

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **Notice 2006-76, page 459.**

This notice provides examples to illustrate and confirm the application of section 937(b) of the Code and regulations sections 1.937-2T and -3T in determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) or whether income is effectively connected with the conduct of a trade or business within such a U.S. possession or territory.

#### **Rev. Proc. 2006-37, page 499.**

This procedure modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, to allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, as modified and amplified by Rev. Proc. 2002-19, as amplified and clarified by Rev. Proc. 2002-54, when seeking a change to a method of accounting provided in regulations sections 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) in conjunction with a change for the same item to a method of accounting utilizing the 3½ month rule authorized by regulations section 1.461-4(d)(6)(ii) or the recurring item exception authorized by regulations section 1.461-5. Rev. Proc. 2006-12 modified.

### **EMPLOYEE PLANS**

#### **T.D. 9280, page 450.**

Final regulations under section 411(d)(6) of the Code provide guidance on the application of the anti-cutback rules.

### **ADMINISTRATIVE**

#### **Rev. Proc. 2006-34, page 460.**

This procedure provides specifications for filing Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, electronically or magnetically. The procedure will be reproduced as the current revision of Publication 1187. Rev. Proc. 2004-63 superseded.

#### **Rev. Proc. 2006-36, page 498.**

This procedure sets forth the Service's procedures for other government agencies or members of the public to request the creation of special statistical studies and compilations involving return information pursuant to section 6108(b) of the Code, and sets forth the criteria for determining reasonable fees for costs associated with the creation of the special statistical studies and compilations.

#### **Announcement 2006-67, page 509.**

This document contains corrections to temporary regulations (T.D. 9260, 2006-23 I.R.B. 1001) that relate to the application of separate foreign tax credit limitations to dividends received from noncontrolled section 902 corporations under section 904(d)(4).

#### **Announcement 2006-68, page 510.**

This document contains corrections to final regulations (T.D. 9272, 2006-35 I.R.B. 332) that relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities.

Announcements of Disbarments and Suspensions begin on page 501.  
Finding Lists begin on page ii.



# 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.

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

## Section 162.—Trade or Business Expenses

The Service modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, to allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, when seeking a change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) of the Income Tax Regulations in conjunction with a change for the same item to a method of accounting utilizing the 3½ month rule authorized by § 1.461-4(d)(6)(ii) or the recurring item exception authorized by § 1.461-5. See Rev. Proc. 2006-37, page 499.

## Section 263.—Capital Expenditures

26 CFR 1.263(a)-4: Amounts paid to acquire or create intangibles.

26 CFR 1.263(a)-5: Amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions.

The Service modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, to allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, when seeking a change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) of the Income Tax Regulations in conjunction with a change for the same item to a method of accounting utilizing the 3½ month rule authorized by § 1.461-4(d)(6)(ii) or the recurring item exception authorized by § 1.461-5. See Rev. Proc. 2006-37, page 499.

## Section 411.—Minimum Vesting Standards

26 CFR 1.411(d)-3: Section 411(d)(6) protected benefits.

### T.D. 9280

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Section 411(d)(6) Protected Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations providing guidance on certain issues under section 411(d)(6) of the Internal Revenue Code (Code), including the interaction between the anti-cutback rules of section 411(d)(6) and the nonforfeiture requirements of section 411(a). These regulations also provide a utilization test under which certain plan amendments are permitted to eliminate or reduce certain early retirement benefits, retirement-type subsidies, or optional forms of benefit. These regulations generally affect sponsors of, and participants and beneficiaries in, qualified retirement plans.

**DATES: Effective Date:** These regulations are effective August 9, 2006.

**Applicability Date:** For dates of applicability, see § 1.411(d)-3(j) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Pamela R. Kinard at (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to 26 CFR part 1 under section 411(d)(6) of the Code. These regulations revise

§ 1.411(d)-3 to provide guidance on the application of section 411(d)(6) to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules of section 411(a)(3) through (11). These rules are intended to reflect *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004). These regulations also set forth standards for the utilization test, which is a permitted method of eliminating optional forms of benefit that are burdensome to the plan and of *de minimis* value to plan participants.

Section 401(a)(7) provides that a trust does not constitute a qualified trust unless its related plan satisfies the requirements of section 411. Section 411(a) generally provides that an employee's right to the accrued benefit derived from employer contributions must become nonforfeitable within a specified period of service. Section 411(a)(3) provides circumstances under which an employee's benefit is permitted to be forfeited without violating section 411(a). Section 411(a)(3)(B) provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits, either (1) by the employer who maintains the plan under which such benefits were being paid, in the case of a plan other than a multiemployer plan, or (2) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The definition of employment for which benefit payments are permitted to be suspended is set forth in 29 CFR 2530.203-3 of the Department of Labor Regulations, which interprets section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the counterpart to section 411(a)(3)(B) of the Code. Employment that satisfies the conditions described in section 203(a)(3)(B) of ERISA and

the regulations are referred to as “section 203(a)(3)(B) service.” See 29 CFR 2530.203–3(c).

Under section 411(a)(10), a plan amendment changing the plan’s vesting schedule must satisfy certain requirements. Section 411(a)(10)(A) provides that a plan amendment changing any vesting schedule under the plan does not satisfy the minimum vesting standards of section 411(a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the applicable amendment date)<sup>1</sup> of any employee who is a participant in the plan is less than the nonforfeitable percentage computed under the plan without regard to the amendment. Section 411(a)(10)(B) provides that a plan amendment changing any vesting schedule under the plan does not satisfy the minimum vesting standards of section 411(a)(2) unless each participant with at least 3 years of service is permitted to elect to have his or her nonforfeitable percentage computed under the plan without regard to the plan amendment.

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) of the Code or section 4281 of ERISA. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, is treated as impermissibly reducing accrued benefits. This protection applies with respect to an employee who satisfies the preamendment conditions for the subsidy either before or after the amendment. Section 411(d)(6)(B) also authorizes the Secretary of the Treasury to provide, through regulations, that section 411(d)(6)(B) does not apply to any plan amendment that eliminates an optional form of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 645(b)(1) of the Economic Growth and Tax Relief Reconciliation

Act of 2001, Public Law 107–16 (115 Stat. 38) (EGTRRA) amended section 411(d)(6)(B) of the Code to direct the Secretary of the Treasury to issue regulations providing that section 411(d)(6)(B) does not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner.

Section 204(g) of ERISA contains parallel rules to section 411(d)(6) of the Code, including a similar directive to the Secretary of the Treasury to issue regulations providing that section 204(g) of ERISA does not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 204(g) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these final regulations issued under section 411(d)(6) of the Code also apply for purposes of section 204(g) of ERISA.

In *Central Laborers’*, the plaintiffs were two inactive participants in a multi-employer pension plan who commenced payment of their benefits in 1996 after qualifying for subsidized early retirement payments. The plan terms required that payments be suspended if a participant engaged in “disqualifying employment.” At the time of their commencement of benefits, the plan defined disqualifying employment to include only employment covered by the plan, but not work as a construction supervisor. Both participants were employed as construction supervisors after they commenced payment of benefits. After the two participants’ benefit payments had commenced in 1996, the plan was amended in 1998 to expand its definition of disqualifying employment to include any employment in the same trade or craft, industry, and geographic

area covered by the plan, and the plan stopped payments to the two participants on account of their disqualifying employment as construction supervisors. The two participants sued to recover the suspended payments, claiming that the amendment expanding the plan’s suspension provisions violated section 204(g) of ERISA.

The Supreme Court, holding for the two participants, ruled that section 204(g) of ERISA prohibits a plan amendment expanding the categories of post-retirement employment that result in suspension of the payment of early retirement benefits already accrued. The Court held that, while ERISA permits certain conditions that are elements of the benefit itself (such as suspensions under section 411(a)(3)(B) of the Code and section 203(a)(3)(B) of ERISA), such a condition may not be imposed on a benefit after the benefit has accrued, and that the right to receive benefit payments on a certain date may not be limited by a new condition narrowing that right. The Court agreed with the 7<sup>th</sup> Circuit that “[a] participant’s benefits cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit ‘reduces’ the benefit just as surely as a decrease in the size of the monthly benefit.” *Central Laborers’*, 547 U.S. at 744, quoting *Heinz v. Central Laborers’ Pension Fund*, 303 F.3d 802, 805 (7<sup>th</sup> Cir. 2002).

On July 11, 1988, final regulations (T.D. 8212) under section 411(d)(6) were published in the **Federal Register** (53 FR 26050). Those regulations are contained in §1.411(d)–4 (the 1988 regulations). On August 12, 2005, final regulations (T.D. 9219, 2005–38 I.R.B. 538) under section 411(d)(6) were published in the **Federal Register** (70 FR 47109) (the 2005 final regulations). Those 2005 final regulations, which are largely contained in §1.411(d)–3, set forth conditions under which a plan amendment is permitted to eliminate an optional form of benefit and to eliminate or reduce an early retirement benefit or a retirement-type subsidy that creates significant burdens or complexities for the plan and its participants, but only if the elimination does not adversely affect the rights of any participant in a

<sup>1</sup> The term *applicable amendment date* means the later of the effective date of the amendment or the date that the amendment is adopted. See §1.411(d)–3(g)(4).

more than *de minimis* manner. However, those regulations reserved two topics for later guidance—a utilization test and the interaction of the permitted forfeiture rules under section 411(a) with the anti-cutback rules under section 411(d)(6) after taking into account the decision in *Central Laborers*<sup>1</sup>.

In connection with the 2005 final regulations, a notice of public rulemaking (REG-156518-04, 2005-38 I.R.B. 582) under section 411(d)(6) of the Code was published in the **Federal Register** (70 FR 47155) (the 2005 proposed regulations) to address the two reserved topics discussed in this preamble. On December 6, 2005, the IRS held a public hearing on the 2005 proposed regulations. Written comments responding to the notice of public rulemaking were also received. After consideration of all the comments, the 2005 proposed regulations are adopted, as amended by this Treasury Decision. The revisions are discussed in this preamble.

## Explanation of Provisions

### *Application of Section 411(d)(6) to Plan Amendments Affecting Vesting*

In applying the holding in *Central Laborers*, these regulations retain the rule in the 2005 proposed regulations that provides that a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits by adding or modifying a plan provision relating to suspension of benefit payments during a period of employment or reemployment violates section 411(d)(6). This rule applies for periods beginning on or after June 7, 2004, the date of the decision in *Central Laborers*. For relief limiting the retroactive application of *Central Laborers*, see the discussion under the heading "Effective Dates" in this preamble.

These regulations also address a broader question of the interaction of the vesting rules in section 411(a) with the requirements of section 411(d)(6), applying the reasoning in *Central Laborers* to

other situations. These regulations generally retain the rule in the 2005 proposed regulations that a plan amendment that decreases a participant's accrued benefits, or otherwise places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, violates section 411(d)(6), even if the amendment merely adds a restriction or condition that is otherwise permitted under the vesting rules in section 411(a)(3) through (11).<sup>2</sup> These regulations also provide examples of the application of this rule, including an example illustrating, for changes in a plan's vesting schedule, the protection of a participant's right to have post-amendment vesting of the participant's pre-amendment accrued benefit determined under the old vesting schedule. Of course, these regulations also retain the rule that such a plan amendment is permitted under section 411(d)(6) to the extent it applies to benefits accruing after the applicable amendment date.

Some commentators agreed with the rule in the 2005 proposed regulations that adopts the holding and rationale of *Central Laborers*, but other commentators raised concerns about the scope of the rule. Several commentators argued that *Central Laborers* only addresses the interaction of section 411(d)(6) with the suspension of benefit rules under section 411(a)(3)(B), and does not require the extension of its holding to plan amendments relating to the other vesting provisions under section 411(a). Those commentators recommended that the regulations be revised to narrow the scope of the rule in the 2005 proposed regulations to the fact pattern in *Central Laborers*. Other commentators recommended that the final regulations provide that, for a plan amendment changing the plan's vesting schedule, the rule in the 2005 proposed regulations does not apply, so that section 411(a)(10) would provide the exclusive requirements for vesting schedule changes. Some of these commentators supported this request by stating that the rule in the

2005 proposed regulations had the effect of rendering section 411(a)(10) moot.

After consideration of the comments relating to the rule in the 2005 proposed regulations, the Treasury Department and the IRS believe that the holding and rationale in the *Central Laborers* decision control and, thus, the rule in the 2005 proposed regulations should be retained, subject to certain modifications. In this regard, the Treasury Department and the IRS note that the protection provided by section 411(a)(10) applies with respect to future accruals, whereas the protection extended by these regulations to changes in a vesting schedule applies only with respect to benefits accrued before the applicable amendment date. However, in light of the comments, these final regulations provide a limited exception from the requirement in the 2005 proposed regulations for a plan changing its vesting computation period. Under this exception, a plan amendment that satisfies the rules for changing a plan's vesting computation period, as set forth in applicable Department of Labor Regulations,<sup>3</sup> does not fail to satisfy the requirements under section 411(d)(6) merely because the plan changes the plan's vesting computation period.

### *Utilization Test*

These regulations generally retain the rule in the 2005 proposed regulations that a plan is permitted to be amended to eliminate optional forms of benefit that comprise a generalized optional form<sup>4</sup> for a participant with respect to benefits accrued before the applicable amendment date if certain requirements relating to the use of the generalized optional form are satisfied. Under the utilization test, a plan is not permitted to eliminate any core option<sup>5</sup> offered under the plan and the plan amendment eliminating the generalized optional form cannot apply to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (for example, a

<sup>2</sup> However, note that section 411(d)(6) does not prohibit a plan amendment that reduces or suspends benefits under a multiemployer plan as permitted under section 411(a)(3)(F) (e.g., a plan amendment to reduce benefits as permitted under section 418D or to suspend benefit payments as permitted under section 418E).

<sup>3</sup> See 29 CFR 2530.203-2(c) for rules relating to changing a plan's vesting computation period. See also §§1.411(a)-8(b)(3) and 1.411(a)-8T(b)(3).

<sup>4</sup> The term *generalized optional form* is defined in §1.411(d)-3(g)(8) as a group of optional forms of benefit that are identical except for differences due to the actuarial factors that are used to determine the amount of the distributions under those optional forms of benefit and the annuity starting dates.

<sup>5</sup> The term *core option* is defined in §1.411(d)-3(g)(5) as a straight life annuity, a 75% joint and contingent annuity, a 10-year term certain and life annuity, and the most valuable option for a participant with a short life expectancy.

90-day period) after the date the amendment is adopted. The utilization test, along with the redundancy method and the core options method, are three permitted methods for eliminating or reducing section 411(d)(6)(B) protected benefits. See §1.411(d)-3(c), (d), and (e) of the 2005 final regulations for rules relating to the redundancy and core options methods.

These regulations provide that, in order to eliminate a noncore optional form of benefit under the utilization test, the plan must satisfy two conditions. First, the generalized optional form must have been available to at least a minimum number of participants who are taken into account during the relevant look-back period. Second, no participant must have elected the optional form of benefit that is part of the generalized optional form with an annuity commencement date that is within the look-back period.

Under the 2005 proposed regulations, the look-back period was generally the 2 plan years immediately preceding the date on which the plan amendment eliminating the general optional form is adopted. These regulations modify the look-back period from the 2005 proposed regulations to include the portion of the plan year in which the plan amendment is adopted that precedes the date of adoption (the pre-adoption period). Adding the pre-adoption period to the look-back period ensures that participants who elected the generalized optional form with an annuity commencement date within the year of adoption are taken into account. However, in order to reduce burdens for plans, the regulations permit a plan to exclude from the look-back period the calendar month in which the amendment is adopted and the 1 or 2 preceding calendar months (to the extent those preceding months are within the pre-adoption period). These regulations also retain the rule under the 2005 proposed regulations permitting a plan to extend the look-back period to include an additional 1, 2, or 3 plan years.

Under the utilization test in the 2005 proposed regulations, the generalized optional form being eliminated must have been available to at least 100 participants who are taken into account during the look-back period. A participant is generally taken into account only if, during the look-back period, the participant was eligible to commence payment of an optional

form of benefit that is part of the generalized optional form being eliminated. However, the 2005 proposed regulations provided that a participant is not taken into account if the participant did not elect any optional form of benefit with an annuity commencement date that is within the look-back period, elected an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of the participant's accrued benefit, elected an optional form of benefit that was only available during a limited period of time that contained a retirement-type subsidy that was not extended to the generalized optional form being eliminated, or elected an optional form of benefit with an annuity commencement date that is more than 10 years before normal retirement age.

Commentators recommended that the regulations be revised to provide an alternative for smaller plans that cannot meet the 100-participant requirement, even with the 5-year look-back rule. Commentators also recommended that the utilization test be revised to permit a plan to use the utilization test to eliminate a general optional form even if a small percentage of participants elected the generalized optional form. The percentages proposed by the commentators ranged from 1% to 5% of the participants. Commentators further recommended that the regulations be revised to permit participants who elected single-sum distributions to be taken into account in determining the applicable number of participants.

In light of these comments, these regulations include a number of revisions. In applying the utilization test, the generalized optional form must be available to at least the applicable number of participants who are taken into account. These regulations define the term *applicable number of participants* as 50 participants. These regulations also set forth a special rule that permits a plan to take into account any participant who elects a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit, provided the applicable number of participants is increased to 1,000 participants.

The Treasury Department and IRS continue to believe that the utilization test, by its nature, determines which optional forms are considered valuable to participants. This determination is made by ref-

erence to participants' elections. The fact that, during a 2-year period, no participant in a substantial number of participant elections elected any optional form of benefit that is within a generalized optional form is a compelling indication that elimination of that generalized optional form would not adversely affect the rights of any participant in a more than *de minimis* manner. Conversely, if at least one participant in the sample elected the generalized optional form, that election would provide significant evidence that the elimination of the generalized optional form could adversely affect the rights of some other participant in a more than *de minimis* manner. In addition, a plan that satisfies the requirements of the utilization test is permitted to be amended to eliminate all of the optional forms of benefit that comprise a generalized optional form without having to satisfy separately the requirements of §1.411(d)-3(e). Thus, these regulations retain the requirement from the 2005 proposed regulations that no participant must have elected any optional form that is part of the generalized optional form that is being eliminated.

#### *Other Issues*

These regulations also include a few modifications to the 2005 final regulations. Specifically, the regulations include specific reference to amendments permitted under sections 418D and 418E (relating to, respectively, to multiemployer plans in reorganization and accrued benefits attributable to employer contributions that are not eligible for the Pension Benefit Guaranty Corporation's guarantee) as not being subject to the requirements of section 411(d)(6). See section 411(a)(3)(F), which permits the reduction and suspension of accrued benefits by a multiemployer plan pursuant to sections 418D and 418E, as well as section 4281 of ERISA.

These regulations also revise the method for determining whether an optional form of benefit is within a family of optional forms of benefit for purposes of eliminating redundant optional forms of benefit in situations in which a plan permits a participant to make different distribution elections with respect to two or more separate portions of the participant's accrued benefit. Comments were received recommending that the regu-

lations be revised to permit a plan that provides different elections with respect to separate portions of a participant's benefit (for example, plans with one set of generally applicable distribution options and a second set of distribution options that apply only to a participant's benefit earned while employed by a former employer) to be permitted to apply the redundancy rules separately to each set of distribution options.

In light of this comment, these regulations permit a plan to apply the redundancy rules separately to each portion of the participant's benefit to which separate distribution elections apply as if that portion were the participant's entire benefit. This change is similar to the bifurcation rule in §1.417(a)(3)-1(c)(5)(iii), which permits a plan that permits a participant to make separate distribution elections with respect to two or more portions of the participant's benefit to describe the financial effect and relative value of combined optional forms of benefit separately for each such portion of the benefit, rather than for each optional form of benefit (for example, each combination of possible elections).

## Effective Dates

### *Applicability Dates for Amendments Relating to Vesting*

With respect to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits by adding or modifying a plan provision relating to suspension of benefit payments, the rules in these regulations apply for periods beginning on or after June 7, 2004. However, for a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits with respect to vesting, other than a plan amendment relating to a suspension of benefit payments, the rules in these regulations apply to plan amendments adopted after August 9, 2006.

### *Applicability Date for Change to Redundancy Rule Regarding Bifurcation of Benefits*

The change to the regulations permitting a plan to apply the redundancy rules separately to each portion of a participant's benefit to which separate distribution elections apply is applicable for amendments adopted after August 9, 2006.

### *Applicability Date for Utilization Test*

The rules provided in the utilization test are applicable for amendments adopted after December 31, 2006.

### *Relief Limiting the Retroactive Application of Central Laborers'*

Rev. Proc. 2005-23, 2005-1 C.B. 991, as modified by Rev. Proc. 2005-76, 2005-50 I.R.B. 1139, limits the retroactive application of *Central Laborers'* for qualified plans under section 401(a) pursuant to the Commissioner's authority under section 7805(b)(8). Rev. Proc. 2005-23 provides that a qualified plan will not be treated as having failed to satisfy the requirements of section 401(a) merely because a plan amendment that was adopted before June 7, 2004, violated section 411(d)(6) by adding or expanding a provision under which a suspension of benefit provision occurs. To receive this treatment, a plan must adopt a reforming plan amendment, comply operationally with the reforming amendment, and provide to affected participants notice of the right to elect retroactively to commence payment of benefits. All of these actions must be completed on or before January 1, 2007.

In response to the 2005 proposed regulations, some commentators expressed concern on how section 411(d)(6) would apply to plan amendments adopted many years in the past when both the rules for interpreting the suspension of benefit provisions under section 411(a)(3)(B) and the rules for satisfying section 411(d)(6) were still being developed. Commentators

specifically raised the issue of whether the adoption of a benefit suspension amendment in response to the final suspension of benefit regulations issued by the Department of Labor would violate section 411(d)(6).<sup>6</sup>

In light of these comments and taking into account the Supreme Court's suggestion for relief in *Central Laborers'*,<sup>7</sup> the Treasury Department and IRS believe that it is appropriate not to require that a plan correct under Rev. Proc. 2005-23 in order to qualify for relief from disqualification under section 401(a) for a plan amendment that added or expanded a suspension of benefit provision if the amendment was adopted before the effective date of the 1988 regulations under section 411(d)(6). Providing this section 7805(b) treatment for any such amendment is appropriate because it would be difficult to determine whether a plan amendment adding or expanding a suspension of benefit payment that was adopted at that time violated section 411(d)(6). In addition, any correction made for any affected plan participant would likely be insignificant (especially in light of subsequent accruals), while creating significant administrative burdens for the plan.

Accordingly, pursuant to the Commissioner's authority under section 7805(b)(8), a plan will not fail to satisfy section 401(a) merely because the plan was amended to add or expand a suspension of benefit provision, provided that the amendment was adopted before January 1, 1989. In the case of collectively bargained plans, this relief applies to plan amendments adopted before January 1, 1991. These dates are based on the effective dates of the 1988 regulations under §1.411(d)-4 for plans generally existing as of August 1, 1986.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment

<sup>6</sup> See 29 CFR 2530.203-3, providing rules that permit a plan to withhold permanently a plan participant's benefit payments on account of a continuation of employment or reemployment after the payments commenced. See also Notice 82-23, 1982-2 C.B. 752 (providing guidance on the need to amend and the timing for a plan to be amended to comply with the final suspension of benefit regulations).

<sup>7</sup> The Court stated in *Central Laborers'*:

Nothing we hold today requires the IRS to revisit the tax-exempt status in past years of plans that were amended in reliance on the agency's representations in its manual by expanding the categories of work that would trigger suspension of benefit payments as to already-accrued benefits. The Internal Revenue Code gives the Commissioner discretion to decline to apply decisions of this Court retroactively. . . . This would doubtless be an appropriate occasion for exercise of that discretion. *Central Laborers'*, 541 U.S. at 748, n.4.

is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(b) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.411(a)–8 is amended by adding paragraph (c)(3) to read as follows:

*§1.411(a)–8 Changes in vesting schedule.*

\* \* \* \* \*

(c) \* \* \*

(3) *Relationship with section 411(d)(6).* For additional requirements relating to section 411(d)(6), see §1.411(d)–3(a)(3).

\* \* \* \* \*

Par. 3. Section 1.411(d)–3 is amended by:

1. Revising the first sentence of paragraph (a)(1).

2. Revising paragraphs (a)(3) and (f).

3. Adding *Examples 3 and 4* to paragraph (a)(4), *Example 3* to paragraph (b)(4), and *Example 6* to paragraph (h).

4. Adding paragraphs (c)(6), (j)(3), (j)(4), and (j)(5).

The revisions and additions read as follows:

*§1.411(d)–3 Section 411(d)(6) protected benefits.*

(a) *Protection of accrued benefits—(1) General rule.* Under section 411(d)(6)(A), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(c)(8), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (see, for example, sections 418D and 418E of the Internal Revenue Code, and section 1541(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 1085)). \* \* \*

\* \* \* \* \*

(3) *Application of section 411(a) non-forfeiture provisions with respect to section 411(d)(6) protected benefits—(i) In general.* The rules of this paragraph (a) apply to a plan amendment that decreases a participant's accrued benefits, or otherwise places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in section 411(a)(3) through (11). However, such an amendment does not violate section 411(d)(6) to the extent it applies with respect to benefits that accrue after the applicable amendment date.

See section 411(a)(10) and §1.411(a)–8 for additional rules relating to changes in a plan's vesting schedule.

(ii) *Exception for changes in a plan's vesting computation period.* Notwithstanding paragraph (a)(3)(i) of this section, a plan amendment that satisfies the applicable requirements under 29 CFR 2530.203–2(c) (rules relating to vesting computation periods) does not fail to satisfy the requirements of section 411(d)(6) merely because the plan amendment changes the plan's vesting computation period.

\* \* \* \* \*

(4) \* \* \*

*Example 3. (i) Facts.* Employer N maintains Plan C, a qualified defined benefit plan under which an employee becomes a participant upon completion of 1 year of service and is vested in 100% of the employer-derived accrued benefit upon completion of 5 years of service. Plan C provides that a former employee's years of service prior to a break in service will be reinstated upon completion of 1 year of service after being rehired. Plan C has participants who have fewer than 5 years of service and who are accordingly 0% vested in their employer-derived accrued benefits. On December 31, 2007, effective January 1, 2008, Plan C is amended, in accordance with section 411(a)(6)(D), to provide that any nonvested participant who has at least 5 consecutive 1-year breaks in service and whose number of consecutive 1-year breaks in service exceeds his or her number of years of service before the breaks will have his or her pre-break service disregarded in determining vesting under the plan.

(ii) *Conclusion.* Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of this paragraph (a), and thus violates section 411(d)(6), because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) protected benefits, as of January 1, 2008, for participants who have fewer than 5 years of service, by restricting the ability of those participants to receive further vesting protections on benefits accrued as of that date.

*Example 4. (i) Facts.* (A) Employer O sponsors Plan D, a qualified profit sharing plan under which each employee has a nonforfeitable right to a percentage of his or her employer-derived accrued benefit based on the following table:



Completed years of service	Nonforfeitable percentage
Fewer than 3	0%
3	20%
4	40%
5	60%
6	80%
7	100%

(B) In January 2006, Employer O acquires Company X, which maintains Plan E, a qualified profit sharing plan under which each employee who has completed 5 years of service has a nonforfeitable right to 100% of the employer-derived accrued benefit. In 2007, Plan E is merged into Plan D. On the effective date for the merger, Plan D is amended to provide that the vesting schedule for participants of Plan E is the 7-year graded vesting schedule of Plan D. In accordance with section 411(a)(10)(A), the plan amendment provides that any participant of Plan E who had completed 5 years of service prior to the amendment is fully vested. In addition, as required under section 411(a)(10)(B), the amendment provides that any participant in Plan E who has at least 3 years of service prior to the amendment is permitted to make an irrevocable election to have the vesting of his or her nonforfeitable right to the employer-derived accrued benefit determined under either the 5-year cliff vesting schedule or the 7-year graded vesting schedule. Participant G, who has an account balance of \$10,000 on the applicable amendment date, is a participant in Plan E with 2 years of service as of the applicable amendment date. As of the date of the merger, Participant G's nonforfeitable right to G's employer-derived accrued benefit is 0% under both the 7-year graded vesting schedule of Plan D and the 5-year cliff vesting schedule of Plan E.

(ii) *Conclusion.* Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of this paragraph (a) and violates section 411(d)(6), because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) protected benefits with respect to G and any participant who has fewer than 5 years of service and who elected (or was made subject to) the new vesting schedule. A method of avoiding a section 411(d)(6) violation with respect to account balances attributable to benefits accrued as of the applicable amendment date and earnings thereon would be for Plan D to provide for the vested percentage of G and each other participant in Plan E to be no less than the greater of the vesting percentages under the two vesting schedules (for example, for G and each other participant in Plan E to be 20% vested upon completion of 3 years of service, 40% vested upon completion of 4 years of service, and fully vested upon completion of 5 years of service) for those account balances and earnings.

\* \* \* \* \*  
 (b) \* \* \*  
 (4) \* \* \*

*Example 3.* (i) *Facts.* Plan C, a multiemployer defined benefit plan in which participation is limited

to electricians in the construction industry, provides that a participant may elect to commence distributions only if the participant is not currently employed by a participating employer and provides that, if the participant has a specified number of years of service and attains a specified age, the distribution is without any actuarial reduction for commencement before normal retirement age. Since the plan's inception, Plan C has provided for suspension of pension benefits during periods of disqualifying employment (ERISA section 203(a)(3)(B) service). Before 2007, the plan defined disqualifying employment to include any job as an electrician in the particular industry and geographic location to which Plan C applies. This definition of disqualifying employment did not cover a job as an electrician supervisor. In 2005, Participant E, having rendered the specified number of years of service and attained the specified age to retire with a fully subsidized early retirement benefit, retires from E's job as an electrician with Employer Y and starts a position with Employer Z as an electrician supervisor. Employer Z is not a participating employer in Plan C but is an employer in the same industry and geographic location as Employer Y. When E left service with Employer Y, E's position as an electrician supervisor was not disqualifying employment for purposes of Plan C's suspension of pension benefit provision, and E elected to commence benefit payments in 2005. In 2006, effective January 1, 2007, Plan C is amended to expand the definition of disqualifying employment to include any job (including supervisory positions) as an electrician in the same industry and geographic location to which Plan C applies. The plan's definition of disqualifying employment satisfies the requirements of section 411(a)(3)(B). On January 1, 2007, E's pension benefits are suspended because of E's disqualifying employment as an electrician supervisor.

(ii) *Conclusion.* Under paragraphs (a)(3) and (b)(1) of this section, the 2007 plan amendment violates section 411(d)(6), because the amendment places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits to the extent it applies with respect to benefits that accrued before January 1, 2007. The result would be the same even if the amendment did not apply to former employees and instead applied only to participants who were actively employed at the time of the applicable amendment.

\* \* \* \* \*  
 (c) \* \* \*  
 (6) *Separate application of redundancy rules for bifurcated benefits.* If a plan permits the participant to make different distribution elections with respect to two or

more separate portions of the participant's benefit, the rules of this paragraph (c) are permitted to be applied separately to each such portion of the participant's benefit as if that portion were the participant's entire benefit. Thus, for example, if one set of distribution elections applies to a portion of the participant's accrued benefit and another set of distribution elections applies to the other portion of the participant's accrued benefit, then with respect to one portion of the participant's benefit, the determination of whether any optional form of benefit is within a family of optional forms of benefit is permitted to be made disregarding elections that apply to the other portion of the participant's benefit. Similarly, if a participant can elect to receive any portion of the accrued benefit in a single sum and the remainder pursuant to a set of distribution elections, the rules of this paragraph (c) are permitted to be applied separately to the set of distribution elections that apply to the portion of the participant's accrued benefit that is not payable in a single sum (for example, for the portion of a participant's benefit that is not paid in a single sum, the determination of whether any optional form of benefit is within a family of optional forms of benefit is permitted to be made disregarding the fact that the other portion of the participant's benefit is paid in a single sum).

\* \* \* \* \*  
 (f) *Utilization test—(1) General rule.* A plan is permitted to be amended to eliminate all of the optional forms of benefit that comprise a generalized optional form (as defined in paragraph (g)(8) of this section) for a participant with respect to benefits accrued before the applicable amendment date if—

(i) None of the optional forms of benefit being eliminated is a core option, within the meaning of paragraph (g)(5) of this section;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (as defined in paragraph (g)(9) of this section) after the date the amendment is adopted;

(iii) During the look-back period—

(A) The generalized optional form has been available to at least the applicable number of participants who are taken into account under paragraph (f)(3) and (4) of this section; and

(B) No participant has elected any optional form of benefit that is part of the generalized optional form with an annuity commencement date that is within the look-back period.

(2) *Look-back period*—(i) *In general.* For purposes of this paragraph (f), the look-back period is the period that includes—

(A) The portion of the plan year in which such plan amendment is adopted that precedes the date of adoption (the pre-adoption period); and

(B) The 2 plan years immediately preceding the pre-adoption period.

(ii) *Special look-back period rules*—(A) *12-month plan year.* In the look-back period, at least 1 of the plan years must be a 12-month plan year.

(B) *Permitted 3-month exclusion in the pre-adoption period.* A plan is permitted to exclude from the look-back period the calendar month in which the amendment is adopted and the preceding 1 or 2 calendar months to the extent those preceding months are contained within the pre-adoption period.

(C) *Permission to extend the look-back period.* In order to have a look-back period that satisfies the minimum applicable number of participants requirement in paragraph (f)(1)(iii)(A) of this section, the look-back period described in paragraph (f)(2)(i)(B) of this section is permitted to be expanded, so as to include the 3, 4, or 5 plan years immediately preceding the plan year in which the amendment is adopted. Thus, in determining the look-back period, a plan is permitted to substitute the 3, 4, or 5 plan years immediately preceding the pre-adoption period for the 2 plan years described in paragraph (f)(2)(i)(B) of this section. However, if a plan does not satisfy the minimum applicable num-

ber of participants requirement of paragraph (f)(1)(iii)(A) of this section using the pre-adoption period and the immediately preceding 5 plan years, the plan is not permitted to be amended in accordance with the utilization test in this paragraph (f).

(3) *Participants taken into account.* A participant is taken into account for purposes of this paragraph (f) only if the participant was eligible to elect to commence payment of an optional form of benefit that is part of the generalized optional form being eliminated with an annuity commencement date that is within the look-back period. However, a participant is not taken into account if the participant—

(i) Did not elect any optional form of benefit with an annuity commencement date that was within the look-back period;

(ii) Elected an optional form of benefit that included a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit;

(iii) Elected an optional form of benefit that was only available during a limited period of time and that contained a retirement-type subsidy where the subsidy that is part of the generalized optional form being eliminated was not extended to any optional form of benefit with the same annuity commencement date; or

(iv) Elected an optional form of benefit with an annuity commencement date that was more than 10 years before normal retirement age.

(4) *Determining the applicable number of participants.* For purposes of applying the rules in this paragraph (f), the applicable number of participants is 50 participants. However, notwithstanding paragraph (f)(3)(ii) of this section, a plan is permitted to take into account any participant who elected an optional form of benefit that included a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit, but only if the applicable number of participants is increased to 1,000 participants.

(5) *Default elections.* For purposes of this paragraph (f), an election includes the payment of an optional form of benefit that applies in the absence of an affirmative election.

\* \* \* \* \*

(h) \* \* \*

*Example 6.* (i) *Facts involving elimination of noncore options using utilization test*—(A) *In general.* Plan G is a calendar year defined benefit plan

under which participants may elect to commence distributions after termination of employment in the following actuarially equivalent forms, with spousal consent, if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity; or a 5-year, 10-year, or a 15-year term certain and life annuity. A participant is permitted to elect a single-sum distribution if the present value of the participant's nonforfeitable accrued benefit is not greater than \$5,000. The annuities offered under the plan are generally available both with and without a social security leveling feature. The social security leveling feature provides for an assumed commencement of social security benefits at any age selected by the participant between the ages of 62 and 67. Under Plan G, the normal retirement age is defined as age 65.

(B) *Utilization test.* In 2007, the plan sponsor of Plan G, after reviewing participants' benefit elections, determines that, during the period from January 1, 2005, through June 30, 2007, no participant has elected a 5-year term certain and life annuity with a social security leveling option. During that period, Plan G has made the 5-year term certain and life annuity with a social security leveling option available to 142 participants who were at least age 55 and who elected optional forms of benefit with an annuity commencement dates during that period. In addition, during that period, 20 of the 142 participants elected a single-sum distribution and there was no retirement-type subsidy available for a limited period of time. Plan G, in accordance with paragraph (f)(1) of this section, is amended on September 15, 2007, effective as of January 1, 2008, to eliminate all 5-year term certain and life annuities with a social security leveling option for all annuity commencement dates on or after January 1, 2008.

(ii) *Conclusion.* The amendment satisfies the requirements of paragraph (f) of this section. First, the 5-year term certain and life annuity with a social security leveling option is not a core option as defined in paragraph (g)(5) of this section. Second, the plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period after the date the amendment is adopted. Third, the 5-year term certain and life annuity with a social security leveling option has been available to at least 50 participants who are taken into account for purposes of paragraph (f) of this section during the look-back period. Fourth, during the look-back period, no participant elected any optional form that is part of the generalized optional form being eliminated (for example, the 5-year term and life annuity with a social security leveling option).

\* \* \* \* \*

(j) \* \* \*

(3) *Effective dates for rules relating to section 411(a) nonforfeitability provisions*—(i) *Application of suspension of benefit rules to section 411(d)(6) protected benefits.* With respect to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits by adding or modifying a plan provision relating to

suspension of benefit payments during a period of employment or reemployment, the rules provided in paragraph (a)(3) of this section apply to periods beginning on or after June 7, 2004.

(ii) *Application of section 411(a) nonforfeitability provisions to section 411(d)(6) protected benefits.* With respect to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits other than a plan amendment described in paragraph (j)(3)(i) of this section, the rules provided in paragraph (a)(3) of this section apply to plan amendments adopted after August 9, 2006.

(4) *Effective date for change to redundancy rule regarding bifurcation of benefits.* The rules provided in paragraph (c)(6) of this section are applicable for amendments adopted after August 9, 2006.

(5) *Effective date for rules relating to utilization test.* The rules provided in paragraph (f) of this section are applicable for amendments adopted after December 31, 2006.

\* \* \* \* \*

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved July 31, 2006.

Eric Solomon,  
*Acting Deputy Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 8, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 9, 2006, 71. F.R. 45379)

## **Section 446.—General Rule for Methods of Accounting**

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

The Service modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, to allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, when seeking a change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) of the Income Tax Regulations in conjunction with a change for the same item to a

method of accounting utilizing the 3½ month rule authorized by § 1.461-4(d)(6)(ii) or the recurring item exception authorized by § 1.461-5. See Rev. Proc. 2006-37, page 499.

## **Section 461.—General Rule for Taxable Year of Deduction**

The Service modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, to allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, when seeking a change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) of the Income Tax Regulations in conjunction with a change for the same item to a method of accounting utilizing the 3½ month rule authorized by § 1.461-4(d)(6)(ii) or the recurring item exception authorized by § 1.461-5. See Rev. Proc. 2006-37, page 499.

# Part III. Administrative, Procedural, and Miscellaneous

## Examples Under Section 937(b)

### Notice 2006-76

#### SECTION 1. PURPOSE

This notice provides additional examples to illustrate and confirm the application of section 937(b) and Temp. Treas. Reg. §§ 1.937-2T and -3T in determining whether income is derived from sources within a U.S. possession or territory specified in section 937(a)(1) (hereinafter “U.S. territory”) or whether income is effectively connected with the conduct of a trade or business within a U.S. territory. The examples address solely the application of the rules under section 937(b) and do not address any other issue, including the circumstances in which a taxpayer would be engaged in the conduct of a trade or business within the United States within the meaning of section 864 or how any transaction should be appropriately characterized. The Treasury Department and the Internal Revenue Service (IRS) intend to include these or substantially similar examples in additional guidance to be provided on the application of the so-called *U.S. income rule* in final regulations under section 937(b). Until additional examples are included in final regulations, taxpayers may treat the examples set forth in this notice as illustrative of the rules in the temporary regulations.

#### SECTION 2. BACKGROUND

##### .01 Section 937(b)

Section 937 was added to the Internal Revenue Code by section 908 of the American Jobs Creation Act (Public Law 108-357). Section 937(a) provides rules for determining whether an individual is a *bona fide* resident of a U.S. territory. Section 937(b) provides rules for determining whether income is derived from sources within a U.S. territory and whether income is effectively connected with the conduct of a trade or business within a U.S. territory. Section 937(b)(1) provides that, except as provided in section 937(b)(2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively

connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a U.S. territory or effectively connected with the conduct of a trade or business within a U.S. territory.

Section 937(b)(2) sets forth the U.S. income rule, which provides that income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States is not treated as income from sources within a U.S. territory or as effectively connected with the conduct of a trade or business within a U.S. territory. Section 937(b) grants the Secretary regulatory authority to provide exceptions to the rules provided in sections 937(b)(1) and (b)(2).

.02 Treasury Regulations under section 937(b)

On April 11, 2005, Treasury and the IRS published in the Federal Register temporary regulations (T.D. 9194, 2005-1 C.B. 1016 [70 FR 18920-01], as corrected at 70 FR 32489-01), which provided rules to implement section 937 and to conform existing regulations to other legislative changes with respect to U.S. territories. A notice of proposed rulemaking (REG-159243-03, 2005-1 C.B. 1075 [70 FR 18949-01]) cross-referencing the temporary regulations was published in the Federal Register on the same day. A public hearing was held on July 21, 2005. Final regulations relating to the residence rules under section 937(a) were issued as T.D. 9248, 2006-9 I.R.B. 524, on January 31, 2006. Final regulations under section 937(b) will be issued in a forthcoming Treasury decision.

In general, the proposed and temporary regulations under section 937(b)(1) provide that the principles of sections 861 through 865 and the regulations thereunder are to be applied in determining gross and taxable income from sources within and without a U.S. territory. See Temp. Treas. Reg. § 1.937-2T(b). The proposed and temporary regulations further provide that the principles of section 864(c) and the regulations thereunder are to be applied in determining whether income is effectively connected with the conduct of a trade or

business in a U.S. territory. See Temp. Treas. Reg. § 1.937-3T(b).

The proposed and temporary regulations under section 937(b)(2) incorporate the U.S. income rule, which limits application of the principles of the source and effectively connected income rules under sections 861 through 865 in order to prevent erosion of the U.S. tax base. See Temp. Treas. Reg. §§ 1.937-2T(c)(1) and -3T(c)(1); see also H.R. Rep. No. 108-755, at 794 (2004). Although the proposed and temporary regulations include several examples applying section 937(b) and Temp. Treas. Reg. §§ 1.937-2T and -3T, some of the comments received by Treasury and the IRS indicate an urgent need for additional examples illustrating the operation of the U.S. income rule. Accordingly, this notice provides two such examples.

Treasury and the IRS plan to include these or substantially similar examples in final regulations. Until regulations under section 937(b) are issued in final form, taxpayers may treat the examples set forth in this notice as illustrative of the rules in the temporary regulations. In addition, Treasury and the IRS continue to consider comments received that have requested exceptions or other modifications to the U.S. income rule.

#### SECTION 3. EXAMPLES

The following examples illustrate the application of section 937(b):

*Example 1.* (i) Facts. Corporation A, a corporation organized in a U.S. territory (Territory X), is engaged in a business consisting of the development of computer software and the sale of that software. Corporation A has its sole place of business in Territory X. Assume for purposes of this example that Corporation A is not engaged in the conduct of a trade or business in the United States. Corporation A receives orders for its software from customers in the United States and around the world. After orders are accepted, Corporation A's software is either: (1) loaded onto compact discs at Corporation A's Territory X facility and shipped via common carrier, or (2) downloaded from Corporation A's server in Territory X. The sales contract provides that the rights, title, and interest in the product will pass from Corporation A to the customer either at Corporation A's place of business in Territory X (if shipped in compact disc form) or at Corporation A's server in Territory X (if electronically downloaded). Assume for purposes of this example that each transaction is classified as a sale of a copyrighted article under Treas. Reg. §§ 1.861-18(c)(1)(ii) and (f)(2).

(ii) Analysis. Under the principles of section 863(a), as applied pursuant to Temp. Treas. Reg. § 1.937-2T(b), because Corporation A passes the rights, title, and interest to the copyrighted articles in Territory X, Corporation A's sales income is sourced to Territory X. Corporation A's sales income is also effectively connected with the conduct of a trade or business in Territory X, under the principles of section 864(c)(3) as applied pursuant to Temp. Treas. Reg. § 1.937-3T(b). Corporation A's income is not from sources within the United States, nor is it effectively connected with the conduct of a trade or business in the United States. Accordingly, the U.S. income rule of section 937(b)(2) and Temp. Treas. Reg. §§ 1.937-2T(c)(1) and 1.937-3T(c)(1) does not operate to prevent Corporation A's sales income from being Territory X source and Territory X effectively connected income under section 937(b)(1).

*Example 2.* (i) Facts. Corporation B, a corporation organized in Territory X, has its sole place of business in Territory X. Assume for purposes of this example that Corporation B is not engaged in the conduct of a trade or business in the United States. Corporation B employs a software business model generally referred to as an "application service provider." Employees of Corporation B in Territory X develop software and maintain it on Corporation B's server in Territory X. Corporation B's customers in the United States and around the world transmit detailed data about their own customers to Corporation B's server and electronic storage facility in Territory X. The cus-

tomers pay a monthly fee to Corporation B under a "Subscription Agreement," and they can use the software to generate reports analyzing the data at any time but do not receive a copy of the software. Corporation B's software allows its customers to generate the reports from their location and to keep track of their relationships with their own customers. Assume for purposes of this example that Corporation B's income from these transactions is derived from the provision of services.

(ii) Analysis. Under the principles of section 861(a)(3) and Treas. Reg. § 1.861-4(a), as applied pursuant to Temp. Treas. Reg. § 1.937-2T(b), because Corporation B performs personal services wholly within Territory X, the compensation Corporation B receives for services is sourced to Territory X. Corporation B's services income is also effectively connected with the conduct of a trade or business in Territory X, under the principles of section 864(c)(3) as applied pursuant to Temp. Treas. Reg. § 1.937-3T(b). Corporation B's income is not from sources within the United States, nor is it effectively connected with the conduct of a trade or business in the United States. Accordingly, the U.S. income rule of section 937(b)(2) and Temp. Treas. Reg. §§ 1.937-2T(c)(1) and 1.937-3T(c)(1) does not operate to prevent Corporation B's services income from being Territory X source or Territory X effectively connected income within the meaning of section 937(b)(1).

#### SECTION 4. EFFECTIVE DATE

The examples in this notice illustrate the principles of section 937(b) and the temporary regulations, which generally apply to taxable years ending after October 22, 2004, except with respect to the U.S. income rule of section 937(b)(2) and Temp. Treas. Reg. §§ 1.937-2T(c)(1) and 1.937-3T(c)(1), which apply to income earned after December 31, 2004.

#### SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Cleve Lisecki of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Lisecki at (202) 435-5262 (not a toll-free call).

#### NOTE:

**Following is a list of related instructions and forms for filing Form 1042-S Electronically/Magnetically:**

- **Current Instructions for Form 1042-S**
- **Form 4419 — Application for Filing Information Returns Electronically/Magnetically**
- **Form 4804 — Transmittal of Information Returns Reported Magnetically**
- **Form 8508 — Request for Waiver From Filing Information Returns Electronically/Magnetically**
- **Form 8809 — Application for Extension of Time To File Information Returns**
- **Notice 210 — Preparation Instructions for Media Labels**
- **Publication 515 — Withholding of Tax on Nonresident Aliens and Foreign Entities (for general information and explanation of tax law associated with Form 1042-S)**
- **Publication 901 — U.S. Tax Treaties**

The Internal Revenue Service (IRS), Enterprise Computer Center at Martinsburg (ECC-MTB) encourages filers to make copies of the blank forms in the back of this publication for future use. These forms can also be obtained by calling 1-800-TAX-FORM (1-800-829-3676). You can also download forms and publications from the IRS Web Site at [www.irs.gov](http://www.irs.gov).

## IMPORTANT NOTES:

IRS/ECC-MTB now offers an Internet connection at <http://fire.irs.gov> for electronic filing. The FIRE System will be down from Dec. 22, 2006, through Jan. 2, 2007, for upgrading. It is not operational during this time for submissions.

For files submitted on the FIRE System, it is the responsibility of the filer to check the status within 5 business days to verify the results of your transmission. **ECC-MTB will no longer mail error reports for files which are bad.** See Part B, Sec. 1, .03.

IRS/ECC-MTB no longer accepts 3<sup>1</sup>/<sub>2</sub>-inch diskettes for filing information returns.

For tax year 2008 forms filed in calendar year 2009, IRS/ECC-MTB will no longer accept tape cartridges. Electronic filing will be the **ONLY** acceptable method for filing Form 1042-S at ECC-MTB.

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Use this Revenue Procedure to prepare Tax Year 2006 and prior year information returns for submission to Internal Revenue Service (IRS) using any of the following:

- Electronic Filing
- Tape Cartridge

**This Revenue Procedure is not revised every year. Updates will be printed as needed in the Internal Revenue Bulletin. General Instructions for Form 1042-S are revised every year. Be sure to consult current instructions when preparing Form 1042-S.**

## Part A. General

Revenue Procedures are generally revised annually to reflect legislative and form changes. Comments concerning this Revenue Procedure, or suggestions for making it more helpful, can be addressed to:

Internal Revenue Service  
Enterprise Computing Center — Martinsburg  
Attn: Information Reporting Program  
230 Murall Drive  
Kearneysville, WV 25430

### Sec. 1. Purpose

**.01** The purpose of this Revenue Procedure is to provide the specifications for filing Form 1042-S with IRS electronically through the FIRE (Filing Information Returns Electronically) System or magnetically, using IBM 3480, 3490, 3490E, 3590, or 3590E compatible tape cartridges. This Revenue Procedure must be used to prepare current and prior year information returns **filed beginning January 1, 2007, and received by IRS/ECC-MTB or postmarked by December 31, 2007.**

**.02** Generally, the box names on the paper Form 1042-S correspond with the fields used to file electronically/magnetically; however, if discrepancies occur, the instructions in this Revenue Procedure govern.

**.03** This Revenue Procedure supersedes Rev. Proc. 2004-63 published as Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically or Magnetically.

**.04** Refer to Part A, Sec.16, for definitions of terms used in this publication.

**.05** Specifications for filing Forms W-2, Wage and Tax Statements, electronically/magnetically are available from the Social Security Administration (SSA) **only**. Filers can call 1-800-SSA-6270 to obtain the phone number of the SSA Employer Service Liaison Officer for their area.

**.06** IRS/ECC-MTB does **not** process Forms W-2. Paper **and/or** magnetic media for Forms W-2 must be sent to SSA. IRS/ECC-MTB does, however, process waiver requests (Form 8508) and extension of time to file requests (Form 8809) for Forms W-2 and requests for an extension of time to provide the employee copies of Forms W-2.

**.07** The following Revenue Procedures and publications provide more detailed filing procedures for certain information returns:

- (a) 2006 Instructions for Form 1042-S.
- (b) Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S.
- (c) Publication 1239, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, Electronically or Magnetically.
- (d) Publication 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G, Electronically or Magnetically.

### Sec. 2. Nature of Changes—Current Year (Tax Year 2006)

**.01** Editorial changes of a clarifying nature have been made throughout this publication. Please read the entire publication carefully.

**.02** The procedure for submitting amended returns has completely changed. Please review Part A, Sec. 13, Amended Returns carefully before submitting amended Forms 1042-S.

**.03** For files submitted on the Fire System, it is the responsibility of the filer to check the status of the file within 5 business days to verify the results of the transmission. ECC-MTB will no longer mail error reports to filers for files that are bad. Information about the errors including the number of errors, a description and the first occurrence will be provided on the FIRE System. If additional information is needed to understand the errors, the filer can call toll-free 1-866-455-7438.

**.04** Paper filing of Form 1042-S and 1042-T is now handled by the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

**.05** The following changes were made to Withholding Agent 'W' Record:

- (a) Type of Return Indicator, position 2, has changed. There are now two indicators to select from, 0 (zero) for original return and 1 (one) for amended return. There is no longer a void return.
- (b) The new field 'Withholding Agent Contact Name', positions 273-317, was added.
- (c) The new field 'Withholding Agent's Department Title', positions 318-362, was added.
- (d) The Contact Phone Number and Extension was moved to positions 363-382.
- (e) The Final Return Indicator was moved to position 383.
- (f) Positions 384-770 are now reserved.

**.06** The following change was made to the Recipient 'Q' Record:

- (a) Type of Return Indicator, position 2, has changed. There are now two indicators to select from, 0 (zero) for original return and 1 (one) for amended return. There is no longer a void return.



- (b) The new field U.S. Tax Withheld Indicator, position 761 was added. There are 3 values to choose from, 0 (zero) for correctly reported, 1 (one) for over withheld, and 2 for under withheld.

### **Sec. 3. Where To File and How to Contact the IRS, Enterprise Computing Center at Martinsburg**

.01 All information returns filed electronically or magnetically are processed at IRS/ECC-MTB. Files containing information returns and requests for IRS electronic filing and tape cartridge information are sent to the following address:

IRS–Enterprise Computing Center — Martinsburg  
Attn: 1042–S Reporting  
230 Murall Drive  
Kearneysville, WV 25430

.02 All requests for an extension of time to file information returns with IRS/ECC-MTB or to the recipients, and requests for undue hardship waivers filed on Form 8508, are sent to the following address:

IRS–Enterprise Computing Center — Martinsburg  
Information Reporting Program  
**Attn: Extension of Time Coordinator**  
240 Murall Drive  
Kearneysville, WV 25430

.03 The telephone numbers for electronic or tape cartridge inquiries submissions are:

#### **Information Reporting Program Customer Service Section**

**TOLL-FREE 1-866-455-7438 or**  
**Outside the U.S. 304-263-8700**  
**email at [mccirp@irs.gov](mailto:mccirp@irs.gov)**

**304-267-3367 — TDD**  
**(Telecommunication Device for the Deaf)**  
**304-264-5602 — Fax Machine**

**Electronic Filing — FIRE System**  
**<http://fire.irs.gov>**

**TO OBTAIN FORMS:**  
**1-800-TAX-FORM (1-800-829-3676)**

**[www.irs.gov](http://www.irs.gov) — IRS Web Site access to forms and publications.**

.04 Current Instructions for Form 1042–S have been included in the Publication 1187 for your convenience. The Form 1042–T is used only to transmit Copy A of **paper** Forms 1042–S. If filing paper returns, follow the mailing instructions on Form 1042–T and submit the paper returns to the *Ogden Service Center, P.O. Box 409101, Ogden, UT 84409*.

.05 Requests for paper Form 1042–S should be made by calling the IRS toll-free number **1-800-TAX-FORM (1-800-829-3676)** or via the IRS Web Site at **[www.irs.gov](http://www.irs.gov)**.

.06 Questions pertaining to magnetic media filing of Forms W–2 **must** be directed to the Social Security Administration (SSA). Filers can call 1–800–772–6270 to obtain the phone number of the SSA Employer Service Liaison Officer for their area.

.07 Filers **should not** contact IRS/ECC-MTB if they have received a penalty notice and need additional information or are requesting an abatement of the penalty. A penalty notice contains an IRS representative’s name and/or phone number for contact purposes; or, the filer may be instructed to respond in writing to the address provided. IRS/ECC-MTB does **not** issue penalty notices and does **not** have the authority to abate penalties. For penalty information, refer to the Penalty section of the current Instructions for Form 1042–S.

.08 A taxpayer or authorized representative may request a copy of a tax return, including Form W–2 filed with a return, by submitting Form 4506, Request for Copy of Tax Return, to IRS. This form may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. For any questions regarding this form, call 215–516–2000 and select option 1. This is not a toll-free number.

**.09** The Information Reporting Program Customer Service Section (IRP/CSS), located at IRS/ECC-MTB, answers electronic, tape cartridge, paper filing and tax law questions from the payer community relating to the filing of business information returns (Forms 1096, 1098, 1099, 5498, 8027, and W-2G). **IRP/CSS also answers questions relating to the electronic/tape cartridge filing of Forms 1042-S. Call toll-free 1-800-455-7438 ext. 6 for specific information on 1042-S filing.** Inquiries dealing with backup withholding and reasonable cause requirements due to missing and incorrect taxpayer identification numbers are also addressed by IRP/CSS. Assistance is available year-round to payers, transmitters, and employers nationwide, Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Standard Time, by calling toll-free **1-866-455-7438** or via email at [mccirp@irs.gov](mailto:mccirp@irs.gov). Do not include SSNs or EINs on emails since this is not a secure line. The Telecommunications Device for the Deaf (**TDD**) toll number is **304-267-3367**. Call as soon as questions arise to avoid the busy filing seasons. Recipients of information returns (payees) should continue to contact 1-800-829-1040 with any questions on how to report the information returns data on their tax returns.

**Note: The Customer Service Section does not answer tax law questions concerning the requirements for withholding of tax on payments of U.S. source income to foreign persons under Chapter 3 of the Code. If you need such assistance, you may call 215-516-2000 and select option 1 (not a toll-free number) or write to: Philadelphia Internal Revenue Service, International Section, P.O. Box 920, Bensalem, PA 19020-8518.**

## Sec. 4. Filing Requirements

**.01** The regulations under section 6011(e)(2)(A) of the Internal Revenue Code provide that any person, including a corporation, partnership, individual, estate, and trust, who is required to file 250 or more information returns must file such returns electronically/magnetically. Withholding agents who meet the threshold of 250 or more Forms 1042-S are required to submit their information electronically or magnetically.

**Note: Even though filers with less than 250 information returns are not required to submit the information returns electronically or magnetically and may submit them on paper, IRS encourages filers to transmit those information returns electronically or magnetically.**

**.02** These requirements apply separately to both originals and amended records filed electronically/magnetically.

**.03** All filing requirements that follow apply individually to each reporting entity as defined by its separate Taxpayer Identification Number (TIN), [Social Security Number (SSN), Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN), or Qualified Intermediary Employer Identification Number (QI-EIN), Withholding Foreign Partnership Employer Identification Number (WP-EIN), Withholding Foreign Trust Employer Identification Number (WT-EIN)]. For example, if a corporation with several branches or locations uses the same EIN, the corporation must aggregate the total volume of returns to be filed for that EIN and apply the filing requirements to each type of return accordingly.

**.04** Filers who are required to submit their information returns on magnetic media may choose to submit their documents by electronic filing. IRS/ECC-MTB has one method for filing information returns electronically; see Part B.

**.05** The above requirements do not apply if the filer establishes hardship (see Part D, Sec. 5).

## Sec. 5. Vendor List

**.01** IRS/ECC-MTB prepares a list of vendors who support electronic or tape cartridge filing. The Vendor List (Pub. 1582) contains the names of service bureaus that will produce files on tape cartridges or via electronic filing. It also contains the names of vendors who provide software packages for filers who wish to produce electronic or tape cartridge files on their own computer systems. This list is compiled as a courtesy and in no way implies IRS/ECC-MTB approval or endorsement.

**.02** If filers meeting the filing requirements engage a service bureau to prepare media on their behalf, the filers should be careful not to report duplicate data, which may cause penalty notices to be generated.

**.03** The Vendor List, Publication 1582, is updated periodically. The most recent revision will be available on the IRS website at [www.irs.gov](http://www.irs.gov).

**.04** A vendor who offers a software package, has the ability to produce tape cartridges for customers, or has the capability to electronically file information returns, and would like to be included on the list, must submit a written request to IRS/ECC-MTB. The request should include:

- (a) Company name,
- (b) Address (include city, state, and ZIP code),
- (c) Telephone number (include area code),
- (d) Email address,
- (e) Contact person,
- (f) Type(s) of service provided (e.g., service bureau and/or software),
- (g) Type(s) of media offered (e.g., tape cartridge, or electronic filing),

(h) Type(s) of return(s)

## Sec. 6. Form 4419, Application for Filing Information Returns Electronically/Magnetically

.01 Transmitters are required to submit Form 4419, Application for Filing Information Returns Electronically/Magnetically, to request authorization to file information returns with IRS/ECC-MTB. A single Form 4419 may be filed. IRS/ECC-MTB encourages transmitters who file for multiple withholding agents or qualified intermediaries to submit one application and to use the assigned Transmitter Control Code (TCC) for all. Please make sure you submit your electronic/magnetic files using the correct TCC.

**Note: EXCEPTIONS — An additional Form 4419 is required for filing Forms 1098, 1099, 5498 and W2-G and Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. See back of Form 4419 for detailed instructions.**

.02 Tape cartridge, and electronically filed returns may not be submitted to IRS/ECC-MTB until the application has been approved. Please read the instructions on the back of Form 4419 carefully. A Form 4419 is included in the Publication 1187 for the filer's use. This form may be photocopied. Additional forms may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. The form is also available at **www.irs.gov**.

.03 Upon approval, a five-character alpha/numeric Transmitter Control Code (TCC) beginning with the digits "22" will be assigned and included in an approval letter. The TCC **must** be coded in the Transmitter "T" Record. If a transmitter uses more than one TCC to file, each TCC must be reported on separate media or in separate transmissions if filing electronically.

.04 If **any** of the information (name, TIN or address) on the Form 4419 changes, please notify IRS/ECC-MTB in writing so the IRS/ECC-MTB database can be updated. However, a change in the method by which information returns are being submitted is not information which needs to be updated (e.g., cartridge to electronic). The transmitter should include the TCC in all correspondence.

.05 Form 4419 may be submitted anytime during the year; however, it **must** be submitted to IRS/ECC-MTB at least 30 days before the due date of the return(s) for current year processing. This will allow IRS/ECC-MTB the minimum amount of time necessary to process and respond to applications. In the event that computer equipment or software is not compatible with IRS/ECC-MTB, a waiver may be requested to file returns on paper documents.

.06 IRS/ECC-MTB encourages a transmitter who files for multiple withholding agents to submit one application and to use the assigned TCC for all withholding agents.

.07 If a withholding agent's files are prepared by a service bureau, it may not be necessary for the withholding agent to submit an application to obtain a TCC. Some service bureaus will produce files, code their own TCC on the media, and send it to IRS/ECC-MTB for the withholding agent. Other service bureaus will prepare tape cartridges and return the media to the withholding agent for submission to IRS/ECC-MTB. These service bureaus may require the withholding agent to obtain a TCC to be coded in the Transmitter "T" Record. Withholding agents should contact their service bureaus for further information.

.08 Once a transmitter is approved to file electronically or magnetically, it is not necessary to reapply each year **unless**:

- (a) The withholding agent has discontinued filing electronically or magnetically for two consecutive years; the withholding agent's TCC may have been reassigned by IRS/ECC-MTB. Withholding agents who are aware that the TCC assigned will no longer be used are requested to notify IRS/ECC-MTB so these numbers may be reassigned; **or**
- (b) The withholding agent's tape cartridge files were transmitted in the past by a service bureau using the service bureau's TCC, but now the withholding agent has computer equipment compatible with that of IRS/ECC-MTB and wishes to prepare his or her own files. The withholding agent must request a TCC by filing Form 4419.

.09 One Form 4419 may be submitted regardless of how many types of media or methods are used to file the return. Multiple TCCs will only be issued to withholding agents with multiple TINs. Only one TCC will be issued per TIN unless the filer has checked the application for the following forms in addition to the Form 1042-S: Forms 1098, 1099, 5498, W-2G, and/or 8027. A separate TCC will be assigned for these forms.

.10 Approval to file does not imply endorsement by IRS/ECC-MTB of any computer software or of the quality of tax preparation services provided by a service bureau or software vendor.

## Sec. 7. Test Files

.01 IRS/ECC-MTB strongly encourages all electronic or tape cartridge filers to submit a test. The test file must consist of a sample of each type of record:

- (a) Transmitter "T" Record
- (b) Withholding Agent "W" Record
- (c) Multiple Recipient "Q" Records (**at least 20**)
- (d) Reconciliation "C" Record
- (e) End of Transmission "F" Record

.02 Use the Test Indicator "**TEST**" (upper case) in Field Positions 195-198 of the "T" Record to show this is a test file.

.03 IRS/ECC-MTB will check the file to ensure it meets the specifications of this Revenue Procedure. For current filers, sending a test file will provide the opportunity to ensure their software reflects all required programming changes. Filers are reminded that no validity, consistency, or math error tests will be conducted.

.04 Tests should be sent to IRS/ECC-MTB between November 1, 2006 and February 15, 2007. Tests must be received at ECC-MTB by February 15, 2007 in order to be processed.

.05 For tests filed on tape cartridge the transmitter must include the signed Form 4804 in the same package with the corresponding tape cartridge. Mark the "TEST" box in Block 1 on the form. Also, mark "TEST" on the external media label.

.06 IRS/ECC-MTB will send a letter of acknowledgment to indicate the test results for tape cartridges identifying the fatal errors. Resubmission of a tape cartridge test file must be received by IRS/ECC-MTB no later than December 15. See Part B, Sec. 4.03 for information on electronic test results.

.07 Magnetic media will not be returned to filers.

**Note: Most validity, consistency and related math error checks within individual "Q" Records will no longer be conducted as part of ECC-MTB's testing procedures.**

## **Sec. 8. Filing of Information Returns Magnetically and Retention Requirements**

.01 Form 4804, Transmittal of Information Returns Reported Magnetically, or a computer-generated substitute, must accompany all tape cartridge shipments.

.02 IRS/ECC-MTB allows for the use of computer-generated substitutes for Form 4804. The substitutes must contain all information requested on the original forms including the affidavit and signature line. Photocopies are acceptable but an original signature is required. When using computer-generated forms, be sure to mark very clearly which tax year is being reported. This will eliminate a phone communication from IRS/ECC-MTB to question the tax year.

.03 Current and prior year data may be submitted in the same shipment; however, each tax year must be on separate media, and a separate Form 4804 must be prepared to clearly indicate each tax year.

.04 Filers who have prepared their information returns in advance of the due date should submit this information to IRS/ECC-MTB no earlier than January 1 of the year the return is due.

.05 Do not report duplicate information. If a filer submits returns electronically/magnetically, identical paper documents must not be filed. This may result in erroneous penalty notices.

.06 Form 4804 may be signed by the withholding agent or the transmitter, service bureau, paying agent, or disbursing agent (all hereafter referred to as agent) on behalf of the payer. Failure to sign the affidavit on Form 4804 may delay processing or could result in IRS/ECC-MTB requesting a replacement file. An agent may sign the Form 4804 if the agent has the authority to sign the affidavit under an agency agreement (either oral, written, or implied) that is valid under state law and adds the caption "FOR: (name of withholding agent/payer)."

.07 Although an authorized agent may sign the affidavit, the withholding agent is responsible for the accuracy of the Form 4804 and the returns filed. The withholding agent will be liable for tax and interest penalties for failure to comply with filing requirements.

.08 A self-adhesive external media label, created by the filer, must be affixed to each tape cartridge. For instructions on how to prepare an external media label, refer to Notice 210 in the forms section of this publication.

.09 On the outside of the shipping container, affix or attach a label which reads "IRB Box \_\_\_\_\_ of \_\_\_\_\_" reflecting the number of containers in the shipment. (Filers can create a label with this information or cut out one of the labels on the special label page provided in this publication.) If there is only one container, mark the outside as Box 1 of 1. For multiple containers, include the sequence (for example, Box 1 of 3, 2 of 3, 3 of 3).

.10 When submitting magnetic files include the following:

- (a) A signed Form 4804;
- (b) External media label (created by filer) affixed to the tape cartridge;
- (c) IRB Box \_\_\_\_\_ of \_\_\_\_\_ outside label.

.11 IRS/ECC-MTB will not pay for or accept "Cash-on-Delivery" or "Charge to IRS" shipments of tax information that an individual or organization is legally required to submit.

.12 Withholding agents should retain a copy of the information returns filed with IRS or have the ability to reconstruct the data for at least 3 years from the due date of the returns.

## **Sec. 9. Due Dates**

.01 The due dates for filing paper returns with IRS also applies to electronic/magnetic filing of Form 1042-S which is on a calendar year basis.

.02 Form 1042-S filed electronically/magnetically must be submitted to IRS/ECC-MTB on or before March 15.

.03 If any due date falls on a Saturday, Sunday, or legal holiday, the return or statement is considered timely if filed or furnished on the next day that is not a Saturday, Sunday, or legal holiday.

.04 Tape cartridge returns postmarked by the United States Postal Service (USPS) on or before March 15, and delivered by United States mail to IRS/ECC-MTB after the due date, are treated as timely under the “timely mailing as timely filing” rule. Notice 97–26, 1997–1 C.B. 413, provides rules for determining the date that is treated as the postmark date. A similar rule applies to items delivered by private delivery services (PDSs) designated by the IRS. A PDS must be designated by the IRS before it will qualify for the timely mailing rule. (See **Note**.) Notice 2004–83, 2004–52 I.R.B. 1030, provides the list of designated PDSs. Designation is effective until the IRS issues a revised list. For items delivered by a non-designated PDS, the actual date of receipt by IRS/ECC-MTB will be used as the filing date. For items delivered by a designated PDS, but through a type of service not designated in Notice 2004–83, the actual date of receipt by IRS/ECC-MTB will be used as the filing date.

**Note: Due to security regulations at ECC-MTB, the Internal Revenue police officers will only accept media from PDSs or couriers from 8:00 a.m. to 3:00 p.m., Monday through Friday.**

.05 Statements to recipients must be mailed on or before March 15.

## Sec. 10. Processing of Information Returns Magnetically at IRS/ECC-MTB

.01 All data received at IRS/ECC-MTB for processing will be given the same protection as individual income tax returns (Form 1040). IRS/ECC-MTB will process the data and determine if the records are formatted and coded according to this Revenue Procedure.

.02 **If the data is formatted incorrectly, IRS/ECC-MTB will request a replacement file in writing. When IRS/ECC-MTB requests a replacement file, it is because we encountered errors and were unable to process the media. Filers will receive a Media Tracking Slip (Form 9267) and letter detailing the reason(s) their media could not be processed. It is imperative that filers maintain backup copies and/or recreate capabilities for their information return files.**

- A **replacement** is an information return file sent by the filer **at the request of IRS/ECC-MTB** because of errors encountered while processing the filer’s original submission. After necessary changes have been made, the file must be resubmitted for processing along with the Media Tracking Slip (Form 9267) which was included in the correspondence from IRS/ECC-MTB. Filers should never send anything to IRS/ECC-MTB marked “Replacement” unless IRS/ECC-MTB has requested a replacement file in writing or via the FIRE System.

.03 All fields indicated as “Required” in the record layouts in Part C **must** contain valid information. If information is not valid, IRS/ECC-MTB will request a replacement file. For example: In the Recipient “Q” Record, position 2, Return Type Indicator, the only valid characters are “0” or “1”. If any other character is entered, a replacement file will be requested.

.04 Tape cartridge files must be corrected and returned with the Media Tracking Slip (Form 9267) to IRS/ECC-MTB within 45 days from the date of the letter. Refer to Part B, Section 6, for procedures for correcting files submitted electronically. A penalty for failure to file correct information returns by the due date will be assessed if the files are not corrected and replaced within the 45 days **or if IRS/ECC-MTB requests replacement files more than two times**. A penalty for intentional disregard of the filing requirements will be assessed if a replacement file is not received. (For penalty information, refer to the Penalty section of the current Instructions for Form 1042–S.)

.05 A letter identifying errors encountered will be provided. It is the responsibility of the transmitter to check the entire replacement file for errors before resubmitting.

.06 IRS/ECC-MTB will not return tape cartridges. Therefore, if the transmitter wants proof that IRS/ECC-MTB received a shipment, the transmitter should select a service with tracking capabilities or one that will provide proof of delivery.

.07 IRS/ECC-MTB will work with filers as much as possible to assist with processing problems.

## Sec. 11. Validation of Information Returns at IRS Service Center

.01 The accuracy of data reported on Form 1042–S will now be reviewed and validated at the IRS Service Center. All fields indicated as “**Required**” in the record layouts in Part D **must** contain **valid information**. If the Service identifies an error, you will be notified and required to provide correct information.

.02 **Know your recipient!** See Notice 2006–35, 2006–14 I.R.B. 708, for know-your-customer rules.

.03 The tax rate entered must be a valid tax rate based on the Internal Revenue Code or on a valid treaty article. The valid treaty rate is based on the recipient’s country of residence for tax purposes. The rate selected must be justified by the appropriate treaty. A valid Tax Rate Table can be found in the Instructions for Forms 1042–S.

.04 The Gross Income amount field must reflect pretax income. The Gross Income amount is the total income paid before any deduction of tax at source.

.05 If a qualified intermediary, withholding foreign partnership, or withholding foreign trust is acting as such, either as a withholding agent or as a recipient, the TIN reported must be a QI-EIN, WP-EIN, or WT-EIN and must begin with “98”. See definition of QI in the Instructions for Form 1042–S.

.06 Country Codes used must be valid codes taken from the Country Code Table. Generally, the use of “OC” or “UC” will generate an error condition. If a recipient is claiming treaty benefits, the Country Code can never be “OC” or “UC”.

.07 If a recipient is an “Unknown Recipient” or “Withholding Rate Pool”, no address should be present. These are the only two situations where a street address is not required.

.08 A U.S. TIN for a recipient is now generally required, particularly for most treaty benefits. The exceptions are very limited and are listed in the current Instructions for Form 1042-S.

.09 Apply the following formula to determine U.S. Federal Tax Withheld (field positions 48-59 of the “Q” Record). All field positions described below are in the “Q” Record.

Income Codes (15-19)

Gross Income Paid (6-17)  
– Withholding Allowance (18-29)  
= Net Income Amount (30-41)  
X Tax Rate (42-45)  
= U.S. Federal Tax Withheld (48-59)

All other Income Codes

Gross Income Paid (6-17)  
X Tax Rate (42-45)  
= U.S. Federal Tax Withheld (48-59)

.10 If the Recipient Code is 20 (Unknown Recipient), the tax rate **must** be 30%.

.11 When making a payment to an international organization (e.g., United Nations) or a tax-exempt organization under IRC 501(a), use Country Code “OC”. Use “UC” only when you have an “Unknown Recipient”.

.12 When using Exemption Code 4, the Recipient Country of Residence Code for Tax Purposes **MUST** be a **VALID** treaty country (e.g., tax resident of Northern Ireland use United Kingdom). Do not use Exemption Code 4 unless a reduction or exemption of tax is based on a treaty claim.

.13 Generally, payments under Income Codes 06 and 08 are not exempt from withholding, however, certain exceptions apply. See the current Instructions for Form 1042-S.

.14 If income is from gambling winnings (Income Code 28) or is not specified (Income Code 50), the tax rate must generally be 30%. This type of income is only exempt from withholding at source if the exemption is based on a tax treaty that has an “Other Income” article.

.15 If Income Code 20 (Earnings as Artist or Athlete) is used, the Recipient Code must be 09. Do not use Recipient Code 01 (Individual), 02 (Corporation), or 03 (Partnership). Generally, the tax rate cannot be reduced even if a treaty may apply.

.16 When paying scholarship and fellowship grants (Income Code 15), the Recipient’s Country of Residence for Tax Purposes must be identified and cannot be “OC” or “UC”. Grants that are exempt under Code Section 117 are no longer required to be reported on Form 1042-S.

**Note: Grants that are exempt under Code 117 include only amounts provided for tuition, fees, books, and supplies to a qualified student. Amounts provided for room and board can only be exempted under a tax treaty and must be reported on Form 1042-S whether exempt from tax or not.**

.17 If a student is receiving compensation (Income Code 19) or a teacher or a researcher is receiving compensation (Income Code 18), all or part of which is exempted from tax under a tax treaty, the Country of Residence for Tax Purposes must be identified and cannot be “OC” or “UC”.

## Sec. 12. Common Submission Problems

.01 Publication 1187 is a format document, **not** a tax law document. Therefore, this publication cannot provide for all possible reporting situations. For any given record entry, it is the responsibility of the filer to make sure that the relevant tax law is applied to the record entry being made.

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### 1. Incorrect TIN indicator in the “W” Record

Be careful that the correct TIN Indicator is used. A U.S. withholding agent always has an EIN. Only a foreign withholding agent that has entered into a Qualified Intermediary agreement with the IRS can have a QI-EIN. If the withholding agent is a foreign company then a foreign address must be entered in the withholding agent address fields.

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### 2. Blank or invalid information in the Withholding Agent’s name and address fields

The IRS error correction process requires that the “W” Record be checked for validity before the “Q” Record can be corrected. Please ensure that the withholding agent’s Name, EIN, Street Address, City and State or Country is present along with the appropriate Postal or ZIP Code. Withholding Agent’s Name Line-1 **must** contain the withholding agent’s name.

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### 3. Missing Recipient TIN in the “Q” Record

A Recipient TIN **must** be present in order to allow a reduction or exemption from withholding at 30% tax rate. The only major exceptions to this rule involve payments of portfolio interest, dividends, and certain royalty payments. If the recipient doesn't have a TIN, one must be applied for and provided to the withholding agent before a reduction or exemption of withholding is allowed.

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### 4. Invalid recipient name and address information

The recipient name entered in Recipient's Name Line-1 must be the same name shown on the withholding certification document provided to and retained by the withholding agent. Recipient's Street Line-1 should only show the official street address. Use Recipient's Street Line-2 for additional internal distribution information such as mail stop numbers or attention information. Follow the instructions for entry of foreign postal codes, cities and countries. Do not input all information in the City field. Use the appropriate fields and codes.

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### 5. Incorrect use of Recipient Code 20 (Unknown Recipient)

This Recipient Code may be used **only** if no withholding certification document has been provided to and retained by the withholding agent, or the withholding certification document provided to and retained has been determined by the withholding agent to be incomplete or otherwise unreliable. If Recipient Code 20 is used, then Recipient Name Line-1 must contain the words Unknown Recipient and the other name and address fields must be blank.

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### 6. Incorrect use of Recipient Code 20 and the Tax Rate and U.S. Tax Withheld fields

If Recipient Code 20 is used, the Tax Rate and the U.S. Tax Withheld must always be 30%. Exemption Code 04 (treaty exemption) **CANNOT BE USED**.

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### 7. Incorrect use of Country Codes in the “Q” Record

There are 3 places in the “Q” Record where country information must be entered. Generally, the information entered in these three fields should be consistent. The country list in the Instructions for Form 1042-S is comprehensive. **Do not** use any code that isn't on the list. Read the instructions for Form 1042-S regarding the use of “OC” and “UC”. **Do not** use these two codes under any circumstance other than those specifically indicated in the Instructions for Form 1042-S.

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### 8. Incorrect reporting of Tax Rates in the “Q” Record

A valid Tax Rate Table can be found in the Instructions for Form 1042-S. Please refer to table and only use the tax rates listed. “Blended rates” are not allowed. If a tax rate for a given recipient changes during the year, two “Q” Records must be submitted.

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### 9. Total amounts reported in the “C” Record do not equal the total amounts reported in the “Q” Records.

The total Gross Income and U.S. Tax Withheld reported in the “Q” Record must equal the total Gross Income and Total U.S. Tax Withheld reported in the corresponding “C” Record.

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.02 Problems relating specifically to filing Form 1042-S electronically can be found in Part B, Sec. 9.

## Sec. 13. Amended Returns

.01 *If you filed a Form 1042-S with the IRS and later discovered an error on the filing, you must send an amended 1042-S as soon as possible.*

**Note:** *If any information you correct on Form(s) 1042-S changes the information previously reported on Form 1042, you must also correct the Form 1042 by filing an amended return.*

.02 *The magnetic media filing requirement of information returns of 250 or more applies separately to both original and amended returns.*

*E*      *If a withholding agent has 100 Forms 1042-S to be amended, they can be filed on paper because they fall*  
*X*      *under the 250 threshold. However, if the withholding agent has 300 Forms 1042-S to be amended, they must*  
*A*      *be filed electronically or magnetically because they exceed the 250 threshold. If for some reason a withholding*  
*M*      *agent cannot file the 300 amended returns on magnetic media, to avoid penalties, a request for a waiver must*  
*P*      *be submitted before filing on paper. If a waiver is approved for original documents, any amended returns for*  
*L*      *the same type of return will be covered under this waiver.*  
*E*

**.03 Amended returns should be filed as soon as possible.** Amended returns filed after August 1 may be subject to the maximum penalty of \$50 per return. Amended returns filed by August 1 may be subject to a lesser penalty. For information on penalties, refer to the Penalty section of the current Instructions for Form 1042-S. However, if a withholding agent discovers errors after August 1, the withholding agent is still required to file amended returns or be subject to a penalty for intentional disregard of the filing requirements. If a record is incorrect, all fields on that record must be completed with the correct information. Submit amended returns only for the returns filed in error. Do not submit the entire file. Furnish amended statements to recipients as soon as possible.

**.04 Amended returns must be identified on the Form 4804 and the external media label by indicating "Correction".**

**Note: Do not include original returns and amended returns on the same media or in the same electronic file.**

**.05** If filers discover that certain information returns were omitted on their original file, they must **not** code these documents as amended returns. The file must be coded and submitted as an original file.

**.06** Prior year data, original and amended, **must** be filed according to the requirements of this Revenue Procedure. If submitting prior year amended returns, use the record format for the current year and submit on separate media. However, use the actual year designation of the amended return in Field Positions 2-5 of the "T" Record. If filing electronically, a separate transmission must be made for each tax year.

**.07** In general, filers should submit amended returns for returns filed within the last 3 calendar years.

**.08** All paper returns, whether original or amended, must be filed with IRS, Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

**.09** Form 4804 must be submitted with amended files submitted magnetically.

**.10** The "Q" Record provides a 20-position field (positions 72-91) for the recipient's account number assigned by the withholding agent. This number will help identify the appropriate incorrect return if more than one return is filed for a particular payee. This number should appear on the initial return and on the amended return in order to identify and process the amended return properly.

**Do not enter a TIN in this field.**

**.11** The record sequence for filing amended returns is the same as for original returns.

**.12** Following is a chart showing the steps to be taken for amending Form 1042-S:

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### **Guidelines for Filing Amended Returns Electronically/Magnetically**

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The record sequence for filing amended returns is the same as for original returns. Create the file in the following order exactly the same as the original transmission:

- (a) Transmitter "T" Record
- (b) Withholding Agent "W" Record with a Return Type Indicator of "1" (1 = Amended) in field position 2
- (c) Recipient "Q" Record(s) with the correct information including the recipient name and address, money amounts and codes with a Return Type Indicator of "1" for amended in field position 2.
- (d) Prepare a Reconciliation "C" Record summarizing the preceding amended "Q" Records.

**Sample data sequence for amended records:**

"T" Record  
"W" Record coded as amended  
"Q" Record coded as amended  
"Q" Record coded as amended  
"Q" Record coded as amended  
"Q" Record coded as amended  
"Q" Record coded as amended  
"C" Record to summarize amended records  
"F" Record

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**.14** For information on when an amended Form 1042 is required, refer to Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

## **Sec. 14. Taxpayer Identification Number (TIN)**

**.01** Section 6109 of the Internal Revenue Code establishes the general requirements under which a person is required to furnish a U.S. TIN to the person obligated to file the information return.

**.02** The Withholding Agent must provide its EIN, QI-EIN, WP-EIN or WT-EIN as appropriate, in the "W" Record and "T" Record if the Withholding Agent is also the transmitter.



**.03** A recipient U.S. TIN (SSN, ITIN, EIN, QI-EIN, WP-EIN, WT-EIN) must be provided on every “Q” Record when:

- (a) Tax rate is less than 30% (See the current Instructions for Form 1042–S for exceptions)
- (b) Income is effectively connected with the conduct of a trade or business in the United States
- (c) Recipient claims tax treaty benefits (generally)
- (d) Recipient is a Qualified Intermediary
- (e) An NRA individual is claiming exemption from withholding on independent personal services
- (f) Other situations may apply, see Publication 515

**.04** In the event the recipient does not have a U.S. TIN, the withholding agent should advise the recipient to take the necessary steps to apply for one.

**.05** The recipient’s U.S. TIN and name combination are used to associate information returns reported to IRS/ECC-MTB with corresponding information on recipients’ tax returns. It is imperative that **correct** U.S. Taxpayer Identification Numbers (TINs) for recipients be provided to IRS/ECC-MTB. **Do not enter hyphens or alpha characters.** Entering all zeros, ones, twos, etc., will have the effect of an incorrect TIN.

**.06** The withholding agent and recipient names with associated TINs should be consistent with the names and TINs used on other tax returns.

**Note: A withholding agent must have a valid EIN, QI-EIN, WP-EIN, and/or WT-EIN. It is no longer valid for a withholding agent to use SSNs and ITINs.**

## Sec. 15. Effect on Paper Returns and Statements to Recipients

**.01** Electronic/magnetic reporting of Form 1042–S eliminates the need to submit paper documents to the IRS. **CAUTION: Do not send Copy A of the paper forms to IRS for any forms filed electronically or on tape cartridge.** This will result in duplicate filing.

**.02** Withholding agents are responsible for providing statements to the recipients as outlined in the current Instructions for Form 1042–S. Refer to those instructions for filing Form 1042–S on paper with the IRS and furnishing statements to recipients.

**.03** Statements to recipients should be clear and legible. If the official IRS form is not used, the filer must adhere to the specifications and guidelines in Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W–2G, and 1042–S.

**.04** The address for filing paper Forms 1042–S and Form 1042 is: *Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.* Do **NOT** send paper Forms 1042–S or 1042 to IRS/ECC-MTB.

## Sec. 16. Definition of Terms

Element	Description
Amended Return	An amended return is an information return submitted by the transmitter to amend an information return that was previously submitted to and processed by IRS/ECC-MTB, but contained erroneous information.
Beneficial Owner	The beneficial owner of income is, generally, the person who is required under U.S. tax principles to include the income in gross income on a tax return. For additional information and special conditions see Definitions in the current Instructions for Form 1042–S.
Employer Identification Number (EIN)	A nine-digit number assigned by IRS for Federal tax reporting purposes.
Electronic Filing	Submission of information returns electronically via the internet. See Part B of this publication for specific information on electronic filing.
File	For purposes of this Revenue Procedure, a file consists of one Transmitter “T” Record at the beginning of the file, a Withholding Agent “W” Record, followed by the Recipient “Q” Record(s), a Reconciliation “C” Record summarizing the number of preceding “Q” Records and total of preceding money fields. Follow with any additional “W”, “Q”, and “C” Record sequences as needed. The last record on the file will be the End of Transmission “F” Record. Nothing should be reported after the End of Transmission “F” Record. A file format diagram is located at the end of Part D.
Filer	Person (may be withholding agent and/or transmitter) submitting information returns to IRS.

<b>Element</b>	<b>Description</b>
FIRE	Filing Information Returns Electronically (FIRE) System is the method for submitting Forms 1042-S electronically to IRS/ECC-MTB. See Part B.
Filing Year	The calendar year in which the information returns are being submitted to IRS.
Flow-Through Entity	A flow-through entity is a foreign partnership (other than a withholding foreign partnership) or a foreign simple or grantor trust (other than a withholding foreign trust). For any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity is considered to be a flow-through entity if it is considered to be fiscally transparent under IRC Section 894 with respect to the payment by an interest holder's jurisdiction.
Foreign Person	A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person. The term also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a Qualified Intermediary. Generally, a payment to a U.S. branch of a foreign person is a payment to a foreign person.
Gross Income	Gross income includes income from all sources, except certain items expressly excluded by statute. Gross income is the starting point for computing adjusted gross income and taxable income.
Individual Taxpayer Identification Number (ITIN)	A nine-digit number issued by IRS to individuals who are required to have a U.S. taxpayer identification number for tax purposes but are not eligible to obtain a Social Security Number (SSN). ITIN may be used for tax purposes only.
Information Return	The vehicle for withholding agents to submit required tax information about a recipient to IRS. For this Revenue Procedure, it is information about a foreign person's U.S. source income subject to withholding, and the information return is Form 1042-S.
Intermediary	An intermediary is a person that acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.
Magnetic Media	For this Revenue Procedure, the term magnetic media refers to IBM 3480, 3490, 3490E, 3590, or 3590E compatible tape cartridge.
Media Tracking Slip	Form 9267 accompanies correspondence sent by IRS/ECC-MTB requesting a replacement file due to incorrect format or certain errors encountered when trying to process the media. <b>This form must be returned with the replacement file.</b>
Nonqualified Intermediary (NQI)	A Nonqualified Intermediary is a foreign intermediary that is not a U.S. person and that is not a Qualified Intermediary.
Payer	A payer is the person for whom the withholding agent acts as a paying agent pursuant to an agreement whereby the withholding agent agrees to withhold and report a payment.
Presumption Rules	The presumption rules are those rules prescribed under Chapter 3 and Chapter 61 of the Internal Revenue Code that a withholding agent must follow to determine the status of a beneficial owner as a U.S. or foreign person when it cannot reliably associate a payment with valid documentation.
Pro-Rata Basis Reporting	If the withholding agent has agreed that an NQI may provide information allocating a payment to its account holders under the provisions of Regulations section 1.1441-1(e)(3)(iv)(D), and the NQI fails to allocate the payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file a Form 1042-S for each recipient on a pro-rata basis.

<b>Element</b>	<b>Description</b>
Qualified Intermediary (QI)	A Qualified Intermediary is a foreign intermediary that is a party to a withholding agreement with the IRS, in which it agrees to comply with the relevant terms of Chapters 3 and 61 of the Internal Revenue Code <i>and is in a country with approved know-your-customer rules. See Notice 2006-35</i>
Qualified Intermediary Employer Identification	A nine-digit number assigned by IRS to a QI for Federal tax reporting purposes. A QI-EIN is only to be used when a QI is acting as a qualified intermediary.
Recipient	Person (nonresident alien individual, fiduciary, foreign partnership, foreign corporation, Qualified Intermediary, Withholding Rate Pool, or other foreign entity) that receives payments from a withholding agent as a beneficial owner or as a qualified intermediary acting on behalf of a beneficial owner. A non-qualified intermediary cannot be a recipient.
Replacement File	A replacement file is an information return file sent by the filer <b>at the request of IRS/ECC-MTB</b> because of certain errors encountered while processing the filer's original submission.
Service Bureau	Person or organization with whom the withholding agent has a contract to prepare and/or submit information return files to IRS/ECC-MTB. A parent company submitting data for a subsidiary is not considered a service bureau.
Social Security Number (SSN)	A nine-digit number assigned by Social Security Administration to an individual for wage and tax reporting purposes.
Special Character	Any character that is <b>not</b> a numeric, an alpha, or a blank.
Taxpayer Identification Number (TIN)	Refers to either an Employer Identification Number (EIN), Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), or a Qualified Intermediary Employer Identification Number (QI-EIN).
Tax Year	The year in which payments were made by a withholding agent to a recipient.
Transmitter	Refers to the person or organization submitting file(s) electronically/magnetically. The transmitter may be the payer, agent of the payer, or withholding agent.
Transmitter Control Code (TCC)	A five-character alpha/numeric number assigned by IRS/ECC-MTB to the transmitter prior to filing electronically or magnetically. An application Form 4419 must be filed with IRS/ECC-MTB to receive this number. This number is inserted in the Transmitter "T" Record (field positions 190-194) of the file and <b>must</b> be present before the file can be processed. Transmitter Control Codes assigned to 1042-S filers will always begin with " <b>22</b> ".
Unknown Recipient	For this Revenue Procedure, an unknown recipient is a recipient for which no documentation has been received by a withholding agent or intermediary or for which documentation received cannot be reliably associated. This includes incomplete documentation. An unknown recipient is always subject to withholding at the maximum applicable rate. No reduction of or exemption from tax may be applied <b><u>under any circumstances.</u></b>
Vendor	Vendors include service bureaus that produce information return files on tape cartridges or via electronic filing for withholding agents. Vendors also include companies that provide software for those who wish to produce their own media or electronic files.

**Element****Description**

Withholding Agent

Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity. The term withholding agent also includes, but is not limited to, a qualified intermediary, a nonqualified intermediary, a withholding foreign partnership, a withholding foreign trust, a flow-through entity, a U.S. branch of a foreign insurance company or foreign bank that is treated as a U.S. person, and an authorized foreign agent. A person may be a withholding agent under U.S. law even if there is no requirement to withhold from a payment or even if another person has already withheld the required amount from a payment.

Withholding Foreign Partnership (WP) or Withholding Foreign Trust (WT)

A foreign partnership or trust that has entered into a withholding or Withholding Foreign Trust agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners.

**Sec. 17. State Abbreviations**

.01 The following state and U.S. territory abbreviations are to be used when developing the state code portion of address fields. This table provides state and territory abbreviations.

State	Code	State	Code	State	Code
Alabama	AL	Kentucky	KY	No. Mariana Islands	MP
Alaska	AK	Louisiana	LA	Ohio	OH
American Samoa	AS	Maine	ME	Oklahoma	OK
Arizona	AZ	Marshall Islands	MH	Oregon	OR
Arkansas	AR	Maryland	MD	Pennsylvania	PA
California	CA	Massachusetts	MA	Puerto Rico	PR
Colorado	CO	Michigan	MI	Rhode Island	RI
Connecticut	CT	Minnesota	MN	South Carolina	SC
Delaware	DE	Mississippi	MS	South Dakota	SD
District of Columbia	DC	Missouri	MO	Tennessee	TN
Federated States of Micronesia	FM	Montana	MT	Texas	TX
Florida	FL	Nebraska	NE	Utah	UT
Georgia	GA	Nevada	NV	Vermont	VT
Guam	GU	New Hampshire	NH	Virginia	VA
Hawaii	HI	New Jersey	NJ	U.S. Virgin Islands	VI
Idaho	ID	New Mexico	NM	Washington	WA
Illinois	IL	New York	NY	West Virginia	WV
Indiana	IN	North Carolina	NC	Wisconsin	WI
Iowa	IA	North Dakota	ND	Wyoming	WY
Kansas	KS				

.02 When reporting APO/FPO addresses use the following format:

**EXAMPLE:**

Recipient Name	PVT Willard J. Doe
Mailing Address	Company F, PSC Box 100 167 Infantry REGT
Recipient City	APO (or FPO)
Recipient State	AE, AA, or AP*

**EXAMPLE:**

Recipient ZIP Code 098010100

\*AE is the designation for ZIPs beginning with 090–098, AA for ZIP 340, and AP for ZIPs 962–966.

## Part B. Electronic Filing Specifications

**Note: The FIRE System is now on the Internet at <http://fire.irs.gov>. It is no longer a dial-up connection.**

### Sec. 1. General

**.01** Electronic filing of Form 1042–S (originals, amended and replacement files) is offered as an alternative to tape cartridge or paper filing. Filing electronically will fulfill the magnetic media requirements for those payers who are required to file magnetically. Payers who are under the filing threshold requirement, are encouraged to file electronically. If the original file was sent magnetically, but IRS/ECC-MTB has requested a replacement file, the replacement may be transmitted electronically. Also, if the original file was submitted via tape cartridge, amended returns or replacement files may be transmitted electronically.

**.02** All electronic filing of information returns are received at IRS/ECC-MTB via the FIRE (Filing Information Returns Electronically) System. To connect to the FIRE System, point your browser to <http://fire.irs.gov>. The system is designed to support the electronic filing of information returns only.

**.03** *For files submitted on the FIRE System, it is the responsibility of the filer to check the status of your file within 5 business days to verify the results of your transmission. ECC-MTB will no longer mail error reports to filers for files that are bad. Information about the errors including the number of errors, a description and the first occurrence will be provided on the FIRE System. If additional information is needed to understand the errors, the filer can call toll-free 1–866–455–7438.*

**.04** The electronic filing of information returns is not affiliated with any other IRS electronic filing programs. Filers must obtain separate approval to participate in each of them. Only inquiries concerning electronic filing of information returns should be directed to IRS/ECC-MTB.

**.05** Files submitted to IRS/ECC-MTB electronically must be in standard ASCII code. Do not send tape cartridges or paper forms with the same information as electronically submitted files. This would create duplicate reporting resulting in penalty notices.

**.06** The record formats of the “T”, “W”, “Q”, “C”, and “F” records are the same for both electronically or magnetically filed records. See Part D, Record Format Specifications and Record Layouts.

### Sec. 2. Advantages of Filing Electronically

Some of the advantages of filing electronically are:

- (1) Paperless, no Form 4804 requirements.
- (2) Security — Secure Socket Layer (SSL) 128-bit encryption.
- (3) Results available within 5 business days regarding the acceptability of the data transmitted. It is the filer’s responsibility to log into the system and check the results.
- (4) Better customer service due to on-line availability of transmitter’s files for research purposes.

### Sec. 3. Electronic Filing Approval Procedure

**.01** Filers must obtain, or already have, a Transmitter Control Code (TCC) assigned prior to submitting their files electronically. (Filers who currently have a TCC for magnetic media filing of Form 1042–S, beginning with “22”, will not be assigned a second TCC for electronic filing.) Refer to Part A, Sec. 6, for information on how to obtain a TCC.

**.02** Once a TCC is obtained, electronic filers assign their own user ID, password and PIN (Personal Identification Number) and do not need prior or special approval. See Part B, Sec. 6, for more information on the PIN.

**.03** If a filer is submitting files for more than one TCC, it is not necessary to create a separate logon and password for each TCC.

**.04** For all passwords, it is the user’s responsibility to remember the password and not allow the password to be compromised. Passwords are user assigned at first logon and must be 8 alpha/numerics containing at least 1 uppercase, 1 lowercase, and 1 numeric. However, filers who forget their password or PIN, can call at **toll-free 1–866–455–7438 or outside the U.S. at 304–263–8700** for assistance. The FIRE System may require users to change their passwords on a yearly basis.

## Sec. 4. Test Files

.01 Filers are not required to submit a test file; however, the submission of a test file is encouraged for all new electronic filers to test hardware and software. If filers wish to submit an electronic test file for Tax Year 2006 (returns to be filed in 2007), it **must** be submitted to IRS/ECC-MTB **no earlier than** November 1, 2006, and **no later than** February 15, 2007.

.02 Filers who encounter problems while transmitting the electronic test file can contact IRS/ECC-MTB **toll-free at 1-866-455-7438 or outside the U.S. at 304-263-8700** for assistance.

.03 Filers must verify the status of the transmitted test data by going to <http://fire.irs.gov> and verifying the status of their file by clicking on CHECK FILE STATUS. This information will be available within 5 business days after the transmission is received by IRS/ECC-MTB.

.04 Form 4804 is not required for test files submitted electronically. See Part B, Sec. 6.

## Sec. 5. Electronic Submissions

.01 Electronically filed information may be submitted to IRS/ECC-MTB 24 hours a day, 7 days a week. Technical assistance will be available Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern Standard Time by calling **toll-free at 1-866-455-7438 or outside the U.S. at 304-263-8700**.

.02 **The FIRE System will be down from December 22, 2006, through January 2, 2007.** This allows IRS/ECC-MTB to update its system to reflect current year changes.

.03 If you are sending files larger than 10,000 records electronically, data compression is encouraged. If you are considering sending files larger than 5 million records, please contact IRS/ECC-MTB for specifics. WinZip and PKZip are the only acceptable compression packages. IRS/ECC-MTB cannot accept self-extracting zip files or compressed files containing multiple files. The time required to transmit information returns electronically will vary depending upon the type of connection to the internet and if data compression is used. **The time required to transmit a file can be reduced by as much as 95 percent by using compression.**

.04 Transmitters may create files using self assigned files name(s). Files submitted electronically will be assigned a new unique file name by the FIRE System. The filename assigned by the FIRE System will consist of submission type (TEST, ORIG [original], AMEN [*amended return*], and REPL [replacement]), the filer's TCC and a four-digit number sequence. The sequence number will be incremented for every file sent. For example, if it is your first original file for the calendar year and your TCC is 22000, the IRS assigned filename would be ORIG.22000.0001. **Record the file name.** This information will be needed by ECC-MTB to identify the file, if assistance is required.

.05 If a file was submitted timely and is bad, the filer will have up to 60 days from the day the file was transmitted to transmit an acceptable file. If an acceptable file is not received within 60 days, the payer could be subject to late filing penalties. This only applies to files originally submitted electronically.

.06 The following definitions have been provided to help distinguish between a amended return and a replacement:

- An **amended return** is an information return submitted by the transmitter to correct an information return that was previously submitted to and processed by IRS/ECC-MTB, but contained erroneous information. **(See Note.)**

**Note: Amended return should only be submitted for records that have been submitted incorrectly, not the entire file.**

- A **replacement** is an information return file sent by the filer because the CHECK FILE STATUS option on the FIRE System indicated the original/amended file was bad. After the necessary changes have been made, the file must be transmitted through the FIRE System. **(See Note.)**

**Note: Filers should never transmit anything to IRS/ECC-MTB as a "Replacement" file unless the CHECK FILE STATUS option on the FIRE System indicates the file is bad.**

.07 The TCC in the Transmitter "T" Record must be the TCC used to transmit the file; otherwise, the file will be considered an error.

## Sec. 6. PIN Requirements

.01 Form 4804 is not required for electronic files. Instead, the user will be prompted to create a PIN consisting of 10 numerics when establishing their initial logon name and password.

.02 The PIN is required each time an ORIGINAL, AMENDED, or REPLACEMENT file is sent electronically and is permission to release the file. It is not needed for a TEST file. An authorized agent may enter their PIN, however, the payer is responsible for the accuracy of the returns. The payer will be liable for penalties for failure to comply with filing requirements. If you forget your PIN, please call **toll-free at 1-866-455-7438 ext. 3 or outside the U.S. at 304-263-8700 ext. 3** for assistance.

## Sec. 7. Electronic Filing Specifications

.01 The FIRE System is designed exclusively for the filing of Forms 1042-S, 1098, 1099, 5498, 8027, and W-2G.

.02 A transmitter must have a TCC (see Part A, Sec. 6) before a file can be transmitted. A TCC assigned for 1042-S magnetic media filing should also be used for electronic filing.

.03 The results of the electronic transmission will be available in the CHECK FILE STATUS area of the FIRE System within 5 business days. It is the filer's responsibility to verify the acceptability of files submitted by selecting the CHECK FILE STATUS option.

## Sec. 8. Connecting to the FIRE System

.01 Point your browser to <http://fire.irs.gov> to connect to the FIRE System.

.02 Before connecting, have your TCC and EIN available.

.03 Your browser must support SSL 128-bit encryption.

.04 Your browser must be set to receive "cookies". Cookies are used to preserve your User ID status.

**First time connection to The FIRE System** (If you have logged on previously, skip to Subsequent Connections to the FIRE System.)

Click "***Create New Account***".

Fill out the registration form and click "***Submit***".

Enter your ***User ID*** (most users logon with their first and last name).

Enter and verify your ***password*** (the password is user assigned and must be 8 alpha/numerics, containing at least 1 uppercase, 1 lowercase and 1 numeric). FIRE may require you to change the password once a year.

Click "***Create***".

If you receive the message "***Account Created***", click "***OK***".

Enter and verify your 10-digit self-assigned PIN (Personal Identification Number).

Click "***Submit***".

If you receive the message "***Your PIN has been successfully created!***", click "***OK***".

Read the bulletin(s) and/or click "***Click here to continue***".

### **Subsequent Connections to The FIRE System**

Click "***Log On***".

Enter your ***User ID*** (most users logon with their first and last name).

Enter your ***password*** (the password is user assigned and is case sensitive).

### **Uploading your file to the FIRE System**

At Menu Options:

Click "***Send Information Returns***".

Enter your ***TCC***:

Enter your ***EIN***:

Click "***Submit***".

## Uploading your file to the FIRE System

The system will then display the company name, address, city, state, ZIP code, phone number, contact and email address. This information will be used to contact or send correspondence (if necessary) regarding this transmission. Please verify your email address is correct as this will be increasingly used to contact filers in the future. Update as appropriate and/or Click "**Accept**".

Click one of the following:

**Original File**

**Amended File**

**Test File** (This option will only be available 11/1/2006 - 02/15/2007.)

**Replacement File** (if you select this option, select one of the following):

**Electronic Replacement** (file was originally transmitted on this system)

Click the file to be replaced

**Magnetic Media Replacement**

Enter the alpha character from Form 9267, Media Tracking Slip, that was sent with the request for replacement file. Click "**Submit**".

Enter your 10-digit PIN.

Click "**Submit**".

Click "**Browse**" to locate the file and open it.

Click "**Upload**".

**When the upload is complete, the screen will display the total bytes received and tell you the name of the file you just uploaded. Record this information.**

If you have more files to upload for that TCC:

Click "**File Another?**"; otherwise,

Click "**Main Menu**".

<p><b>It is your responsibility to check the acceptability of your file; therefore, be sure to check back into the system in 5 business days using the CHECK FILE STATUS option.</b></p>
--

## Checking your FILE STATUS

At the Main Menu:

Click "**Check File Status**".

Enter your **TCC**:

Enter your **EIN**:

Click "**Search**".

If "Results" indicate:

**"Good"** — File has been released to our mainline processing.

**"Bad"** — Correct the errors and timely resubmit the file as a "replacement".

**"Not yet processed"** — File has been received, but we do not have results available yet. Please check back in a few days.

Click on the desired file for a detailed report of your transmission.

When you are finished, click on **Main Menu**.



## Checking your FILE STATUS

Click “*Log Out*”  
Close your Web Browser.

### **Sec. 9. Common Problems and Questions Associated with Electronic Filing**

.01 Refer to Part A, For Major Problems Encountered with Form 1042–S electronic/magnetic files.

.02 The following are the major errors associated with electronic filing:

#### **NON-FORMAT ERRORS**

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##### **1. Transmitter does not check the FIRE System to determine file acceptability.**

The results of your file transfer are posted to the FIRE System within 5 business days. It is your responsibility to verify file acceptability and, if the file contains errors, you can get an online listing of the errors. Date received and number of recipient records are also displayed.

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##### **2. Transmitter uses the TCC assigned for filing 1098, 1099, 5498 or W–2G Forms.**

*Use your 1042–S TCC which begins with ‘22’ to transmit your 1042–S file, otherwise, it will be automatically considered an error.*

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##### **3. Incorrect file is not replaced timely.**

If we have advised you your file is bad, correct the file and timely resubmit as a replacement.

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##### **4. Transmitter compresses several files into one.**

Only compress one file at a time. For example, if you have 10 uncompressed files to send, compress each file separately and send 10 separate compressed files.

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##### **5. Transmitter sends a file and CHECK FILE STATUS indicates that the file is good, but the transmitter wants to send a replacement or amended file to replace the original/amended/replacement file.**

Once a file has been transmitted, you cannot send a replacement file unless CHECK FILE STATUS indicates the file is bad (5 business days after file was transmitted). If you do not want us to process the file, you must first contact us **toll-free at 1–866–455–7438 or outside the U.S. at 304–263–8700** to see if this is a possibility.

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##### **6. Transmitter sends an original file that is good, and then sends an amended file for the entire file even though there are only a few changes.**

The amended file, containing the proper coding, should only contain the records needing correction, not the entire file.

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##### **7. File is formatted as EBCDIC.**

All files submitted electronically must be in standard ASCII code.

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##### **8. Transmitter has one TCC number, but is filing for multiple companies, which EIN should be used when logging into the system to send the file?**

When sending the file electronically, you will need to enter the EIN of the company assigned to the TCC. When you upload the file, it will contain the EINs for the other companies that you are filing for. This is the information that will be passed forward.

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##### **9. Transmitter sent the wrong file, what should be done?**

Call us as soon as possible **toll-free at 1–866–455–7438 or outside the U.S. at 304–263–8700**. We may be able to stop the file before it has been processed. **Please do not send a replacement for a file that is marked as a good file.**

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## **Part C. Tape Cartridge Filing Specifications**

### **Sec. 1. General**

.01 The specifications contained in this part of the Revenue Procedure define the **required** format and content of the records to be included in the electronic/tape cartridge file. Do not deviate from this format.

.02 Transmitters must be consistent in the use of recording modes and density on files. If the media does not meet these specifications, IRS/ECC-MTB will request a replacement file. Filers are encouraged to submit a test prior to submitting the actual file. Contact IRS/ECC-MTB for further information **toll-free at 1-866-455-7438 or outside the U.S. at 304-263-8700.**

.03 Regardless of the type of media used or if returns are filed electronically, the record length must be 780 positions.

## Sec. 2. Tape Cartridge Filing Specifications

.01 In most instances, IRS/ECC-MTB can process tape cartridges that meet the following specifications:

- (a) Must be IBM 3480, 3490, 3490E, 3590, or 3590E compatible.
- (b) Must meet American National Standard Institute (ANSI) standards and have the following characteristics:
  - (1) Tape cartridges will be 1/2-inch tape contained in plastic cartridges which are approximately 4-inches by 5-inches by 1-inch in dimension.
  - (2) Magnetic tape will be chromium dioxide particle based 1/2-inch tape.
  - (3) Cartridges must be 18-track, 36-track, 128-track, or 256-track parallel (See **Note**).
  - (4) Cartridges will contain 37,871 CPI or 75,742 CPI (characters per inch).
  - (5) Mode will be full function.
  - (6) The data may be compressed using EDRC (Memorex) or IDRC (IBM) compression.
  - (7) Either EBCDIC (Extended Binary Coded Decimal Interchange Code) or ASCII (American Standard Coded Information Interchange) may be used.

.02 The tape cartridge records defined in this Revenue Procedure may be blocked subject to the following:

- (a) A block **must not** exceed 23,400 tape positions.
- (b) All records, except the header and trailer labels, may be blocked or unblocked. A record may not contain any control fields or block descriptor fields which describe the length of the block or the logical records within the block. The number of logical records within a block (the blocking factor) must be constant in every block with the exception of the last block which may be shorter (see item (b) above). The block length must be evenly divisible by 780.
- (c) **Records may not span blocks.**

.03 Tape cartridges may be labeled or unlabeled.

.04 For the purposes of this Revenue Procedure, the following must be used:

Tape Mark:

- (a) Signifies the physical end of the recording on tape.
- (b) For even parity, use BCD configuration 001111 (8421).
- (c) May follow the header label and precede and/or follow the trailer label.

**Note: Filers should indicate on the external media label whether the cartridge is 18-track, 36-track, 128-track or 256-track.**

## Part D. Record Format Specifications and Record Layouts

### Sec. 1. Transmitter "T" Record

.01 This record identifies the entity preparing and transmitting the file. The transmitter and the withholding agent may be the same, but they need not be.

.02 The first record of a file **MUST** be a Transmitter "T" Record (preceded only by header labels). The "T" Record must appear on each electronic file and cartridge; otherwise, a replacement file may be requested.

.03 The "T" Record is a fixed length of 780 positions.

.04 All alpha characters entered in the "T" Record must be upper case.

**Note 1: For all fields marked "Required", the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with these instructions, IRS will contact you to request a replacement file. For those fields not marked Required, a transmitter must allow for the field, but may be instructed to enter blanks or zeroes in the indicated media position(s) and for the indicated length. All records have a fixed length of 780 positions.**

**Note 2: A copy of the current Instructions for Form 1042-S for this revision of the Publication 1187 is included at the end of this publication. These instructions should be used for the proper coding of each field in this record where applicable. The instructions are updated each year as required. Since Publication 1187 may not be revised every year, be sure to use the most current instructions.**

**Note 3: Valid characters for all name and address fields are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe ('), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as "in care of")] is valid in the first position only.**

**Record Name: Transmitter "T" Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
1	Record Type	1	<b>Required.</b> Enter "T."
2-5	Tax Year	4	<b>Required.</b> Enter year for which income and withholding are being reported.
6-14	Transmitter's Taxpayer Identification Number (TIN)	9	<b>Required.</b> Enter the Taxpayer Identification Number of the Transmitter. This can be a Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), Employer Identification Number (EIN) or Qualified Intermediary Number (QI-EIN). <b>DO NOT ENTER blanks, hyphens or alpha characters.</b> A TIN consisting of all the same digits (e.g., 111111111) is not acceptable.
15-54	Transmitter Name	40	<b>Required.</b> Enter name of transmitter of file. Abbreviate if necessary to fit 40-character limit. Omit punctuation if possible. Left-justify and blank fill.

**Note: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ü = U, Ø = O, ñ = N, etc.**

55-94	Transmitter's Address	40	<b>Required.</b> Enter full mailing address of the transmitter. This will include number, street, and apartment or suite number (P.O. Box can be used if mail is not delivered to street address). Abbreviate as needed to fit 40-character limit. Omit punctuation if possible. Left-justify and blank fill.
95-114	City	20	<b>Required.</b> Enter the city or town (or other locality name) of transmitter. If applicable, enter APO or FPO only. Left-justify and blank fill.
115-116	State Code	2	<b>Required if U.S. Transmitter.</b> Enter only the two-alpha State Code. <b>DO NOT</b> spell out the state name. See State Code Table, Part A, Sec. 17.
117-118	Province Code	2	<b>Required if Foreign Country Code is "CA" (Canada).</b> Enter only the two-alpha character Province Code as shown in the Province Code table. <b>DO NOT spell out the Province Name. If foreign country other than Canada, blank fill.</b>
	<b>Province Code</b>	<b>Province</b>	
	AB	Alberta	
	BC	British Columbia	
	LB	Labrador	
	MB	Manitoba	
	NB	New Brunswick	
	NF	Newfoundland	
	NS	Nova Scotia	
	NT	Northwest Territories	
	NU	Nunavut	
	ON	Ontario	
	PE	Prince Edward Island	
	QC or PQ	Quebec	
	SK	Saskatchewan	
	YK	Yukon Territory	
119-120	Country Code	2	<b>Required if Foreign Transmitter. If Country Code is present, State Code field MUST be blank.</b> Enter only the two-alpha Country Code from the Country Code table. <b>DO NOT spell out the Country Name.</b>

**Note 1: COUNTRY CODES: The list of country codes provided in the current Instructions for Form 1042-S includes all internationally recognized country codes and must be used to ensure the proper coding of the Country Code field. This list is updated each year as required. Do not enter U.S. in the Country Code field.**

**Record Name: Transmitter "T" Record**

Field Positions	Field Title	Length	Description and Remarks
121-129	Postal or ZIP Code	9	<b>Required if U.S. address. Enter up to nine numeric characters for all U.S. addresses (including territories, possessions and APO/FPO).</b>  <b>Conditional for foreign addresses.</b> Enter the alpha/numeric foreign postal code. Left-justify and blank fill the remaining positions. DO NOT use hyphens.
130-169	Contact Name	40	<b>Required.</b> Enter the name of the person to contact if any questions should arise with the transmission.
170-189	Contact Telephone Number	20	<b>Required.</b> Enter the contact person's telephone number, and extension, if applicable. If foreign, provide appropriate codes for overseas calls. Left-justify.
190-194	Transmitter Control Code (TCC)	5	<b>Required.</b> Enter the five-character alpha/numeric TCC assigned ONLY for Form 1042-S reporting. (The first two numbers will always be 22).
195-198	Test Indicator	4	<b>Required if this is a test file.</b> Enter the word "TEST". Otherwise enter blanks.
199	Prior Year Indicator	1	<b>Required.</b> Enter a "P" only if reporting prior year data; otherwise, enter blank. Do not enter a "P" for current year information.
200-770	Reserved	571	Blank fill.
771-778	Record Sequence Number	8	<b>Required.</b> Enter the number of the record as it appears within your file. The record sequence number for the "T" record will always be "1" (one), since it is the first record on your file and you can have only one "T" record in a file. Each record, thereafter, must be incremented by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the "T" record sequence number would appear as "00000001" in the field, the first "W" record would be "00000002", the first "Q" record, "00000003", the second "Q" record, "00000004" and so on until you reach the final record of the file, the "F" record.
779-780	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

**Transmitter "T" Record Layout**

Record Type	Tax Year	Transmitter's TIN	Transmitter Name	Transmitter Address	City	State Code	Province Code
1	2-5	6-14	15-54	55-94	95-114	115-116	117-118

Country Code	Postal or ZIP Code	Contact Name	Contact Telephone Number	TCC	Test Indicator	Prior Year Indicator	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
119-120	121-129	130-169	170-189	190-194	195-198	199	200-770	771-778	779-780

**Sec. 2. Withholding Agent "W" Record**

.01 The "W" Record identifies the Withholding Agent.

.02 Enter a "W" Record after the initial "T" Record on the file, followed by the Recipient "Q" Records, and a Reconciliation "C" Record. *Do not report for a withholding agent if there are no corresponding Recipient "Q" records.*

.03 Several “W” Records for different Withholding Agents may appear on the same Transmitter’s File.

.04 Each “W” Record is a fixed length of 780 positions.

.05 All alpha characters entered in the “W” Record must be upper case.

**Note 1: For all fields marked “Required”, the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with these instructions, your file may not process correctly. For those fields not marked “Required”, a transmitter must allow for the field, but may be instructed to enter blanks or zeroes in the indicated media position(s) and for the indicated length. All records have a fixed length of 780 positions.**

**Note 2: A copy of the current Instructions for Form 1042–S for this revision of the Publication 1187 is included at the end of this publication. These instructions should be used for the proper coding of each field in this record where applicable. The list of country codes in the instructions includes all recognized country codes and **MUST** be used for coding. The instructions are updated each year as required. *Since Publication 1187 may not be revised every year, be sure to use the most current instructions.***

*Note 3: Valid characters for all name and address fields are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe (’), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as “in care of”)] is valid in the first position only.*

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**Record Name: Withholding Agent “W” Record**

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Field Positions	Field Title	Length	Description and Remarks
1	Record Type	1	<b>Required.</b> Enter “W”.
2	Return Type Indicator	1	<b>Required.</b> Enter the one position value below to identify whether the record is Original or Amended. Do not enter a blank or alpha character.  Acceptable Values are: • 0 (Zero) = Original • 1 = Amended
3	Pro Rata Basis Reporting	1	<b>Required.</b> Enter the one position value below to identify if reporting on a Pro Rata Basis.  Acceptable Values are: • 0 (Zero) = Not Pro Rata • 1 = Pro Rata Basis Reporting
4–12	Withholding Agent’s EIN	9	<b>Required.</b> Enter the nine-digit Employer Identification Number of the Withholding Agent. Do <b>NOT</b> enter blanks, hyphens or alpha characters. An EIN consisting of all the same digits (e.g., 11111111) is not acceptable. Do <b>NOT</b> enter the recipient’s TIN in this field.

**Note: See current Instructions for Form 1042–S to determine when a Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust must provide its QI-EIN, WP-EIN or WT-EIN in this field.**

13	Withholding Agent’s EIN Indicator	1	<b>Required.</b> Enter the Withholding Agent’s EIN indicator from the following values:  • 0 = EIN • 1 = QI-EIN, WP-EIN, WT-EIN • 2 = NQI-EIN
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**Note: Use EIN indicator 1 only if the Withholding Agent’s EIN begins with “98” AND the Withholding Agent’s City, State and Country Code fields indicate that the Withholding Agent is not a U.S. withholding agent.**

14–53	Withholding Agent’s Name Line-1	40	<b>Required.</b> Enter the Withholding Agent’s Name as established when filing for the EIN or QI-EIN which appears in positions 4–12 of the “W” Record. Left-justify and blank fill.
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**Note: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ü = U, Ø = O, ñ = N, etc.**

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**Record Name: Withholding Agent "W" Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
54-93	Withholding Agent's Name Line-2	40	Enter supplementary withholding agent's name information; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases or titles. Also use this line for "care of" or "via". <b>See Note 3 at the beginning of the "W" Record.</b>
94-133	Withholding Agent's Name Line-3	40	See above.
134-173	Withholding Agent's Street Line-1	40	<b>Required.</b> Enter the mailing address of the withholding agent. Street address should include number, street, and apartment or suite number (or P.O. Box if mail is not delivered to street address). Abbreviate as needed. Left-justify and blank fill.
174-213	Withholding Agent's Street Line-2	40	Enter supplementary withholding agent street address information. Otherwise, blank fill.
214-253	Withholding Agent's City	40	<b>Required.</b> Enter the city or town (or other locality name). Enter APO or FPO only if applicable. <b>Do not</b> enter a foreign postal code in the city field. Left-justify and blank fill.
254-255	Withholding Agent's State Code	2	<b>Required if Withholding Agent has a U.S. address.</b> Enter the two-character State Code abbreviation. If not a U.S. state, territory or APO/FPO identifiers, blank fill. <b>Do not use any of the two character Country Codes in the State Code Field.</b>
<b>Note: If the withholding agent has a U.S. address, leave the country code in positions 258-259 blank.</b>			
256-257	Withholding Agent's Province Code	2	<b>Required if Foreign Country Code is "CA" (Canada).</b> Enter only the two-alpha character Province Code as shown in the Province Code Table. See "T" record positions 117-118 for Province Code Table. <b>DO NOT spell out the Province Name. If foreign country other than Canada, blank fill.</b>
258-259	Withholding Agent's Country Code	2	<b>Required if QI or NQI or other foreign withholding agent.</b> Enter only the two-alpha Country Code from the Country Code Table. <b>DO NOT spell out the Country Name.</b>
<b>Note: COUNTRY CODES: The list of country codes provided in the current Instructions for Form 1042-S includes all internationally recognized country codes and MUST be used to ensure the proper coding of the Country Code field. This list is updated each year as required. Do not enter U.S. in the Country Code field.</b>			
260-268	Postal or ZIP Code	9	<b>Required if U.S. address.</b> Enter up to nine numeric characters for all U.S. addresses (including territories, possessions and APO/FPO). <b>Conditional for foreign addresses.</b> Enter the alpha/numeric foreign postal code. <b>DO NOT</b> use hyphens or blanks within the Postal Code. Left-justify and blank fill the remaining positions.
269-272	Tax Year	4	<b>Required.</b> Enter the four-digit year of the current tax year unless you entered a "P" in the Prior Year Indicator Field of the "T" Record. All recipient "Q" Records must report payments for this year only. Different tax years may not appear on the same file.
273-317	Withholding Agent Contact Name	45	<b>Required.</b> Enter the name of the person IRS can contact if questions arise concerning this filing. Left-justify and blank fill the remaining positions.
318-362	Withholding Agent's Department Title	45	<b>Required.</b> Enter the title of the contact person or the dept. which can handle inquiries concerning this filing. Left-justify and blank fill the remaining positions.

**Record Name: Withholding Agent "W" Record**

Field Positions	Field Title	Length	Description and Remarks
363-382	Contact Phone Number and Extension	20	<b>Required.</b> Enter the telephone number of a person to contact regarding electronic or magnetic files. Omit hyphens. If no extension is available, left-justify and fill unused positions with blanks. If foreign, provide appropriate codes for overseas call.
383	Final Return Indicator	1	<b>Required.</b> Enter the one position value below to indicate whether you will be filing Forms 1042-S in the future. <ul style="list-style-type: none"> <li>• 0 (Zero) = will be filing</li> <li>• 1 = will not be filing</li> </ul>
384-770	Reserved	387	Blank fill.
771-778	Record Sequence Number	8	<b>Required.</b> Enter the number of the record as it appears within your file. The record sequence number for the "T" record will always be "1" (one), since it is the first record on your file and you can have only one "T" record in a file. Each record, thereafter, must be incremented by one in ascending numerical sequence, <i>i.e.</i> , 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the "T" record sequence number would appear as "00000001" in the field, the first "W" record would be "00000002", the first "Q" record, "00000003", the second "Q" record, "00000004" and so on until you reach the final record of the file, the "F" record.
779-780	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

**Withholding Agent "W" Record Layout**

Record Type	Return Type Indicator	Pro Rata Basis Reporting	Withholding Agent's EIN	Withholding Agent's EIN Indicator	Withholding Agent's Name Line-1	Withholding Agent's Name Line-2
1	2	3	4-12	13	14-53	54-93

Withholding Agent's Name Line-3	Withholding Agent's Street Line-1	Withholding Agent's Street Line-2	Withholding Agent's City	Withholding Agent's State Code	Withholding Agent's Province Code	Withholding Agent's Country Code
94-133	134-173	174-213	214-253	254-255	256-257	258-259

Postal or ZIP Code	Tax Year	Withholding Agent Contact Name	Withholding Agent's Department Title	Contact Phone Number and Extension	Final Return Indicator
260-268	269-272	273-317	318-362	363-382	383

Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
384-770	771-778	779-780

### Sec. 3. Recipient “Q” Record

.01 The “Q” Record contains name and address information for the Recipient of Income, Non-Qualified Intermediary or Flow-Through Entity if appropriate, Payer, and all data concerning the income paid and tax withheld that is required to be reported under U.S. law. Each Recipient “Q” Record is treated as if it were a separate Form 1042–S.

.02 Since the “Q” Record is restricted to one type of income and one tax rate, under certain circumstances it may be necessary to submit more than one “Q” Record for the same recipient. Failure to provide multiple Recipient “Q” Records when necessary may generate math computation errors during processing. This will result in IRS contacting you for correct information.

.03 Following are some of the circumstances when more than one “Q” Record for a recipient would be required:

- (a) Different types of income. For example, Recipient X derived income from Capital Gains (Income Code 09) and Industrial Royalties (Income Code 10). A separate “Q” Record must be reported for each Income Code, providing Gross Income Paid and U.S. Federal Tax Withheld pertaining to that Income Code.
- (b) Change in Country Code during the year. For example, the Withholding Agent received notification via Form W–8BEN that the recipient’s country of residence for tax purposes changed from country X to country Y. A separate “Q” Record must be reported for each Country Code providing Gross Income Paid, Tax Rate, U.S. Federal Tax Withheld and Exemption Code, if any. The amounts reported must be based on each country.
- (c) Change in a country’s tax treaty rate during the year. For example, effective April 1, country X changes its tax treaty rate from 10% to 20%. A separate “Q” Record must be reported for each of the tax rates. Provide the Gross Income Paid, Tax Rate, and U.S. Federal Tax Withheld under each tax rate.

.04 All recipient “Q” Records for a particular Withholding Agent must be written after the corresponding Withholding Agent “W” Record, followed by a Reconciliation “C” Record, and before the “W” Record for another Withholding Agent begins.

.05 All alpha characters entered in the “Q” Record must be upper case.

.06 Report income and tax withheld in whole dollars only. Round up or down as appropriate. **DO NOT** enter cents.

**Note 1: For all fields marked “Required”, the transmitter must provide the information described under Description and Remarks. If required fields are not completed in accordance with these instructions, IRS will contact you to request a replacement file. For those fields not marked “Required”, a transmitter must allow for the field, but may be instructed to enter blanks or zeroes in the indicated media position(s) and for the indicated length. All records have a fixed length of 780 positions.**

**Note 2: A copy of the current Instructions for Form 1042–S for this revision of the Publication 1187 is included at the end of this publication. These instructions should be used for the proper coding of each field in this record where applicable. The list of country codes in the instructions includes all recognized country codes and MUST be used for coding. The instructions are updated each year as required. Since Publication 1187 may not be revised every year, be sure to use the most current instructions.**

*Note 3: Valid characters for all name and address fields are alpha, numeric, blank, ampersand (&), hyphen (-), comma (,), apostrophe (’), forward slash (/), pound sign (#), period (.), and the percent (%). The percent [% (used as “in care of”)] is valid in the first position only.*

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#### Record Name: Recipient “Q” Record

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Field Positions	Field Title	Length	Description and Remarks
1	Record Type	1	<b>Required.</b> Enter “Q”.
2	Return Type Indicator	1	<b>Required.</b> Enter the one position value below to identify whether the record is Original or Amended. Must be the same value as in the “W” Record. Values are: <ul style="list-style-type: none"> <li>• 0 (Zero) = Original</li> <li>• 1 = Amended</li> </ul>
3	Pro Rata Basis Reporting	1	<b>Required.</b> Enter the one position value below to identify whether reporting Pro Rata Basis. Must be the same value as in the “W” Record. Values are: <ul style="list-style-type: none"> <li>• 0 (Zero) = Not Pro Rata</li> <li>• 1 = Pro Rata Basis Reporting</li> </ul>

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**Record Name: Recipient "Q" Record**

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Field Positions	Field Title	Length	Description and Remarks
4-5	Income Code	2	<b>Required.</b> Enter the two-position value EXACTLY as it appears from the income code table. The Income Code must accurately reflect the type of income paid. <b>DO NOT</b> enter blanks or 00 (zeroes).
<b>Note: Refer to the current Instructions for Form 1042-S for more information.</b>			
6-17	Gross Income	12	<b>Required.</b> Enter the gross income amount in whole dollars only, rounding to the nearest dollar ( <b>do not enter cents</b> ). For example report \$600.75 as 00000000601. An income amount of zero cannot be shown. Numeric only, right-justify and zero fill.
<b>Note: Do not report negative amounts in any amount field.</b>			
18-29	Withholding Allowance	12	<b>Used with Income Codes 15 through 19 ONLY.</b> Enter the withholding allowance amount in whole dollars only, rounding to the nearest dollar ( <b>do not enter cents</b> ). Numeric only, right-justify and zero fill. Otherwise, enter blanks.
30-41	Net Income	12	<b>Required if Dollar Amount is Entered in Withholding Allowance Field.</b> Enter the net income in whole dollars only, rounding to the nearest dollar ( <b>do not enter cents</b> ). An amount other than zero <b>must</b> be shown. Numeric only, right-justify and zero fill. Otherwise, enter blanks.
42-45	Tax Rate	4	<b>Required.</b> Enter the correct Tax Rate applicable to the income in gross income field or net income field, as appropriate. Enter the Tax Rate as a 2-digit whole number and 2-digit decimal (e.g., enter 39.6% as 3960, 15% as 1500 or 6% as 0600). See Note below.
<b>Note: The correct Tax Rate must be entered, even if withholding was at a lesser rate. See the current Instructions for Form 1042-S.</b>			
46-47	Exemption Code	2	<b>Required. Read Carefully.</b> <ul style="list-style-type: none"> <li>• If the tax rate entered is 0%, enter the appropriate exemption code "01" through "09" from the current Instructions for Form 1042-S.</li> <li>• If the tax rate entered is 1% through 30%, enter "00".</li> <li>• If the tax rate entered is 33% or higher, blank fill. <b>DO NOT</b> enter "00".</li> </ul> See the current Instructions for Form 1042-S for circumstances under which Exemption Code "99" must be used.
<b>Note: If an incorrect amount of tax was withheld, report the amount that was actually withheld and use the correct tax rate in field positions 42-45.</b>			
48-59	U.S. Tax Withheld	12	<b>Required.</b> Enter the U.S. Federal tax withheld amount in whole dollars, rounding to the nearest dollar ( <b>do not enter cents</b> ). For example, report \$600.25 as 00000000600). Numeric only, right-justify and zero fill.
<b>Note: If the U. S. tax withheld was either under or over reported, see Field Position 761 of the "Q" Record.</b>			
60-71	Amount Repaid	12	This field should be completed only if: <ul style="list-style-type: none"> <li>• you repaid a recipient an amount that was over-withheld and you are going to reimburse yourself by reducing, by the amount of tax actually repaid, the amount of any deposit made for a payment period in the calendar year following calendar year of withholding. Otherwise, enter blanks.</li> </ul>
72-91	Recipient's Account Number	20	Enter the account number assigned by the withholding agent to the recipient. <b>Do not</b> enter the recipient's U.S. or foreign TIN. If account numbers are NOT assigned, then blank fill. This field may contain numeric, alpha characters, blanks or hyphens. Left-justify and blank fill.
92-93	Recipient Code	2	<b>Required.</b> Enter the appropriate Recipient Code. Refer to the list of appropriate codes in the current Instructions for Form 1042-S. No other codes or values are valid.

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**Record Name: Recipient “Q” Record**

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Field Positions	Field Title	Length	Description and Remarks
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**Note: If recipient code “20” is used then Recipient’s Name Line-1 must be “UNKNOWN” or “UNKNOWN RECIPIENT” and Recipient’s Name Lines 2 and 3 must be BLANK. The tax rate must be 30%.**

94–133	Recipient’s Name Line-1	40	<b>Required.</b> Provide the complete name of the recipient. If the recipient has a U.S. TIN, enter the name as established when applying for the TIN. If recipient code “20” is used then “UNKNOWN” or “UNKNOWN RECIPIENT” must be entered and Recipient’s Name Lines 2 and 3 must be blank. See current Instructions for Form 1042–S for specifics on “Unknown Recipient” and “Withholding Rate Pool”. <b>See Note 3 at the beginning of the “Q” Record.</b>
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**Note 1: A Non-Qualified Intermediary (NQI) can NEVER be entered as the recipient.**

**Note 2: Do not use special characters in names or addresses that are unique to a language other than English. For example: å = A, æ = A, ü = U, Ø = O, ñ = N, etc.**

134–173	Recipient’s Name Line-2	40	Enter supplementary recipient name information including titles; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases or titles. Also use this line for “care of”, “Attn.” or “via”. <b>See Note 3 at the beginning of the “Q” Record.</b>
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174–213	Recipient’s Name Line-3	40	See above.
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214–253	Recipient’s Street Line-1	40	<b>Required.</b> Enter the mailing address of the recipient. Street address should include number, street, apartment, or suite number (or P.O. Box if mail is not delivered to street address). Abbreviate as needed. Left-justify and blank fill. <b>See Note 3 at the beginning of the “Q” Record.</b>
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254–293	Recipient’s Street Line-2	40	Enter supplementary recipient street address information. If a P.O. Box is used in addition to a street address, enter it here; otherwise, blank fill.
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294–333	Recipient’s City	40	<b>Required.</b> Enter the city or town (or other locality name). Enter APO or FPO only, if applicable. Do not enter a foreign postal code in the city field. Left-justify and blank fill.
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334–335	Recipient’s State	2	<b>Required if U.S. address.</b> Enter the two-character State Code abbreviation. If no U.S. state, territory or APO/FPO identifier is applicable then blank fill. <b>Do not use any of the two character Country Codes in the State Code Field.</b>
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**Note: If the recipient has a U.S. address, leave the province code in positions 336–337 and country code in positions 338–339 blank.**

336–337	Recipient’s Province Code	2	<b>Required if Recipient Country Code in positions 338–339 is “CA”.</b> Enter only the two-alpha character Province Code as shown in the Province Code Table. See “T” record positions 117–118 for Province Code Table. <b>DO NOT spell out the Province Name. If foreign country other than Canada, blank fill.</b>
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338–339	Recipient’s Country Code	2	<b>Required if the recipient has a foreign address.</b> Enter the two-character Country Code abbreviation.
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**Note 1: If the state code is entered in positions 334–335, leave this field blank.**

**Note 2: COUNTRY CODES: The list of country codes provided in the current Instructions for Form 1042–S includes all internationally recognized country codes and MUST be used to ensure the proper coding of the Country Code field. This list is updated each year as required.**

**Note 3: Enter “UC” (unknown country) only if the payment is to an unknown recipient. If you are making a payment to a QI or QI withholding rate pool, enter the country code of the QI.**

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**Record Name: Recipient "Q" Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
340–348	Postal or ZIP Code	9	Enter up to nine numeric characters for all U.S. addresses (including territories, possessions and APO/FPO). For foreign addresses, enter the alpha/numeric foreign postal code, if applicable. Enter this code in the left most position and blank fill the remaining positions. <b>DO NOT</b> use hyphens or blanks between numbers or letters (e.g., if the postal code is written as A6B 3C5 input as A6B3C5). Left-justify.
349–357	Recipient's U.S. TIN	9	Enter the recipient's nine-digit U.S. Taxpayer Identification Number (TIN). <b>DO NOT</b> enter hyphens or alpha characters. If TIN is not required under regulations, blank fill.
<b>Note: U.S. TINs are now required for most recipients. See current Instructions for Form 1042-S.</b>			
358	Recipient's U.S. TIN Type	1	<p><b>Required.</b> Enter the recipient's U.S. TIN type indicator from the following values:</p> <ul style="list-style-type: none"> <li>• 0 (Zero) = No TIN required</li> <li>• 1 = SSN/ITIN</li> <li>• 2 = EIN</li> <li>• 3 = QI-EIN, WP-EIN, WT-EIN</li> </ul> <p>See current Instructions for Form 1042-S for when a TIN is not required.</p>
359–398	Recipient's Country of Residence for Tax Purposes	40	<b>Required.</b> Enter the complete name of the recipient's country of residence for tax purposes in which the recipient claims residency under that country's tax law, whether or not you are applying a tax treaty benefit to this payment.
399–400	Recipient's Country Code for Tax Purposes	2	<b>Required.</b> Enter the two-character Country Code for which the recipient is a resident for tax purposes and on which the tax treaty benefits are based, whether or not you are applying a tax treaty benefit to this payment. The rate of tax withheld is determined by this code.
<b>Note: Do not enter U.S. in the Country Code field. Enter "OC" (other country) <u>only</u> when the country of residence does not appear on the list or the payment is made to an international organization.</b>			
401–440	NQI/FLW-THR Name Line-1	40	Provide the complete name of the NQI/FLW-THR Entity. It is very important that the complete name of the NQI/FLW-THR entity be provided. left-justify and blank fill. <b>See Note 3 at the beginning of the "Q" Record.</b>
<b>Note: All NQI/FLW-THR fields are REQUIRED if the NQI/FLW-THR entity is involved in the payment structure.</b>			
441–480	NQI/FLW-THR Name Line-2	40	Enter supplementary information; otherwise, enter blanks. Use this line for additional names (e.g., partners or joint owners), for trade names, stage names, aliases or titles. Also use this line for "care of" or "via". <b>See Note 3 at the beginning of the "Q" Record.</b>
481–520	NQI/FLW-THR Name Line-3	40	See above.
521–522	Reserved	2	Enter blanks.
523–562	NQI/FLW-THR Street Line-1	40	Enter the mailing address of the NQI/FLW-THR entity. Street address should include number, street, apartment, or suite number (or P.O. Box if mail is not delivered to street address). Abbreviate as needed. Left-justify and blank fill.
563–602	NQI/FLW-THR Street Line-2	40	Enter supplementary NQI/FLW-THR entity street address information; otherwise, blank fill.
603–642	NQI/FLW-THR City	40	Enter the city or town (or other locality name). Left-justify and blank fill.
643–644	Reserved	2	Enter blanks.

**Record Name: Recipient “Q” Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
645–646	NQI/FLW-THR Province Code	2	Enter the two-alpha character Province Code abbreviation, if applicable. See “T” record positions 117–118.
647–648	NQI/FLW-THR Country Code	2	Enter the two-character Country Code abbreviation, where the NQI/FLW-THR is located.
649–657	NQI/FLW-THR Postal Code	9	Enter the alpha/numeric foreign postal code. Enter this code in the left most position and blank fill the remaining positions. <b>DO NOT</b> use hyphens or blanks between numbers or letters (e.g., if the postal code written as A6B 3C5 input as A6B3C5). Left-justify.
658–666	NQI/FLW-THR U.S. TIN	9	Enter the NQI/FLW-THR nine-digit U.S. Taxpayer Identification Number (TIN). Do NOT enter hyphens or alpha characters.
667–706	Payer’s Name	40	Enter the name of the Payer of Income if different from the Withholding Agent. Abbreviate as needed. If Withholding Agent and Payer are the same, blank fill.
707–715	Payer’s U.S. TIN	9	Enter the Payer’s U.S. Taxpayer Identification Number if there is an entry in the Payer Name Field; otherwise, leave blank.
716–727	State Income Tax Withheld	12	If State Tax has been withheld, enter that amount, in whole dollars (do not enter cents). Right-justify and zero fill. If no entry, zero fill.
728–737	Payer’s State Tax Number	10	Enter the employer’s state I.D. number assigned by the state.
738–739	State Code	2	Enter the two-character State Code abbreviation.
740–760	Special Data Entries	21	This field may be used for the filer’s own purposes (e.g., Do Not Mail). If this field is not used, enter blanks.
761	<i>U.S. Tax Withheld Indicator</i>	1	<b>Required.</b> Indicate if the U.S. tax withheld was correct or incorrect using the following values:  <ul style="list-style-type: none"> <li>• 0 = Correctly reported</li> <li>• 1 = Over withheld</li> <li>• 2 = Under withheld</li> </ul>
<b>Note: Please refer to U.S. Tax Withheld positions 48–59.</b>			
762–770	<i>Reserved</i>	9	<i>Enter blanks.</i>
771–778	Record Sequence Number	8	<b>Required.</b> Enter the number of the record as it appears within your file. The record sequence number for the “T” record will always be “1” (one), since it is the first record on your file and you can have only one “T” record in a file. Each record, thereafter, must be incremented by one in ascending numerical sequence, <i>i.e.</i> , 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the “T” record sequence number would appear as “00000001” in the field, the first “W” record would be “00000002”, the first “Q” record, “00000003”, the second “Q” record, “00000004” and so on until you reach the final record of the file, the “F” record.
779–780	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

**Recipient "Q" Record Layout**

Record Type	Return Type Indicator	Pro Rata Basis Reporting	Income Code	Gross Income	Withholding Allowance	Net Income	Tax Rate	Exemption Code
1	2	3	4-5	6-17	18-29	30-41	42-45	46-47

U.S. Tax Withheld	Amount Repaid	Recipient's Account Number	Recipient Code	Recipient's Name Line-1	Recipient's Name Line-2	Recipient's Name Line-3	Recipient's Street Line-1
48-59	60-71	72-91	92-93	94-133	134-173	174-213	214-253

Recipient's Street Line-2	Recipient's City	Recipient's State	Recipient's Province Code	Recipient's Country Code	Postal or ZIP Code	Recipient's U.S. TIN	Recipient's U.S. TIN Type
254-293	294-333	334-335	336-337	338-339	340-348	349-357	358

Recipient's Country of Residence for Tax Purposes	Recipient's Country of Residence Code for Tax Purposes	NQI/FLW-THR Name Line-1	NQI/FLW-THR Name Line-2	NQI/FLW-THR Name Line-3	Reserved
359-398	399-400	401-440	441-480	481-520	521-522

NQI/FLW-THR Street Line-1	NQI/FLW-THR Street Line-2	NQI/FLW-THR City	Reserved	NQI/FLW-THR Province Code
523-562	563-602	603-642	643-644	645-646

NQI/FLW-THR Country Code	NQI/FLW-THR Postal Code	NQI/FLW-THR U.S. TIN	Payer's Name	Payer's U.S. TIN	State Income Tax Withheld	Payer's State Tax Number
647-648	649-657	658-666	667-706	707-715	716-727	728-737

State Code	Special Data Entries	U. S. Tax Withheld Indicator	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
738-739	740-760	761	762-770	771-778	779-780

**Sec. 4. Reconciliation "C" Record**

.01 The "C" Record is a fixed record length of 780 positions and all positions listed are **required**. The "C" Record is a summary of the number of "Q" Records for each Withholding Agent, Gross Amount Paid, and Total U.S. Tax Withheld.

.02 This record will be written after the last "Q" Record filed for a given withholding agent. For each "W" Record and group of "Q" Records on the file, there must be a corresponding "C" Record.

.03 All alpha characters entered in the "C" Record must be upper case.

**Record Name: Reconciliation "C" Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
1	Record Type	1	<b>Required.</b> Enter "C".
2-9	Total "Q" Records	8	<b>Required.</b> Enter the total number of "Q" Records for this withholding agent. Right-justify and zero fill. <b>Do not enter all zeros.</b> For example, 53 "Q" records are entered as 00000053. See Part A, Sec. 4, Filing Requirements.
10-15	Blank	6	Enter blanks.
16-30	Total Gross Amount Paid	15	<b>Required.</b> Enter the total gross income amount in whole dollars ( <b>do not enter cents</b> ). For example report \$600.00 as 00000000600. An income amount other than zero must be shown. Right-justify and zero fill.
31-45	Total U.S. Tax Withheld	15	<b>Required.</b> Enter the total U.S. Federal tax withheld amount in whole dollars ( <b>do not enter cents</b> ). For example report \$600.00 as 00000000600. Right-justify and zero fill.
46-770	Reserved	725	Blank fill.
771-778	Record Sequence Number	8	<b>Required.</b> Enter the number of the record as it appears within your file. The record sequence number for the "T" record will always be "1" (one), since it is the first record on your file and you can have only one "T" record in a file. Each record, thereafter, must be incremented by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the "T" record sequence number would appear as "00000001" in the field, the first "W" record would be "00000002", the first "Q" record, "00000003", the second "Q" record, "00000004" and so on until you reach the final record of the file, the "F" record.
779-780	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

**Reconciliation "C" Record Layout**

Record Type	Total "Q" Records	Blank	Total Gross Amount Paid	Total U.S. Tax Withheld	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
1	2-9	10-15	16-30	31-45	46-770	771-778	779-780

**Sec. 5. End of Transmission "F" Record**

.01 The "F" Record is a fixed record length of 780 positions and all positions listed are required. The "F" Record is a summary of the number of withholding agents and media count in the entire file.

.02 This record will be written after the last "C" Record of the entire file. End the file with an End of Transmission "F" Record. No data will be read after the "F" Record. Only a "C" Record may precede the "F" Record. The "F" Record may only be followed by a tape mark, a trailer label or a combination of both.

.03 All alpha characters entered in the "F" Record must be upper case.

**Record Name: End of Transmission "F" Record**

<b>Field Positions</b>	<b>Field Title</b>	<b>Length</b>	<b>Description and Remarks</b>
1	Record Type	1	<b>Required.</b> Enter "F".
2-4	Withholding Agent Count	3	<b>Required.</b> Enter the total number of withholding agents on this file. This count must be the same as the total number of "W" records. Right-justify and zero fill.
5-7	Media Count	3	<b>Required.</b> Enter the total number of media for this transmission. Right-justify and zero fill.
8-770	Reserved	763	Blank fill.
771-778	Record Sequence Number	8	<b>Required.</b> Enter the number of the record as it appears within your file. The record sequence number for the "T" record will always be "1" (one), since it is the first record on your file and you can have only one "T" record in a file. Each record, thereafter, must be incremented by one in ascending numerical sequence, i.e., 2, 3, 4, etc. Right-justify numbers with leading zeroes in the field. For example, the "T" record sequence number would appear as "00000001" in the field, the first "W" record would be "00000002", the first "Q" record, "00000003", the second "Q" record, "00000004" and so on until you reach the final record of the file, the "F" record.
779-780	Blank or Carriage Return Line Feed	2	Enter blanks or carriage return line feed (CR/LF) characters.

**End of Transmission "F" Record Layout**

Record Type	Withholding Agent Count	Media Count	Reserved	Record Sequence Number	Blank or Carriage Return Line Feed
1	2-4	5-7	8-770	771-778	779-780

**Part E. Extensions of Time and Waivers**

**Sec. 1. General — Extensions**

**.01** An extension of time to file may be requested for Form 1042-S.

**.02** Submit Form 8809, Application for Extension of Time To File Information Returns, to IRS/ECC-MTB at the address listed in .08 of this section. This form may be used to request an extension of time to file Form 1042-S submitted on paper, electronically, or magnetically to the IRS. Use a separate Form 8809 for each method of filing information returns you intend to use, i.e., electronically and/or magnetically.

**.03** To be considered, an extension request must be postmarked or transmitted by the due date of the returns; otherwise, the request will be denied. (See Part A, Sec. 9.) If requesting an extension of time to file several types of forms, use one Form 8809; however, Form 8809 or file must be postmarked no later than the earliest due date. For example, if requesting an extension of time to file both Forms 1099-INT and 1042-S, submit Form 8809 on or before February 28, 2007.

**.04 As soon as it is apparent** that a 30-day extension of time to file is needed, an extension request should be submitted. It will take a minimum of 30 days for IRS/ECC-MTB to respond to an extension request. Generally, IRS/ECC-MTB does not begin processing extension requests until January. Extension requests received prior to January are input on a first come, first served basis.

**.05** Under certain circumstances, a request for an extension of time may be denied. When a denial letter is received, any additional or necessary information may be resubmitted within 20 days.

**.06** Requesting an extension of time for multiple withholding agents (50 or less) may be done by submitting Form 8809 and attaching a list of the withholding agents names and associated TINs. **The listing must be attached to ensure an extension is recorded for all withholding agents.** Form 8809 may be computer-generated or photocopied. Be sure to use the most recently updated version and include all the pertinent information.

.07 Requests for an extension of time to file for more than 50 withholding agents are **required** to be submitted electronically or magnetically. IRS encourages requests for 10 to 50 withholding agents to be filed electronically or magnetically. (See Sec. 3, for the record layout.) The request may be filed electronically or on tape cartridges.

.08 All requests for an extension of time filed on Form 8809 or tape cartridge should be sent using the following address:

IRS-Enterprise Computing Center at Martinsburg  
Information Reporting Program  
**Attn: Extension of Time Coordinator**  
240 Murall Drive  
Kearneysville, WV 25430

**Note: Due to the large volume of mail received by IRS/ECC-MTB and the time factor involved in processing Extension of Time (EOT) requests, it is imperative that the attention line be present on all envelopes or packages containing Form 8809.**

.09 Requests for extensions of time to file postmarked by the United States Postal Service on or before the due date of the returns, and delivered by United States mail to IRS/ECC-MTB after the due date, are treated as timely under the “timely mailing as timely filing” rule. A similar rule applies to designated private delivery services (PDSs). See Part A, Sec. 9, for more information on PDSs. For requests delivered by a designated PDS, but through a non-designated service, the actual date of receipt by IRS/ECC-MTB will be used as the filing date.

.10 Transmitters requesting an extension of time for multiple withholding agents will receive one approval letter, accompanied by a list of withholding agents covered under that approval.

.11 If an additional extension of time is needed, a second Form 8809 or file must be filed by the initial extended due date. Check line 7 on the form to indicate that an additional extension is being requested. A second 30-day extension will be approved only in cases of extreme hardship or catastrophic event. **If requesting a second 30-day extension of time, submit the information return files as soon as prepared. Do not wait for ECC-MTB’s response to your second extension request.**

.12 If an extension request is approved, the approval letter should be kept on file. **DO NOT** send the approval letter or copy of the approval letter to IRS/ECC-MTB with the tape cartridge file or to the *Ogden Service Center* where the paper Forms 1042-S are filed.

.13 Request an extension for only one tax year.

.14 A signature is not required when requesting a 30-day extension. If a second 30-day extension is requested, the Form 8809 **must** be signed.

.15 Failure to properly complete and sign Form 8809 may cause delays in processing the request or result in a denial. Carefully read and follow the instructions on the back of Form 8809.

.16 Form 8809 may be obtained by calling **1-800-TAX-FORM (1-800-829-3676)**. The form is also available on the **IRS Website at [www.irs.gov](http://www.irs.gov)**.

## **Sec. 2. Specifications for Electronic/Magnetic Filing of Extensions of Time**

.01 The specifications in Sec. 3 include the required 200-byte record layout for extensions of time to file requests submitted electronically or magnetically. Also included are the instructions for the information that is to be entered in the record. **Filers are advised to read this section in its entirety to ensure proper filing.**

.02 If a filer does not have an IRS/ECC-MTB assigned Transmitter Control Code (TCC), Form 4419, Application for Filing Information Returns Electronically/Magnetically, **must** be submitted to obtain a TCC. This number **must** be used to submit an extension request electronically/magnetically. (See Part A, Sec. 6.)

.03 For extension requests filed on tape cartridge, the transmitter must mail the completed, signed Form 8809, Application for Extension of Time To File Information Returns, in the same package as the corresponding media or fax it to 304-264-5602. For extension requests filed electronically, the transmitter must fax Form 8809 the same day the transmission is made.

.04 **Transmitters submitting an extension of time electronically or magnetically should not submit a list of withholding agent names and TINs with Form 8809 since this information is included on the electronic or magnetic file. However, Line 6 of Form 8809 must be completed with the total number of records included on the electronic file or tape cartridge.**

.05 Do not submit extension requests filed on tape cartridge before *January 1*, or electronically before *January 3*.

.06 Each tape cartridge **must** have an external media label containing the following information:

- (a) Transmitter name
- (b) Transmitter Control Code (TCC)
- (c) Tax year
- (d) The words “Extension of Time”
- (e) Record count



.07 Electronic filing, and tape cartridge specifications for extensions are the same as the specifications for filing of information returns. (See Part B, or C for specific technical information.)

### Sec. 3. Record Layout — Extension of Time

.01 Positions 6 through 188 of the following record should contain information about the withholding agent for whom the extension of time to file is being requested. Do not enter transmitter information in these fields. **Only one TCC may be present in a file.**

Record Layout for Extension of Time			
Field Positions	Field Title	Length	Description and Remarks
1–5	Transmitter Control Code	5	<b>Required.</b> Enter the five-digit Transmitter Control Code (TCC) issued by IRS. <b>Only one TCC per file is acceptable.</b>
6–14	Withholding Agent's TIN	9	<b>Required.</b> Must be the valid nine-digit TIN assigned to the withholding agent. <b>Do not enter blanks, hyphens or alpha characters.</b> All zeros, ones, twos, etc., will have the effect of an incorrect TIN. For foreign entities that are not required to have a TIN, this field may be blank; however, the Foreign Entity Indicator, position 187, <b>must</b> be set to "X."
15–54	Withholding Agent's Name	40	<b>Required.</b> Enter the name of the withholding agent whose TIN appears in positions 6–14. Left-justify information and fill unused positions with blanks.
55–94	Second Withholding Agent's Name	40	If additional space is needed, this field may be used to continue name line information (e.g., c/o First National Bank); otherwise, enter blanks.
95–134	Withholding Agent's Address	40	<b>Required.</b> Enter the withholding agent's address. Street address should include number, street, apartment or suite number (or P.O. Box if mail is not delivered to a street address).
135–174	Withholding Agent's City	40	<b>Required.</b> Enter withholding agent's city, town, or post office.
<b>Note: For foreign addresses, filers may use the payer city, state, and ZIP Code as a continuous 51-position field. Enter information in the following order: city, province or state, postal code, and the name of the country.</b>			
175–176	Withholding Agent's State	2	<b>Required.</b> Enter the withholding agent's valid U.S. Postal Service state abbreviation. (Refer to Part A, Sec. 16.)
177–185	Withholding Agent's ZIP Code	9	<b>Required.</b> Enter withholding agent's ZIP Code. If using a five-digit ZIP Code, left-justify information and fill unused positions with blanks.
186	Document Indicator	1	<b>Required.</b> Enter the appropriate document code that indicates the form for which you are requesting an extension of time.  <u>Code</u> <u>Document</u> 4        1042–S
187	Foreign Entity Indicator	1	Enter "X" if the withholding agent is a foreign entity. <b>Note: A foreign entity is not required to have a TIN.</b>
188	Recipient Request Indicator	1	Enter "X" if the extension request is to furnish statements to the recipients of the information return.
<b>Note: A separate file is required for this type of extension request. A file must either contain all blanks or all X's in this field.</b>			
189–198	Blank	10	Enter blanks.
199–200	Blank	2	Enter blanks or carriage return/line feed (CR/LF) characters.

## Extension of Time Record Layout

Transmitter Control Code	Withholding Agent's TIN	Withholding Agent's Name	Second Withholding Agent's Name	Withholding Agent's Address	Withholding Agent's City
1-5	6-14	15-54	55-94	95-134	135-174

Withholding Agent's State	Withholding Agent's ZIP Code	Document Indicator	Foreign Entity Indicator	Recipient Request Indicator	Blank	Blank or CR/LF
175-176	177-185	186	187	188	189-198	199-200

### Sec. 4. Extension of Time for Recipient Copies of Information Returns

**.01** Request an **extension of time to furnish the statements to recipients** of Form 1042-S by submitting a letter to IRS/ECC-MTB at the address listed in Part D, Sec. 1.08. The letter should contain the following information:

- (a) Withholding Agent's name
- (b) TIN
- (c) Address
- (d) Type of return
- (e) Specify that the extension request is to provide statements to recipients
- (f) Reason for delay
- (g) Signature of withholding agent or duly authorized person.

**.02** Requests for an extension of time to furnish statements to recipients of Form 1042-S are not automatically approved; however, if approved, generally an extension will allow a maximum of 30 additional days from the due date. The request must be postmarked by the date on which the statements are due to the recipients.

**.03** Generally, only the withholding agent may sign the letter requesting the extension for recipient copies. A transmitter must have a contractual agreement with the withholding agents to submit extension requests on their behalf. This should be stated in your letter of request for recipient copy extensions. If you are requesting an extension for multiple withholding agents electronically or magnetically, you must use the format specifications in Sec. 3.

**.04** Requests for a recipient extension of time to file for more than 50 withholding agents are required to be submitted electronically or magnetically. IRS encourages requests for 10 to 50 withholding agents to be filed electronically or magnetically (See Sec. 3, for record layout.) The request may be filed electronically, or on tape cartridges.

### Sec. 5. Form 8508, Request for Waiver From Filing Information Returns Electronically/Magnetically

**.01** If a withholding agent is required to file on magnetic media but fails to do so (or fails to file electronically in lieu of magnetic media filing) and does not have an approved waiver on record, the withholding agent will be subject to a penalty of \$50 per return in excess of 250 unless reasonable cause is established. (For penalty information, refer to the Penalty Section of the *General Instructions for Form 1042-S*.)

**.02** If withholding agents are required to file original or amended returns on magnetic media, but such filing would create an undue hardship, they may request a waiver from these filing requirements by submitting Form 8508, Request for Waiver From Filing Information Returns Electronically/Magnetically, to IRS/ECC-MTB. Form 8508 can be obtained on the IRS Website at [www.irs.gov](http://www.irs.gov) or by calling toll-free 1-800-829-3676.

**.03** Even though a withholding agent may submit as many as 249 amended returns on paper, IRS encourages electronic or magnetic filing of amended returns. Once the 250 threshold has been met, filers are required to submit any returns of 250 or more electronically or magnetically. However, if a waiver for original documents is approved, any amended returns for the same type of returns will be covered under this waiver.

**.04** Generally, only the withholding agent may sign Form 8508. A transmitter may sign if given power of attorney; however, a letter signed by the payer stating this fact must be attached to Form 8508.

**.05** A transmitter must submit a separate Form 8508 for each withholding agent. Do not submit a list of withholding agents.

**.06** All information requested on Form 8508 must be provided to IRS for the request to be processed.

.07 The waiver, if approved, will provide exemption from the magnetic media filing requirement for the current tax year only. Withholding agents may not apply for a waiver for more than one tax year at a time; application must be made each year a waiver is necessary. Waivers, after the first year, are granted only in cases of undue hardship or catastrophic events.

.08 Form 8508 may be photocopied or computer-generated as long as it contains all the information requested on the original form.

.09 Filers are encouraged to submit Form 8508 to IRS/ECC-MTB at least 45 days before the due date of the returns. Generally, IRS/ECC-MTB does not process waiver requests until January. Waiver requests received prior to January are processed on a first come, first served basis.

.10 All requests for a waiver should be sent using the following address:

IRS-Enterprise Computing Center — Martinsburg  
Information Reporting Program  
240 Murall Drive  
Kearneysville, WV 25430

.11 Waivers are evaluated on a case-by-case basis and are approved or denied based on criteria set forth in the regulations under section 6011(e) of the Internal Revenue Code. The transmitter must allow a minimum of 30 days for IRS/ECC-MTB to respond to a waiver request.

.12 If a waiver request is approved, keep the approval letter on file. **DO NOT** send a copy of the approved waiver to the *Ogden Service Center*.

.13 An approved waiver only applies to the requirement for filing Form 1042-S electronically/magnetically. The withholding agent must timely file information returns on the official IRS paper forms or an acceptable substitute form with the *Ogden Service Center*.

## Procedures for Requesting Special Statistical Studies and Compilations Involving Return Information

### Rev. Proc. 2006-36

#### SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth the Internal Revenue Service's procedures for other Government agencies or members of the public to request the creation of special statistical studies and compilations involving return information pursuant to section 6108(b) of the Internal Revenue Code, and to set forth the criteria for determining reasonable fees for costs associated with the creation of the special statistical studies and compilations.

#### SECTION 2. BACKGROUND

.01 Under section 6108(b), the IRS may, upon written request, create and produce special statistical studies and compilations involving return information (as defined by section 6103(b)(2)). In processing requests for special statistical studies and compilations, the IRS, pursuant to section 6108(c), will not disclose information that could, directly or

indirectly, be associated with or identify a particular taxpayer. The IRS may charge a reasonable fee for the cost of work or services associated with making special statistical studies and compilations. The IRS will determine the amount of the fee as discussed below in Section 5.

##### .02 Definitions

(a) A "special statistical study" is an *ad hoc* statistical examination or analysis of return information that generally requires new programming and analysis according to specifications provided in the request. A special statistical study might comprise tabulations as well as accompanying reports on methodology and analytical details.

(b) A statistical "compilation" is an *ad hoc* accumulation of existing (or readily available) data into a data set or data file, which generally requires new programming according to specifications provided in the request. Both special statistical studies and compilations will be reviewed for accuracy by IRS staff before they are considered completed. The IRS staff, including clerical and computer programming personnel, will ensure, as reasonably practicable, the correctness of the special statistical study or compilation in conjunction with the original request.

(c) A special statistical study or compilation is *not*:

(i) statistical data contained in reports or releases already made available to the public, or

(ii) statistical data that is readily reproducible. "Readily reproducible" means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, compact disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Records that require manipulation of data within a database or several databases, reprogramming one or more databases, or analysis of the data to produce the records, are not readily reproducible.

#### SECTION 3. PROCEDURES FOR REQUESTING SPECIAL STATISTICAL STUDIES AND COMPILATIONS PURSUANT TO SECTION 6108(b)

.01 In general. Requests for special statistical studies or compilations (involving either new projects or changes in recurring projects) must be submitted in writing with specifications as complete and definite as practicable. Specifications that are concise and mutually understood by the requester and IRS are essential for a project's successful completion. Specifications should include the source and availability of data and content, manner of presentation (*e.g.*,

particular medium or application) and timing of results (e.g., scheduling).

.02 All requests for special statistical studies or compilations must be addressed to the Director, Research, Analysis, and Statistics, at the following address:

Internal Revenue Service  
1111 Constitution Avenue  
Washington, DC 20224  
Attention: RAS

The Director, Research, Analysis, and Statistics, will review all requests for special statistical studies or compilations and make a determination whether to grant or deny the request for such special statistical studies or compilations based on the considerations stated in paragraph 4.01 below. If a significant amount of resources is needed to accommodate a request, such determination will be made in consultation with the heads of the responsible IRS offices and, when Statistics of Income (SOI) resources are involved, the Director, Office of Tax Analysis, Department of the Treasury.

.03 If assistance is needed, IRS staff is available to help the requester in detailing the specifications. Consultations at initial stages, *i.e.*, while planning by the requester is underway, may facilitate the undertaking of a special study or compilation. In some instances, initial consultation may reveal that an existing IRS product contains all the data necessary to fulfill the request. In addition, there is information available on the *irs.gov* website through the “Tax Stats” link. SOI’s Statistical Information Services Office may be reached by phone at (202) 874-0410 (not a toll-free number), by fax at (202) 874-0964, by email at *SIS@IRS.GOV*, or by mail at the address given in paragraph 3.02 above.

#### SECTION 4. AVAILABILITY OF SPECIAL STATISTICAL STUDIES AND COMPILATIONS

.01 The fulfillment of requests submitted pursuant to this Revenue Procedure will be subject to: staff availability and workload (including the potential impact on studies required by the Office of Tax Analysis), the complexity and/or magnitude of the request, the impact on tax administration, software capabilities, database configurations and equipment func-

tionality, and disclosure considerations. A request will be declined if the IRS determines at the time of the initial request that the special statistical study or compilation could reveal return information or other confidential information the disclosure of which is not required by law and no reconfiguration of the request can avoid disclosure of return information or other non-disclosable data.

.02 If the configuration of a completed special statistical study or compilation may result in the disclosure of return information, or produce other confidential information the disclosure of which is not required by law, the IRS will inform the requester and offer to discuss with the requester, to the extent practicable, possible reconfigurations of data to avoid the prohibited disclosure. If the special statistical study or compilation cannot be reconfigured, the requester will be so informed and the special statistical study or compilation will not be released.

.03 In general, the IRS will consider whether to grant or deny requests for special statistical studies and compilations in the order of receipt.

#### SECTION 5. DETERMINATION OF FEES

.01 Fees will be charged for a special statistical study or compilation. These fees will be determined in accordance with prevailing Government standards, but in no case will work be done before a cost estimate is provided to the requester and, if accepted, a reimbursable agreement entered into between IRS and the requester.

.02 Fees are based on the actual, full cost of providing the product or service. “Full cost” includes all direct and indirect costs to any part of the IRS of providing the special statistical study or compilation. These costs include, but are not limited to:

(a) direct costs such as computer costs, salaries, management and supervisory costs;

(b) indirect personnel costs such as fringe benefits, *e.g.*, medical insurance and retirement (generally assessed at a percentage of direct salary costs); and

(c) physical overhead, consulting, and other indirect costs such as material and supply costs and utilities.

.03 The IRS may charge fees for any costs incurred during the processing of

an accepted request for special statistical studies and compilations, even if no special statistical study or compilation is ultimately disclosed.

#### SECTION 6. EFFECTIVE DATE

This revenue procedure is effective September 18, 2006.

#### SECTION 7. DRAFTING INFORMATION

The principal drafter of this revenue procedure is A. M. Gulas of the Office of Chief Counsel, Procedure and Administration (Disclosure and Privacy Law Division). For further information regarding this revenue procedure, contact A. M. Gulas at (202) 622-4560 (not a toll-free number).

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*26 CFR 601.204: Changes in accounting periods and in methods of accounting.*

*(Also Part 1, §§ 162, 263, 446, 461, 481, 1.167(a)-3(b), 1.263(a)-4, 1.263(a)-5, 1.446-1, 1.481-1.)*

## Rev. Proc. 2006-37

#### SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2006-12, 2006-3 I.R.B. 310, which provides procedures under which a taxpayer may obtain automatic consent to change to a method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, or 1.167(a)-3(b) of the Income Tax Regulations (the “final regulations”) for a taxable year ending on or after December 31, 2005, and for any earlier taxable year that is after the taxpayer’s second taxable year ending on or after December 31, 2003. The modifications provided by this revenue procedure allow a taxpayer to utilize the advance consent procedures of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, when seeking a change to a method of accounting provided in the final regulations in conjunction with a change for the same item to a method of accounting utilizing the 3<sup>1/2</sup> month rule authorized by § 1.461-4(d)(6)(ii) or the recurring item exception authorized by § 1.461-5.

## SECTION 2. BACKGROUND

.01 Rev. Proc. 2006-12 provides procedures under which a taxpayer may obtain automatic consent to change to a method of accounting provided in the final regulations for a taxable year ending on or after December 31, 2005, and for any earlier taxable year that is after the taxpayer's second taxable year ending on or after December 31, 2003. Rev. Proc. 2006-12 modified and amplified Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, to include the changes to methods of accounting provided in the final regulations that are within the scope of Rev. Proc. 2006-12.

.02 Section 6.02 of Rev. Proc. 2006-12 provides, in part, that if a taxpayer seeks to change to a method of accounting utilizing the 3½ month rule or the recurring item exception for the item for which the taxpayer also seeks to change to a method provided in the final regulations, the taxpayer must file two separate applications for change in accounting method — one for a change in method of accounting under Rev. Proc. 2006-12 to the method of accounting provided in the final regulations and the other for a change in method of accounting under Rev. Proc. 97-27 to a method of accounting utilizing the 3½ month rule or the recurring item exception.

## SECTION 3. CHANGES TO REV. PROC. 2006-12

.01 The third sentence of section 2.07 of Rev. Proc. 2006-12 is modified to read as follows:

“Except as provided in section 3 of this revenue procedure, for any change in method of accounting to which this revenue procedure applies, a taxpayer may not file an application for a change in method of accounting under Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432.”

.02 Section 3 of Rev. Proc. 2006-12 is modified by adding the following two sentences to the end:

“However, a taxpayer that seeks to change its method of accounting to utilize the 3½ month rule authorized by § 1.461-4(d)(6)(ii) or to utilize the recurring item exception authorized by § 1.461-5 for the item for which the taxpayer also seeks a change to a method of accounting provided in the final regulations may apply for both changes for the same item on an application for a change in method of accounting filed under Rev. Proc. 97-27. The terms and conditions in this revenue procedure apply to a request for a change to a method of accounting provided in the final regulations filed under Rev. Proc. 97-27.”

.03 Section 6.02 of Rev. Proc. 2006-12 is modified by adding the following two sentences to the end:

“However, instead of filing two separate applications for a change in method of accounting utilizing the 3½ month rule or the recurring item exception in conjunction with a change to a method provided in the final regulations, a taxpayer may apply for both changes for the same item on an application for a change in method of accounting filed under Rev. Proc. 97-27. The terms and conditions in this revenue procedure apply to a request for a change to a method of accounting provided in the

final regulations filed under Rev. Proc. 97-27.”

## SECTION 4. APPLICATIONS PREVIOUSLY FILED UNDER REV. PROC. 97-27

If a taxpayer has already filed a Form 3115, *Application for Change in Accounting Method*, under Rev. Proc. 97-27 to utilize the 3½ month rule or the recurring item exception with respect to an item under the final regulations, the taxpayer may amend the Form 3115 filed under Rev. Proc. 97-27 to include a change to a method of accounting provided in the final regulations for the same item.

## SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-12 is modified.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for a taxable year ending on or after December 31, 2005, and for any earlier taxable year that is after the taxpayer's second taxable year ending on or after December 31, 2003.

## SECTION 7. CONTACT INFORMATION

For further information regarding this revenue procedure, call Grace Matuszeski of the Associate Chief Counsel (Income Tax and Accounting) at (202) 622-7900 (not a toll-free call).

## 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 2006-57

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
Crane, Stephen	Palm Springs, CA	Enrolled Agent	May 4, 2006 to August 3, 2007
Cohen, Ronald J.	Newburgh, NY	Attorney	Indefinite from June 21, 2006
Layson, David A.	Corydon, IN	Attorney	April 7, 2006 to October 6, 2007
Brough, Donald L.	Salem, IN	CPA	July 1, 2006 to June 30, 2010
Gulian, Yervant	Great Neck, NY	CPA	April 17, 2006 to December 16, 2007

Name	Address	Designation	Date of Suspension
Rivera-Smith, Dawn	Brick, NJ	CPA	May 30, 2006 to November 29, 2008
Eckstein, Matthew	Woodbury, NY	CPA	June 15, 2006 to March 14, 2007
Hecht, Jodee L.	Clifton, VA	CPA	Indefinite from June 19, 2006
Finch, Phillip W.	Yorktown, VA	CPA	Indefinite from June 22, 2006
Troese Jr., Henry A.	Clarion, PA	Enrolled Agent	Indefinite from June 22, 2006
Robbins, Ronald E.	Pittsford, VT	CPA	June 24, 2006 to June 23, 2008
Shapiro, Sidney C.	West Palm Beach, FL	CPA	Indefinite from July 1, 2006
Martini, Anthony	Stamford, CT	CPA	June 18, 2006 to December, 17, 2007
Cunningham, William	Philadelphia, PA	CPA	July 1, 2006 to March 31, 2007
Simontacchi, Joseph F.	Morris Plains, NJ	CPA	Indefinite from July 1, 2006
Carroccio, Ronald P.	Staten Island, NY	CPA	Indefinite from July 1, 2006
Miller, Walter P.	Roanoke, VA	CPA	Indefinite from July 1, 2006
Aneji, Patrick	Houston, TX	CPA	Indefinite from June 22, 2006
Rosenbloom, Mark L.	Chicago, IL	Attorney	August 15, 2006 to August 14, 2007
Viener, Ira S.	Fort Lee, NJ	CPA	Indefinite from August 1, 2006

Name	Address	Designation	Date of Suspension
Ganz, Sheldon M.	Great Neck, NJ	CPA	Indefinite from August 1, 2006
Tomasulo, Maria	Wantagh, NY	CPA	Indefinite from August 7, 2006
Galpern, Joel G.	North Miami, FL	CPA	Indefinite from September 1, 2006

## 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
Dolan Jr., John L.	Memphis, TN	Attorney	Indefinite from April 3, 2006
St. Mary, Randall L.	Snohomish, WA	Attorney	Indefinite from April 3, 2006
Therriault, Michael J.	Bel Air, MD	Attorney	Indefinite from April 3, 2006
Smith, Bernard P.	Marblehead, MA	Attorney	Indefinite from April 3, 2006
Bradley, Phillip M.	West Point, VA	Attorney	Indefinite from April 3, 2006
Haefele, Richard J.	Wayzata, MN	Attorney	Indefinite from April 3, 2006
Decker, William E.	Mandeville, LA	Attorney	Indefinite from April 3, 2006
Arbour, John J.	Monroe, LA	Attorney	Indefinite from April 3, 2006



Name	Address	Designation	Date of Suspension
Keller, John S.	Martin Kenner, LA	Attorney	Indefinite from April 3, 2006
Fallon, Charles D.	Neptune, NJ	Attorney	Indefinite from April 3, 2006
Agresti, Thomas J.	Centennial, CO	Attorney	Indefinite from April 3, 2006
Kirsch, Craig F.	Pittsburgh, PA	CPA	Indefinite from April 3, 2006
Hall, Lenny G.	McDowell, KY	CPA	Indefinite from April 11, 2006
Hultgren, Jerry R.	Fresno, CA	Attorney	Indefinite from April 11, 2006
Loutos, Peter A.	Chicago, IL	Attorney	Indefinite from April 11, 2006
Smith III, Frank L.	Bushnell, FL	Attorney	Indefinite from April 11, 2006
Morley, Michael J.	Springfield, PA	CPA	Indefinite from April 11, 2006
Waters, Richard W.	Smithfield, UT	CPA	Indefinite from April 11, 2006
Hartgraves, Travis M.	Abilene, TX	Attorney	Indefinite from April 14, 2006
Dunn, George T.	Lockhart, TX	Attorney	Indefinite from April 14, 2006
Adkins, Thomas R.	Houston, TX	Attorney	Indefinite from April 14, 2006
Hairston, John W.	Sugar Land, TX	Attorney	Indefinite from April 26, 2006
Marcone, Frank J.	Upper Providence, PA	Attorney	Indefinite from May 1, 2006

Name	Address	Designation	Date of Suspension
Fraley, Donald J.	Minneapolis, MN	Attorney	Indefinite from May 3, 2006
Tooke, S. Judd	Shreveport, LA	Attorney	Indefinite from May 3, 2006
Reilly, Michael G.	Council Bluffs, IA	Attorney	Indefinite from May 3, 2006
Faneuil, Robert A.	Newton, MA	Attorney	Indefinite from May 3, 2006
Maignan, Peter R.	Upper Marlboro, MD	Attorney	Indefinite from May 3, 2006
Son, David	Phoenix, AZ	Attorney	Indefinite from May 5, 2006
Susman, Warren I.	New York, NY	Attorney	Indefinite from May 8, 2006
Wurst, Jerome	Arlington, TX	Attorney	Indefinite from May 8, 2006
O'Shea, Joseph G.	Jackson Heights, NY	Attorney	Indefinite from May 8, 2006
Biegelson, Alan	Brooklyn, NY	Attorney	Indefinite from May 8, 2006
Leonard, Robert K.	Winston-Salem, NC	Attorney	Indefinite from May 8, 2006
Cassidy, Michael M.	Madison, WI	Attorney	Indefinite from May 8, 2006
Dobkin, Daniel B.	New Hyde Park, NY	Attorney	Indefinite from May 8, 2006
Nealy, Joseph L.	Sugarland, TX	Attorney	Indefinite from May 16, 2006
Conmey, Edwin W.	Oconomowoc, WI	Attorney	Indefinite from May 16, 2006
Knott Jr., Robert T.	Los Angeles, CA	Attorney	Indefinite from May 16, 2006

Name	Address	Designation	Date of Suspension
Diamond, Howard S.	Mendham, NJ	Attorney	Indefinite from May 16, 2006
Fitzgerald, Bill L.	Lubbock, TX	Attorney	Indefinite from May 16, 2006
Brubaker, Gregory A.	San Francisco, CA	Attorney	Indefinite from May 18, 2006
Dodenbier, Robert F.	Lehi, UT	Attorney	Indefinite from May 18, 2006
Young, Paul J.	Taft, CA	Attorney	Indefinite from June 8, 2006
Dahodwala, Fatema	Andover, MA	Attorney	Indefinite from June 8, 2006
Mendola, Joseph E.	Monessen, PA	CPA	Indefinite from June 8, 2006
Rooney, Edward F.	Minneapolis, MN	Attorney	Indefinite from June 8, 2006
Long, Rebecca L.	Wichita, KS	Attorney	Indefinite from June 8, 2006
West, Clifton C.	Fayetteville, NC	Attorney	Indefinite from June 8, 2006
Silva, Zoilo I.	City Island, NY	Attorney	Indefinite from June 8, 2006
Tyler Jr., Earle S.	Bangor, ME	Attorney	Indefinite from June 12, 2006
Horneber, Alice S.	Sioux City, IA	Attorney	Indefinite from June 12, 2006
Donnelly, Christine M.	Blue Springs, MO	Attorney	Indefinite from June 12, 2006
Driscoll Jr., Peter	Columbia, MD	Attorney	Indefinite from June 12, 2006
Souza, John C.	Pocatello, ID	Attorney	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
Crockett, Kevin J.	Midvale, UT	Attorney	Indefinite from June 12, 2006
White, Debra M. Wyatt	Navasota, TX	CPA	Indefinite from June 12, 2006
Wilkins, Daniel J.	Chelmsford, MA	Attorney	Indefinite from June 12, 2006
Merica, Chad L.	Murray, UT	CPA	Indefinite from June 12, 2006
Wintroub, David S.	Omaha, NE	Attorney	Indefinite from June 12, 2006
Smith, Roderick E.	Kansas City, MO	Attorney	Indefinite from June 12, 2006
Guida, Joseph M.	Aberdeen, MD	Attorney	Indefinite from June 12, 2006
Sonibare, Nash	St. Paul, MN	CPA	Indefinite from June 12, 2006
Braun, Marc W.	St. Louis, MO	Attorney	Indefinite from June 12, 2006
Coffey, John J.	Rye, NH	Attorney	Indefinite from June 12, 2006
Whitehead, H. Allen	New York, NY	Attorney	Indefinite from June 12, 2006
Lansky, Sidney	Mattapoisett, MA	Attorney	Indefinite from June 12, 2006
Pazniokas, Paul M.	Norwood, MA	Attorney	Indefinite from June 12, 2006
Bajgrowicz, James J.	Santa Rosa, CA	Attorney	Indefinite from June 12, 2006
Davis, Bret J.	Los Angeles, CA	Attorney	Indefinite from June 12, 2006
McAvoy, Timothy	Chicago, IL	Attorney	Indefinite from June 12, 2006

Name	Address	Designation	Date of Suspension
Loffadelli, Thomas C.	Studio City, CA	Attorney	Indefinite from June 12, 2006
Emeziem, Kelechi C.	Antioch, CA	Attorney	Indefinite from June 12, 2006
Pugh, William C.	Wayzata, MN	Attorney	Indefinite from June 12, 2006
Lamanna, Eugene C.	Reading, PA	Attorney	Indefinite from June 12, 2006
Bartels, John R.	St. Paul, MN	Attorney	Indefinite from June 12, 2006
Shapiro, Kenneth S.	Bala Cynwyd, PA	CPA	Indefinite from June 14, 2006
Stone, Jerry W.	Austin, TX	Attorney	Indefinite from June 21, 2006
Vanriper, Philip E.	Binghamton, NY	Attorney	Indefinite from June 21, 2006
Simuro, Valerie T.	Gardiner, NY	Attorney	Indefinite from June 21, 2006
Simms, William K.	Brooklyn, NY	Attorney	Indefinite from June 21, 2006
Weaver, Terring M.	Clarksburg, WV	CPA	Indefinite from July 1, 2006
Norman, Clarence	Brooklyn, NY	Attorney	Indefinite from August 3, 2006
Knight, John G.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006
Kronegold, Sheldon H.	Englewood, NJ	Attorney	Indefinite from August 3, 2006
Foushee, Wayne H.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006

# 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 ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Kahn, Harold	Hollis, NY	CPA	June 26, 2006 to June 25, 2010

# Disbarments 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 oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Gailey, James N.	Huntersville, NC	CPA	June 5, 2006

# 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
Williams, Daniel S.	Carlsbad, CA	Attorney	March 29, 2006
Azan, Reinaldo L.	Miami Beach, FL	CPA	July 24, 2006
Golub, Stephen B.	Norwalk, CT	CPA	August 3, 2006

## Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations; Correction

### Announcement 2006-67

AGENCY: Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to temporary regulations.

**SUMMARY:** This document contains corrections to temporary regulations (T.D. 9260, 2006-23 I.R.B. 1001) that were published in the **Federal Register** on Tuesday, April 25, 2006 (71 FR 24516) regarding the application of separate foreign tax credit limitations to dividends received from noncontrolled section 902 corporations under section 904(d)(4).

**DATES:** These corrections are effective April 25, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ginny Chung (202) 622-3850 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The temporary regulations (T.D. 9260) that are the subject of this correction are

under section 904 of the Internal Revenue Code.

#### Need for Correction

As published, (T.D. 9260) contains errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 9260) which was the subject of FR Doc. 06-3882, is corrected as follows:

#### § 1.904-4 [Corrected]

1. On page 24530, column 2, § 1.904-4, Instructional Par. 11., number 3, the language “3. In paragraph (e)(5)(iii), remove the language “and paragraph (9) of this section” and add the language “paid in taxable years beginning before January 1, 2003” in its place.” is corrected to read “3. In paragraph (e)(5)(iii), remove the language “and paragraph (g) of this section” and add the language “paid in taxable years beginning before January 1, 2003” in its place.”

Guy R. Traynor,  
*Chief, Publications and  
Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).*

(Filed by the Office of the Federal Register on August 18, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 21, 2006, 71 F.R. 48474)

## REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders); Correction

### Announcement 2006-68

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 9272, 2006-35 I.R.B. 332) that were published in the **Federal Register** on Tuesday, August 1, 2006 (71 FR 43363) relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities.

DATES: These corrections are effective August 1, 2006.

FOR FURTHER INFORMATION CONTACT: Dale Collinson, (202) 622-3900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

The correction notice that is the subject of this document is under sections 860A, 860G(b), 863, 1441, and 1442 of the Internal Revenue Code.

#### Need for Correction

As published, final regulations (T.D. 9272) contain errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9272), which was the subject of FR Doc. E6-12363, is corrected as follows:

1. On page 43364, column 1, in the preamble, under the paragraph heading “Background and Explanation of Provisions”, first full paragraph of the column, line 6, the language “furtherance of the congressional” is corrected to read “furtherance of the Congressional”.

2. On page 43365, column 1, in the preamble, under the paragraph heading “Special Analyses”, line 5 from bottom of the paragraph, the language “Code, these temporary regulations will” is corrected to read “the Code, these temporary regulations will”.

LaNita Van Dyke,  
*Acting Chief, Publications  
and Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).*

(Filed by the Office of the Federal Register on August 23, 2006, 8:45 a.m., and published in the issue of the Federal Register for August 24, 2006, 71 F.R. 49992)

# 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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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.



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