and circumstances surrounding the specific transaction. For certain transactions, that may mean that the transaction will be treated as not having occurred for tax purposes and the person must concede all claimed tax benefits of the transaction for all taxable periods not barred by the period of limitations on assessment. For other transactions, that may mean that the transaction will be recharacterized in a manner consistent with its substance, and the person must concede all claimed tax benefits inconsistent with that substance. The person may also be required to make adjustments to basis, as appropriate, may be required to unwind or dissolve entities formed for the purpose of facilitating the transaction, and may have to pay applicable excise tax, employment tax, and self-employment tax liabilities.

These settlement terms apply for resolution of these transactions only, and do not constitute an interpretation of general rules to be applied in transactions not settled under this initiative.

A person may be required to change its method(s) of accounting to resolve a transaction. In such a situation, the settlement will impose the necessary accounting method change(s) with the following terms and conditions. The year of change will be the earliest taxable year in which the existing accounting method was used by the person in connection with the transaction, or the first taxable year for which the period of limitations has not expired. The Commissioner will grant consent under § 446(e) to make the method change on a retroactive basis. Where required, a § 481(a) adjustment will be imposed and taken into account entirely in the year of change.

Additional transaction-specific provisions apply in resolving these transactions. See Questions and Answers for Announcement 2005–80 at *http://www.irs.gov* for those specific provisions.

B. *Transaction Costs Generally Allowed as an Ordinary Loss*. A person settling under this initiative will be allowed to treat as an ordinary loss those transaction costs, including promoter fees and fees paid for accounting, appraisal, and legal services, actually paid by the taxpayer. If tax benefits, including benefits attributable to transaction costs, were claimed in a year barred by the period of limitations on assessment, then transaction costs will be allowed as an ordinary loss only to the extent the transaction costs exceed the tax benefits claimed in the barred years.

C. *Tax-Exempt Entities*. Where a transaction includes a tax-exempt entity as a party, resolution for the taxpayer may require the tax-exempt entity to disburse any funds received as a result of the transaction. As noted in paragraph A of this section 4, excise taxes may also apply. If an eligible taxpayer created a tax-exempt entity specifically for the purpose of accommodating an abusive or tax-avoidance transaction, or if an entity created by an eligible taxpayer has engaged in abusive transactions as a substantial part of its activities, the entity may also be required to agree to revocation of its exemption.

D. *Multi-Party Transactions*. The Service generally expects that all parties to a transaction (*e.g.*, an employer and employee) will elect to resolve the transaction under this initiative. The failure of all parties to the transaction to elect to resolve the transaction under this initiative will not automatically preclude settlement for the electing parties. If all parties do not elect to participate in this initiative, however, the Service reserves the right to not settle with the electing parties if it is not in the interest of sound tax administration to do so.

E. *Penalties*.

1. Except as otherwise provided in this paragraph E, a person that settles a transaction under this initiative will pay an accuracy-related penalty under § 6662 on the underpayment attributable to the transaction in the percentage amount provided for the transaction above in section 3.

2. A person that properly disclosed the transaction under Announcement 2002–2, 2002–1 C.B. 304, will not pay a penalty on the underpayment

[1] The Service does not consider deductions under § 170 for charitable contributions of patents, other intellectual property, or conservation easements to be inappropriate when taxpayers have complied with the requirements for such deductions. Indeed, § 170 is intended to encourage charitable giving. In some instances, however, taxpayers have improperly claimed charitable contribution deductions as described in Notice 2004–41 and Notice 2004–7.

attributable to the disclosed transaction.

3. For purposes of this settlement initiative, at the discretion of the Service, a person that received and relied on a written tax opinion with respect to the treatment of the transaction under federal tax law before filing a return affected by the transaction will not pay a penalty on the underpayment attributable to that transaction if[2]—

   a. the tax opinion (i) concluded at a confidence level of at least "more likely than not" (a greater than 50% likelihood) that all significant federal tax issues arising out of the transaction would be resolved in the taxpayer's favor, and (ii) considered all the relevant facts and did not assume any unreasonable facts; and

   b. the tax advisor (i) was not a person described in section 2, paragraph 1 or 2, (ii) was not referred to the taxpayer by a person described in section 2, paragraph 1 or 2, and (iii) did not have a fee arrangement contingent on the successful sustention of all or part of the intended tax benefit.

4. All other applicable penalties and additions to tax will apply.

F. *Statute Extensions*. Where the period of limitations on assessment of any applicable tax (*e.g.*, income, excise, and employment taxes) will otherwise expire within 12 months after a person files an Election, the Service will ordinarily request that the person consent to extend the applicable period of limitations. If, after a request by the Service, the person does not consent to extend the applicable period of limitations as requested, the Service will treat that person as having withdrawn from this initiative.

Section 5. Application Process

A. *Election*. A person that wants to resolve a transaction through this settlement initiative must send an Election (Form 13750, *Election to Participate in Announcement 2005–80 Settlement Initiative*, and all required attachments) on or before January 23, 2006, to:

INTERNAL REVENUE SERVICE
Attn: Announcement 2005–80
MS 1505
24000 Avila Rd
Laguna Niguel, CA 92677

Form 13750, as well as the required schedules and attachments, must be used to elect to participate in this initiative and must be submitted to the address listed above. The form will be available at *http://www.irs.gov*. The Service reserves the right not to accept any Election not properly addressed and timely mailed within the meaning of § 7502.

A person who is under examination (or in Appeals), or who is a partner in a TEFRA partnership that is under examination (or in Appeals), must send a copy of the Election to the IRS examiner (or IRS Appeals Officer).

B. *Required Information*. The Election requests information necessary to process the election and determine the proper tax liabilities. The Service may request additional information and documents relating to the transaction, such as marketing materials and tax opinion letters. All requested information must be submitted under penalties of perjury to the Service within 30 days of the date of mailing of the request for additional information by the Service. The Service may grant an extension for good cause to persons who request additional time within the 30-day period. The Service will treat a person who fails to provide the required information within the applicable time period as having withdrawn from the initiative.

C. *Passthrough Entities*. If the participant in the transaction was a partnership, subchapter S corporation, or some other pass-through entity, then the person that would be liable for the tax (*e.g.*, the partner or shareholder) who wants to participate in this initiative must submit an Election on his or her own behalf.

D. *Closing Agreement and Payment*. After receiving all the necessary information, the Service will prepare a closing agreement under § 7121 reflecting the terms of the settlement. The Service will send the closing agreement to the person (or the person's corporate parent or representative, if appropriate), who must sign and return it to the Service within 30 days of the date of mailing by the Service. The Service may grant an extension for good cause.

A person settling under this initiative must fully pay all taxes, interest, and penalties due under the terms of the settlement when the signed closing agreement is returned to the Service. Any person unable to make full payment at that time must submit complete financial statements and agree to financial arrangements acceptable to the Service before the Service will execute a closing agreement. The Service will not execute a closing agreement under this initiative with anyone unable to reach acceptable financial arrangements.

E. *Other Dispute Resolution Procedures*. This settlement initiative does not affect conventional Service resolution procedures available to eligible persons that do not settle under this initiative. For eligible persons that forgo resolving eligible transactions under this settlement initiative and take their issues to Appeals, Appeals will carefully consider both the issue merits and the penalty, but such persons should not expect to receive a better offer in Appeals than that offered under this settlement initiative and may in fact receive a less favorable outcome.

Section 6. Paperwork Reduction Act

The collection of information in this announcement has been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1967. 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 OMB number.

The collection of information in this announcement is in Section 5, Application Process. This information is required to apply the terms of the settlement and determine the suitable amount of any penalties. Collecting information is required to obtain the benefit described in this announcement. The likely respondents are

[2] The penalty waiver under this paragraph is being provided in the context of this administrative settlement, and does not reflect all relevant facts and circumstances that determine whether a taxpayer reasonably relied in good faith on a tax opinion.

individuals, businesses, other for-profit institutions, and tax-exempt entities.

The estimated total annual reporting burden is 2,500 hours. The estimated annual burden per respondent varies from 3 to 7 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 500. The estimated frequency of responses is one time per respondent.

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

Section 7. Contact Information

The principal author of this announcement is Joe Spires of the Office of Chief Counsel. For further information regarding this announcement, questions can be sent to *Settlement.Initiative@irscounsel.treas.gov* or contact (202) 622–4284 (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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