

Internal Revenue bulletin

Bulletin No. 2008-4
January 28, 2008

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 2008-14, page 310.

This notice lists positions identified as frivolous for purposes of section 6702(c) of the Code. Notice 2007-30, 2007-14 I.R.B. 883, modified and superseded.

Notice 2008-15, page 313.

Allocation of prepaid qualified mortgage insurance premiums for 2007. This notice explains how individual taxpayers may allocate prepaid qualified mortgage insurance premiums to determine the amount that may be deducted in 2007. This notice also provides guidance to reporting entities on the information reporting of prepaid qualified mortgage insurance premiums for 2007. Comments are requested on the rules that should apply to the allocation and reporting of premiums in future years.

EMPLOYEE PLANS

Notice 2008-17, page 316.

Weighted average interest rate update; corporate bond indices; 30-year Treasury Securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in January 2008; the 24-month average segment rates; the funding transitional segment rates applicable for January 2008; and the minimum present value transitional rates for December 2007.

EXEMPT ORGANIZATIONS

Notice 2008-14, page 310.

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ESTATE TAX

Notice 2008-14, page 310.

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GIFT TAX

Notice 2008-14, page 310.

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Announcements of Disbarments and Suspensions begin on page 333.
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Department of the Treasury
Internal Revenue Service

EMPLOYMENT TAX

REG-111583-07, page 319.

Proposed regulations under section 6205 of the Code amend the process for making interest-free adjustments of underpayments and overpayments of employment taxes pursuant to sections 6205 and 6413, respectively. The regulations also clarify the process for filing claims for refund of overpayments of employment taxes under sections 6402 and 6414. The regulations will continue to permit taxpayers to file a claim for refund in lieu of making an interest-free adjustment for an overpayment of employment taxes. A public hearing is scheduled for April 17, 2008.

Notice 2008-14, page 310.

This notice lists positions identified as frivolous for purposes of section 6702(c) of the Code. Notice 2007-30, 2007-14 I.R.B. 883, modified and superseded.

SELF-EMPLOYMENT TAX

Notice 2008-14, page 310.

This notice lists positions identified as frivolous for purposes of section 6702(c) of the Code. Notice 2007-30, 2007-14 I.R.B. 883, modified and superseded.

EXCISE TAX

Notice 2008-14, page 310.

This notice lists positions identified as frivolous for purposes of section 6702(c) of the Code. Notice 2007-30, 2007-14 I.R.B. 883, modified and superseded.

ADMINISTRATIVE

Notice 2008-14, page 310.

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Notice 2008-15, page 313.

Allocation of prepaid qualified mortgage insurance premiums for 2007. This notice explains how individual taxpayers may allocate prepaid qualified mortgage insurance premiums to determine the amount that may be deducted in 2007. This notice also provides guidance to reporting entities on the information reporting of prepaid qualified mortgage insurance premiums for 2007. Comments are requested on the rules that should apply to the allocation and reporting of premiums in future years.

Notice 2008-16, page 315.

This notice provides rules under section 170(f)(17) of the Code for substantiating lump-sum charitable contributions made through the Combined Federal Campaign or a similar program.

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 6050H.—Returns Relating to Mortgage Interest Received in Trade or Business From Individuals

This notice explains how individual taxpayers may allocate prepaid qualified mortgage insurance premi-

ums to determine the amount that may be deducted in 2007. This notice also provides guidance to reporting entities on the information reporting of prepaid qualified mortgage insurance premiums for 2007. Comments are requested on the rules that should apply to the allocation and reporting of premiums in future years. See Notice 2008-15, page 313.

Part III. Administrative, Procedural, and Miscellaneous

Frivolous Positions

Notice 2008-14

PURPOSE

Positions that are the same as or similar to the positions listed in this notice are identified as frivolous for purposes of the penalty for a “frivolous tax return” under section 6702(a) of the Internal Revenue Code and the penalty for a “specified frivolous submission” under section 6702(b). Persons who file a purported return of tax, including an original or amended return, based on one or more of these positions are subject to a penalty of \$5,000 if the purported return of tax does not contain information on which the substantial correctness of the self-assessed determination of tax may be judged or contains information that on its face indicates the self-assessed determination of tax is substantially incorrect. Likewise, persons who submit a “specified submission” (namely, a request for a collection due process hearing or an application for an installment agreement, offer-in-compromise, or taxpayer assistance order) based on one or more of the positions listed in this notice are subject to a penalty of \$5,000. The penalty may also be applied if the purported return or any portion of the specified submission is not based on a position set forth in this notice, yet reflects a desire to delay or impede the administration of Federal tax laws for purposes of section 6702(a)(2)(B) or 6702(b)(2)(A)(ii).

BACKGROUND

Section 407 of Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922, 2960-62 (2006), amended section 6702 to increase the amount of the penalty for frivolous tax returns from \$500 to \$5,000 and to impose a penalty of \$5,000 on any person who submits a “specified frivolous submission.” A submission is a “specified frivolous submission” if it is a “specified submission” (defined in section 6702(b)(2)(B) as a request for a hearing under section 6320 or 6330 or an application under section 6159, 7122

or 7811) and any portion of the submission (i) is based on a position identified by the Secretary as frivolous or (ii) reflects a desire to delay or impede administration of the Federal tax laws. Section 6702 was further amended to add a new subsection (c) requiring the Secretary to prescribe, and periodically revise, a list of positions identified as frivolous. Notice 2007-30, 2007-14 I.R.B. 883, contained the prescribed list. This notice revises the list to add more positions identified as frivolous. The positions that have been added are found in paragraphs 9(g), 11, 14 and 25.

DISCUSSION

Frivolous Positions. Positions that are the same as or similar to the following are frivolous.

(1) Compliance with the internal revenue laws is voluntary or optional and not required by law, including arguments that:

- a. Filing a Federal tax or information return or paying tax is purely voluntary under the law, or similar arguments described as frivolous in Rev. Rul. 2007-20, 2007-14 I.R.B. 863.
- b. Nothing in the Internal Revenue Code imposes a requirement to file a return or pay tax, or that a person is not required to file a tax return or pay a tax unless the Internal Revenue Service responds to the person's questions, correspondence, or a request to identify a provision in the Code requiring the filing of a return or the payment of tax.
- c. There is no legal requirement to file a Federal income tax return because the instructions to Forms 1040, 1040A, or 1040EZ or the Treasury regulations associated with the filing of the forms do not display an OMB control number as required by the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, or similar arguments described as frivolous in Rev. Rul. 2006-21, 2006-1 C.B. 745.
- d. Because filing a tax return is not required by law, the Service must prepare a return for a taxpayer who does

not file one in order to assess and collect tax.

- e. A taxpayer has an option under the law to file a document or set of documents in lieu of a return or elect to file a tax return reporting zero taxable income and zero tax liability even if the taxpayer received taxable income during the taxable period for which the return is filed, or similar arguments described as frivolous in Rev. Rul. 2004-34, 2004-1 C.B. 619.
- f. An employer is not legally obligated to withhold income or employment taxes on employees' wages.
- g. Only persons who have contracted with the government by applying for a governmental privilege or benefit, such as holding a Social Security number, are subject to tax, and those who have contracted with the government may choose to revoke the contract at will.
- h. A taxpayer may lawfully decline to pay taxes if the taxpayer disagrees with the government's use of tax revenues, or similar arguments described as frivolous in Rev. Rul. 2005-20, 2005-1 C.B. 821.
- i. An administrative summons issued by the Service is *per se* invalid and compliance with a summons is not legally required.

(2) The Internal Revenue Code is not law (or “positive law”) or its provisions are ineffective or inoperative, including the sections imposing an income tax or requiring the filing of tax returns, because the provisions have not been implemented by regulations even though the provisions in question either (a) do not expressly require the Secretary to issue implementing regulations to become effective or (b) expressly require implementing regulations which have been issued.

(3) A taxpayer's income is excluded from taxation when the taxpayer rejects or renounces United States citizenship because the taxpayer is a citizen exclusively of a State (sometimes characterized as a “natural-born citizen” of a “sovereign state”), that is claimed to be a separate country or otherwise not subject to the laws of the United States. This position

includes the argument that the United States does not include all or a part of the physical territory of the 50 States and instead consists of only places such as the District of Columbia, Commonwealths and Territories (e.g., Puerto Rico), and Federal enclaves (e.g., Native American reservations and military installations), or similar arguments described as frivolous in Rev. Rul. 2004–28, 2004–1 C.B. 624, or Rev. Rul. 2007–22, 2007–14 I.R.B. 866.

(4) Wages, tips, and other compensation received for the performance of personal services are not taxable income or are offset by an equivalent deduction for the personal services rendered, including an argument that a taxpayer has a “claim of right” to exclude the cost or value of the taxpayer’s labor from income or that taxpayers have a basis in their labor equal to the fair market value of the wages they receive, or similar arguments described as frivolous in Rev. Rul. 2004–29, 2004–1 C.B. 627, or Rev. Rul. 2007–19, 2007–14 I.R.B. 843.

(5) United States citizens and residents are not subject to tax on their wages or other income derived from sources within the United States, as only foreign-based income or income received by nonresident aliens and foreign corporations from sources within the United States is taxable, and similar arguments described as frivolous in Rev. Rul. 2004–30, 2004–1 C.B. 622.

(6) A taxpayer has been untaxed, de-taxed, or removed or redeemed from the Federal tax system though the taxpayer remains a United States citizen or resident, or similar arguments described as frivolous in Rev. Rul. 2004–31, 2004–1 C.B. 617.

(7) Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006–18, 2006–1 C.B. 743.

(8) Only certain types of income are taxable, for example, income that results from the sale of alcohol, tobacco, or firearms or from transactions or activities that take place in interstate commerce.

(9) Federal income taxes are unconstitutional or a taxpayer has a constitutional

right not to comply with the Federal tax laws for one of the following reasons:

- a. The First Amendment permits a taxpayer to refuse to pay taxes based on religious or moral beliefs.
- b. A taxpayer may withhold payment of taxes or the filing of a tax return until the Service or other government entity responds to a First Amendment petition for redress of grievances.
- c. Mandatory compliance with, or enforcement of, the tax laws invades a taxpayer’s right to privacy under the Fourth Amendment.
- d. The requirement to file a tax return is an unreasonable search and seizure contrary to the Fourth Amendment.
- e. Income taxation, tax withholding, or the assessment or collection of tax is a “taking” of property without due process of law or just compensation in violation of the Fifth Amendment.
- f. The Fifth Amendment privilege against self-incrimination grants taxpayers the right not to file returns or the right to withhold all financial information from the Service.
- g. The Ninth Amendment exempts those with religious or other objections to military spending from paying taxes to the extent the taxes will be used for military spending.
- h. Mandatory or compelled compliance with the internal revenue laws is a form of involuntary servitude prohibited by the Thirteenth Amendment.
- i. Individuals may not be taxed unless they are “citizens” within the meaning of the Fourteenth Amendment.
- j. The Sixteenth Amendment was not ratified, has no effect, contradicts the Constitution as originally ratified, lacks an enabling clause, or does not authorize a non-apportioned, direct income tax.
- k. Taxation of income attributed to a trust, which is a form of contract, violates the constitutional prohibition against impairment of contracts.
- l. Similar constitutional arguments described as frivolous in Rev. Rul. 2005–19, 2005–1 C.B. 819.

(10) A taxpayer is not a “person” within the meaning of section 7701(a)(14) or other provisions of the Internal Revenue Code, or similar arguments described as

frivolous in Rev. Rul. 2007–22, 2007–14 I.R.B. 866.

(11) Only fiduciaries are taxpayers, or only persons with a fiduciary relationship to the United States are obligated to pay taxes, and the United States or the Service must prove the fiduciary status or relationship.

(12) Federal Reserve Notes are not taxable income when paid to a taxpayer because they are not gold or silver and may not be redeemed for gold or silver.

(13) In a transaction using gold and silver coins, the value of the coins is excluded from income or the amount realized in the transaction is the face value of the coins and not their fair market value for purposes of determining taxable income.

(14) A taxpayer who is employed on board a ship that provides meals at no cost to the taxpayer as part of the employment may claim a so-called “Mariner’s Tax Deduction” (or the like) allowing the taxpayer to deduct from gross income the cost of the meals as an employee business expense.

(15) A taxpayer may purport to operate a home-based business as a basis to deduct as business expenses the taxpayer’s personal expenses or the costs of maintaining the taxpayer’s household when the maintenance items or amounts as reported do not correspond to a *bona fide* home business, such as when they are grossly excessive in relation to the conceivable costs for some portion of the home being used exclusively and regularly as a business, or similar arguments described as frivolous by Rev. Rul. 2004–32, 2004–1 C.B. 621.

(16) A “reparations” tax credit exists, including arguments that African-American taxpayers may claim a tax credit on their Federal income tax returns as reparations for slavery or other historical mistreatment, that Native Americans are entitled to an analogous credit (or are exempt from Federal income tax on the basis of a treaty), or similar arguments described as frivolous in Rev. Rul. 2004–33, 2004–1 C.B. 628, or Rev. Rul. 2006–20, 2006–1 C.B. 746.

(17) A Native American or other taxpayer who is not an employer engaged in a trade or business may nevertheless claim (for example, in an amount exceeding all reported income) the Indian Employment Credit under section 45A, which explicitly requires, among other criteria, that the tax-

payer be an employer engaged in a trade or business to claim the credit.

(18) A taxpayer's wages are excluded from Social Security taxes if the taxpayer waives the right to receive Social Security benefits, or a taxpayer is entitled to a refund of, or may claim a charitable-contribution deduction for, the Social Security taxes that the taxpayer has paid, or similar arguments described as frivolous in Rev. Rul. 2005-17, 2005-1 C.B. 823.

(19) Taxpayers may reduce or eliminate their Federal tax liability by altering a tax return, including striking out the penalty-of-perjury declaration, or attaching documents to the return, such as a disclaimer of liability, or similar arguments described as frivolous in Rev. Rul. 2005-18, 2005-1 C.B. 817.

(20) A taxpayer is not obligated to pay income tax because the government has created an entity separate and distinct from the taxpayer—a "straw man"—that is distinguishable from the taxpayer by some variation of the taxpayer's name, and any tax obligations are exclusively those of the "straw man," or similar arguments described as frivolous in Rev. Rul. 2005-21, 2005-1 C.B. 822.

(21) Inserting the phrase "nunc pro tunc" on a return or other document filed with or submitted to the Service has a legal effect, such as reducing a taxpayer's tax liability, or similar arguments described as frivolous in Rev. Rul. 2006-17, 2006-1 C.B. 748.

(22) A taxpayer may avoid tax on income by attributing the income to a trust, including the argument that a taxpayer can put all of the taxpayer's assets into a trust to avoid income tax while still retaining substantial powers of ownership and control over those assets or that a taxpayer may claim an expense deduction for the income attributed to a trust, or similar arguments described as frivolous in Rev. Rul. 2006-19, 2006-1 C.B. 749.

(23) A taxpayer may lawfully avoid income tax by sending income offshore, including depositing income into a foreign bank account.

(24) A taxpayer can claim the section 44 Disabled Access Credit to reduce tax or generate a refund, for example, by purportedly having purchased equipment or services for an inflated price (which may or may not have been actually paid), even though it is apparent that the taxpayer did

not operate a small business that purchased the equipment or services to comply with the requirements of the Americans with Disabilities Act.

(25) A taxpayer may claim the section 6421 fuels tax credit, which is limited to gasoline used in an off-highway business use, even though the taxpayer did not purchase and use gasoline during the taxable period for which the credit is claimed for an off-highway business use. Also, if the taxpayer claims an amount of credit that is so disproportionately excessive to any (including zero) business income reported on the taxpayer's income tax return as to be patently unallowable (*e.g.*, a credit that is 150 percent of business income reported on Form 1040) or facially reflects an impossible quantity of gasoline given the business use, if any, as reported by the taxpayer.

(26) A taxpayer is allowed to buy or sell the right to claim a child as a qualifying child for purposes of the Earned Income Tax Credit.

(27) An IRS Form 23C, *Assessment Certificate — Summary Record of Assessments*, is an invalid record of assessment for purposes of section 6203 and Treas. Reg. § 301.6203-1, the Form 23C must be personally signed by the Secretary of the Treasury for an assessment to be valid, the Service must provide a copy of the Form 23C to a taxpayer if requested before taking collection action, or similar arguments described as frivolous in Rev. Rul. 2007-21, 2007-14 I.R.B. 865.

(28) A tax assessment is invalid because the assessment was made from a section 6020(b) substitute for return, which is not a valid return.

(29) A statutory notice of deficiency is invalid because the taxpayer to whom the notice was sent did not file an income tax return reporting the deficiency or because the statutory notice of deficiency was unsigned or not signed by the Secretary of the Treasury or by someone with delegated authority.

(30) A Notice of Federal Tax Lien is invalid because it is not signed by a particular official (such as by the Secretary of the Treasury), or because it was filed by someone without delegated authority.

(31) The form or content of a Notice of Federal Tax Lien is controlled by or subject to a state or local law, and a Notice of Federal Tax Lien that does not comply in

form or content with a state or local law is invalid.

(32) A collection due process notice under section 6320 or 6330 is invalid if it is not signed by the Secretary of the Treasury or other particular official, or if no certificate of assessment is attached.

(33) Verification under section 6330 that the requirements of any applicable law or administrative procedure have been met may only be based on one or more particular forms or documents (which must be in a certain format), such as a summary record of assessment, or that the particular forms or documents or the ones on which verification was actually determined must be provided to a taxpayer at a collection due process hearing.

(34) A Notice and Demand is invalid because it was not signed, was not on the correct form (*e.g.*, a Form 17), or was not accompanied by a certificate of assessment when mailed.

(35) The United States Tax Court is an illegitimate court or does not, for any purported constitutional or other reason, have the authority to hear and decide matters within its jurisdiction.

(36) Federal courts may not enforce the internal revenue laws because their jurisdiction is limited to admiralty or maritime cases or issues.

(37) Revenue Officers are not authorized to issue levies or Notices of Federal Tax Lien or to seize property in satisfaction of unpaid taxes.

(38) A Service employee lacks the authority to carry out the employee's duties because the employee does not possess a certain type of identification or credential, for example, a pocket commission or a badge, or it is not in the correct form or on the right medium.

(39) A person may represent a taxpayer before the Service or in court proceedings even if the person does not have a power of attorney from the taxpayer, has not been enrolled to practice before the Service, or has not been admitted to practice before the court.

(40) A civil action to collect unpaid taxes or penalties must be personally authorized by the Secretary of the Treasury and the Attorney General.

(41) A taxpayer's income is not taxable if the taxpayer assigns or attributes the income to a religious organization (a "corporation sole" or ministerial trust) claimed to

be tax-exempt under section 501(c)(3), or similar arguments described as frivolous in Rev. Rul. 2004–27, 2004–1 C.B. 625.

(42) The Service is not an agency of the United States government but rather a private-sector corporation or an agency of a State or Territory without authority to administer the internal revenue laws.

(43) Any position described as frivolous in any revenue ruling or other published guidance in existence when the return adopting the position is filed with or the specified submission adopting the position is submitted to the Service.

Returns or submissions that contain positions not listed above, which on their face have no basis for validity in existing law, or which have been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction, may be determined to reflect a desire to delay or impede the administration of Federal tax laws and thereby subject to the \$5,000 penalty.

The list of frivolous positions above will be periodically revised as required by section 6702(c).

EFFECTIVE DATE

This notice is effective for submissions made and issues raised after January 14, 2008. For submissions made and issues raised between March 16, 2007, and January 14, 2008, Notice 2007–30 applies.

EFFECT ON OTHER DOCUMENTS

Notice 2007–30 is modified and superseded.

DRAFTING INFORMATION

The principal author of this notice is the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact the Office of the Associate Chief Counsel (Procedure and Administration), Branch 2, at (202) 622–4940 (not a toll-free call).

Allocation of Prepaid Qualified Mortgage Insurance Premiums for 2007

Notice 2008–15

PURPOSE

This notice provides guidance to individual taxpayers on how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium a taxpayer may deduct in 2007 under § 163(h)(4)(F) of the Internal Revenue Code (the “Code”).

This notice also provides guidance to reporting entities receiving prepaid qualified mortgage insurance premiums in 2007.

BACKGROUND

Section 163(a) of the Code generally allows a deduction for all interest paid or accrued within the taxable year on indebtedness. However, § 163(h)(1) provides that in the case of a taxpayer other than a corporation, no deduction shall be allowed for personal interest paid or accrued during the taxable year. Section 163(h)(2)(D) excludes qualified residence interest from the definition of personal interest.

Section 163(h)(3)(A) defines qualified residence interest, in part, as interest paid or accrued during the taxable year on acquisition indebtedness with respect to any qualified residence of the taxpayer. The determination of whether any property is a qualified residence of the taxpayer is made as of the time the interest is accrued.

Section 163(h)(4)(A) defines a qualified residence as the taxpayer’s principal residence and one other property that the taxpayer designates as a residence for purposes of § 163(h)(4) for the taxable year and that the taxpayer uses as a residence (within the meaning of § 280A(d)(1)). This general rule is subject to several special rules contained in § 163(h)(4).

Section 163(h)(3)(B) defines acquisition indebtedness as any indebtedness that is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer and is secured by such residence. Acquisition indebtedness

includes indebtedness secured by the residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from the refinancing does not exceed the amount of the refinanced indebtedness. The aggregate amount treated as acquisition indebtedness for any period may not exceed \$1,000,000 (\$500,000 in the case of a married individual filing a separate return).

Section 419 of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109–432, 120 Stat. 2967 (the “Act”), added provisions to §§ 163(h)(3) and 163(h)(4) to treat qualified mortgage insurance premiums paid or accrued in 2007 for qualified mortgage insurance contracts issued in 2007 as deductible qualified residence interest. In the case of prepaid qualified mortgage insurance premiums, the deduction is limited to the amount allocable to 2007. The allocable amount may be reduced or eliminated under § 163(h)(3)(E)(ii), which provides that the amount allowed as a deduction is phased out ratably by 10 percent for each \$1,000 (\$500 in the case of a married individual filing a separate return) the taxpayer’s adjusted gross income exceeds \$100,000 (\$50,000 in the case of a married individual filing a separate return). Prior to enactment of section 419 of the Act, taxpayers could not deduct premiums paid for mortgage insurance as qualified residence interest.

Section 163(h)(3)(E) provides that premiums paid or accrued for qualified mortgage insurance in connection with acquisition indebtedness for a qualified residence are treated as qualified residence interest for purposes of § 163.

Section 163(h)(4)(E) defines qualified mortgage insurance as —

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration,¹ and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. § 4901), as in effect on December 20, 2006, the date § 163(h)(4)(E) was enacted).

¹ References in § 163(h)(4)(E)(i) to the Veterans Administration (“VA”) and Rural Housing Administration (“Rural Housing”), are interpreted to mean their respective successors, the Department of Veterans Affairs and Rural Housing Service.

Section 163(h)(4)(F) states that any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of the term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the VA or Rural Housing.

Section 419 of the Act also added § 6050H(h) to the Code, which generally provides that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating \$600 or more for any calendar year, shall make an information return in the form prescribed by the Secretary. For 2007, qualified mortgage insurance premiums should be reported in box 4 on Form 1098, *Mortgage Interest Statement*. The Instructions for Form 1098 state that, except for amounts paid to the VA or Rural Housing, payments allocable to periods after 2007 are treated as paid in the periods to which they are allocable.

Generally, under § 6724(a) a failure to file a correct information return shall not be subject to a penalty if it is shown that such failure is due to reasonable cause and not to willful neglect. Under § 301.6724-1(a)(2)(i) of the Procedure and Administration Regulations, a penalty is waived for reasonable cause if the filer establishes that there are significant mitigating factors with respect to the failure. Section 301.6724-1(b)(1) provides that a significant mitigating factor includes the fact that, prior to the failure to file, the filer was never required to file the particular type of return or to furnish the particular type of statement with respect to which the failure occurred.

ALLOCATION OF PREPAID QUALIFIED MORTGAGE INSURANCE PREMIUMS UNDER § 163(h)(4)(F) PAID IN 2007

The Department of the Treasury (the “Treasury”) and the Internal Revenue Service (the “IRS”) have received comments

on the implementation of section 419 of the Act. Notwithstanding the general rules for the treatment of qualified residence interest (for example, the period over which certain points paid to refinance a mortgage are allocable), the Treasury and IRS have determined, as a matter of administrative convenience, to provide the following guidance on the treatment of prepaid qualified mortgage insurance premiums.

In the case of an individual taxpayer who, in 2007, obtained a mortgage qualifying as acquisition indebtedness on a qualified residence and, in connection with that mortgage, paid (by cash or financing, without regard to source) a qualified mortgage insurance premium for private mortgage insurance or mortgage insurance provided by the Federal Housing Administration issued in 2007 but extending beyond 2007, the taxpayer may allocate the prepaid premium ratably over the shorter of —

- (1) the stated term of the mortgage, or
- (2) 84 months, beginning with the month in which the insurance was obtained,

to determine the amount treated as deductible qualified residence interest for 2007 (the “allocation method”). The individual taxpayer may have to contact the issuer of the Form 1098 to ascertain the manner in which the premium amount was reflected in box 4.

The Treasury and IRS have determined 84 months to be an appropriate allocation period after reviewing comments received from representatives of the mortgage insurance industry.

REPORTING REQUIREMENTS FOR 2007 FOR ENTITIES RESPONSIBLE FOR REPORTING PREPAID QUALIFIED MORTGAGE INSURANCE PREMIUMS

A reporting entity that receives, from an individual, qualified mortgage insurance premiums of \$600 or more in 2007 is required to file the 2007 Form 1098. For prepaid qualified mortgage insurance premiums, except for amounts paid to the VA or Rural Housing, the entity should report in box 4 of the Form 1098 the portion of the amount received that is allocable to 2007, as provided in the instructions to the form. However, an entity reporting either the amount actually received or the amount

determined under the 84-month allocation method described above will be deemed to meet the requirements of § 6724(a).

REQUEST FOR COMMENTS

This notice provides transitional relief for individual taxpayers and reporting entities for 2007. Section 3 of the Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. No. 110-142, 121 Stat. 1803, which was enacted on December 20, 2007, contains a provision extending the deductibility of qualified mortgage insurance premiums under § 163(h)(3)(E) through 2010. The Treasury and IRS request comments regarding the appropriate allocation method and reporting requirements that should apply to future years.

Written comments in response to this notice should be submitted no later than March 28, 2008, to the Internal Revenue Service, CC:PA:LPD:RU (Notice 2008-15), room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand carried between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:RU (Notice 2008-15), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, comments may be submitted via the Internet at Notice.Comments@irs.counsel.treas.gov in which case “Notice 2008-15” should be in the subject line. All submissions will be available for public inspection and copying in their entirety. Therefore, submissions received by the IRS should not include taxpayer-specific information of a confidential nature. Submissions should include the name and telephone number of a person to contact.

DRAFTING INFORMATION

The principal author of this notice is Charles H. Kim of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Charles H. Kim at (202) 622-5020 (not a toll-free call).

Organization Treated as a Donee

Notice 2008-16

SECTION 1. PURPOSE

This notice provides rules under § 170(f)(17) of the Internal Revenue Code (Code) for substantiating lump-sum charitable contributions made through the Combined Federal Campaign (CFC) or a similar program (e.g., a United Way Campaign).

Taxpayers claiming charitable contribution deductions for cash, check, or other monetary gifts made in taxable years beginning after August 17, 2006, are subject to the recordkeeping requirements of § 170(f)(17), as added by section 1217 of the Pension Protection Act of 2006, P.L. 109-280, 120 Stat. 780 (2006) (PPA). To substantiate a deduction, § 170(f)(17) requires a taxpayer to maintain a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

The Internal Revenue Service and the Treasury Department expect to issue regulations under § 170 incorporating the recordkeeping requirements of § 170(f)(17). Taxpayers making lump-sum charitable contributions through the CFC or a similar program may rely on this notice to comply with § 170(f)(17) until those regulations are effective.

SECTION 2. BACKGROUND

Section 170 generally allows a deduction, subject to certain limitations, for any charitable contribution (as defined in § 170(c)) payment of which is made during the taxable year. For any contribution of \$250 or more, § 170(f)(8) provides that no deduction is allowed unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization. The contemporaneous written acknowledgment must contain the following information: the amount of cash and a description of any property other than cash contributed; a statement whether the donee organization provided any goods or services in consideration for the contribution; and a description and good faith

estimate of the value of any goods or services provided in consideration for the contribution, or, if the goods or services consist solely of intangible religious benefits, a statement to that effect.

Section 1.170A-13(f)(12) of the Income Tax Regulations provides, in relevant part, that an organization described in § 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization (PCFO) for purposes of the CFC) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of § 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in § 170(c).

Section 1217 of the PPA adds § 170(f)(17), effective for contributions made in taxable years beginning after August 17, 2006. Section 170(f)(17) provides that no deduction is allowed under § 170(a) for any contribution of a cash, check, or other monetary gift, unless the taxpayer maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization and the date and the amount of the contribution. Unlike § 170(f)(8), which applies only to contributions of \$250 or more, § 170(f)(17) applies to all contributions of a cash, check, or other monetary gift, regardless of amount. Notice 2006-110, 2006-51 I.R.B. 1127, provides rules under § 170(f)(17) for substantiating charitable contributions made by payroll deduction.

Any contribution of \$250 or more made by cash, check, or other monetary gift is subject to §§ 170(f)(8) and (f)(17). No deduction for a lump-sum contribution of \$250 or more is allowed unless the taxpayer satisfies the substantiation requirements of each section. However, both §§ 170(f)(8) and (f)(17) may be satisfied by a single document if the document contains all information required by both sections within the time period as may be required.

SECTION 3. APPLICATION OF § 170(f)(17) TO LUMP-SUM CONTRIBUTIONS MADE THROUGH THE CFC OR A SIMILAR PROGRAM

A deduction for a lump-sum contribution made in taxable years beginning after August 17, 2006, will not be allowed unless the recordkeeping requirements of § 170(f)(17) are met. In the case of a lump-sum contribution made through the CFC or a similar program, an organization described in § 170(c), or an organization described in 5 CFR 950.105 (a PCFO for purposes of the CFC) and acting in that capacity, that receives a payment made as a contribution may be treated as a donee described in § 170(c) for purposes of § 170(f)(17) (and not solely for purposes of § 170(f)(8)) even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in § 170(c). For purposes of § 170(f)(17), a written communication from the PCFO for purposes of the CFC (and acting in that capacity) or a similar organization, must include the name of the donee organization that is the ultimate recipient of the charitable contribution (i.e., the one or more organizations described in § 170(c) to which the PCFO for purposes of the CFC (or the similar organization) distributes the amount received).

The Internal Revenue Service and the Treasury Department expect to issue regulations under § 170 that will incorporate the recordkeeping requirements of § 170(f)(17). In light of the purpose of section 1217 of the PPA, the nexus between the PCFOs (or similar organizations) and actual donees will be reviewed. The anticipated regulations may require disclosure to each donor of the actual amount distributed to the ultimate recipient organizations through the CFC or the similar program and the date of that distribution. Taxpayers may rely on this notice to substantiate lump-sum contributions made through the CFC or a similar program in taxable years beginning after August 17, 2006, until those regulations are effective.

SECTION 4. PAPERWORK REDUCTION ACT

The collections of information referenced in this notice have been previously reviewed and approved by the Office of Management and Budget (OMB) as part of the promulgation of § 1.170A-13 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0754. This notice merely clarifies the substantiation required for a contribution of a cash, check, or other monetary gift subject to § 170(f)(17).

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

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

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Nancy J. Lee of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding

this notice, contact Nancy J. Lee at (202) 622-5020 (not a toll-free call).

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2008-17

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA),

provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-42 I.R.B. 366.

The composite corporate bond rate for December 2007 is 6.28 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range		
Month	Year		90%	to	100%
January	2008	5.92	5.33		5.92

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from December 2007 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of December 2007 are, respectively, 4.93, 6.13 and 6.69. The three 24-month average corporate bond segment rates applicable for January 2008 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.31	5.92	6.43

The transitional segment rates under § 430(h)(2)(G) applicable for January 2008, taking into account the corporate bond weighted average of 5.92 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.72	5.92	6.09

30-YEAR TREASURY SECURITIES INTEREST RATE

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for December 2007 is 4.53 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2037.

The rate of interest on 30-year Treasury securities for December 2007 is 4.53 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2037.

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for December 2007, taking into account the December 2007 30-year Treasury rate of 4.53 stated above, are as follows:

ment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for December 2007, taking into account the December 2007 30-year Treasury rate of 4.53 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.61	4.85	4.96

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at RetirementPlanQuestions@irs.gov.

Table I

Monthly Yield Curve for December 2007

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	4.93	20.5	6.50	40.5	6.71	60.5	6.79	80.5	6.82
1.0	4.81	21.0	6.51	41.0	6.72	61.0	6.79	81.0	6.82
1.5	4.72	21.5	6.52	41.5	6.72	61.5	6.79	81.5	6.82
2.0	4.70	22.0	6.53	42.0	6.72	62.0	6.79	82.0	6.82
2.5	4.75	22.5	6.54	42.5	6.72	62.5	6.79	82.5	6.83
3.0	4.84	23.0	6.54	43.0	6.73	63.0	6.79	83.0	6.83
3.5	4.95	23.5	6.55	43.5	6.73	63.5	6.79	83.5	6.83
4.0	5.07	24.0	6.56	44.0	6.73	64.0	6.79	84.0	6.83
4.5	5.19	24.5	6.57	44.5	6.73	64.5	6.79	84.5	6.83
5.0	5.30	25.0	6.58	45.0	6.73	65.0	6.80	85.0	6.83
5.5	5.41	25.5	6.58	45.5	6.74	65.5	6.80	85.5	6.83
6.0	5.51	26.0	6.59	46.0	6.74	66.0	6.80	86.0	6.83
6.5	5.60	26.5	6.60	46.5	6.74	66.5	6.80	86.5	6.83
7.0	5.68	27.0	6.60	47.0	6.74	67.0	6.80	87.0	6.83
7.5	5.75	27.5	6.61	47.5	6.75	67.5	6.80	87.5	6.83
8.0	5.81	28.0	6.61	48.0	6.75	68.0	6.80	88.0	6.83
8.5	5.87	28.5	6.62	48.5	6.75	68.5	6.80	88.5	6.83
9.0	5.93	29.0	6.62	49.0	6.75	69.0	6.80	89.0	6.83
9.5	5.98	29.5	6.63	49.5	6.75	69.5	6.80	89.5	6.83
10.0	6.03	30.0	6.63	50.0	6.75	70.0	6.81	90.0	6.83
10.5	6.07	30.5	6.64	50.5	6.76	70.5	6.81	90.5	6.83
11.0	6.11	31.0	6.64	51.0	6.76	71.0	6.81	91.0	6.84
11.5	6.15	31.5	6.65	51.5	6.76	71.5	6.81	91.5	6.84
12.0	6.18	32.0	6.65	52.0	6.76	72.0	6.81	92.0	6.84
12.5	6.21	32.5	6.66	52.5	6.76	72.5	6.81	92.5	6.84
13.0	6.24	33.0	6.66	53.0	6.76	73.0	6.81	93.0	6.84
13.5	6.27	33.5	6.67	53.5	6.77	73.5	6.81	93.5	6.84
14.0	6.29	34.0	6.67	54.0	6.77	74.0	6.81	94.0	6.84
14.5	6.32	34.5	6.67	54.5	6.77	74.5	6.81	94.5	6.84
15.0	6.34	35.0	6.68	55.0	6.77	75.0	6.81	95.0	6.84
15.5	6.36	35.5	6.68	55.5	6.77	75.5	6.82	95.5	6.84
16.0	6.37	36.0	6.68	56.0	6.77	76.0	6.82	96.0	6.84
16.5	6.39	36.5	6.69	56.5	6.78	76.5	6.82	96.5	6.84
17.0	6.41	37.0	6.69	57.0	6.78	77.0	6.82	97.0	6.84
17.5	6.42	37.5	6.69	57.5	6.78	77.5	6.82	97.5	6.84
18.0	6.44	38.0	6.70	58.0	6.78	78.0	6.82	98.0	6.84
18.5	6.45	38.5	6.70	58.5	6.78	78.5	6.82	98.5	6.84
19.0	6.46	39.0	6.70	59.0	6.78	79.0	6.82	99.0	6.84
19.5	6.48	39.5	6.71	59.5	6.78	79.5	6.82	99.5	6.84
20.0	6.49	40.0	6.71	60.0	6.78	80.0	6.82	100.0	6.84

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Employment Tax Adjustments

REG-111583-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to regulations relating to employment tax adjustments and employment tax refund claims. These proposed amendments modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and Federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code). These proposed amendments also modify the process for filing claims for refund of overpayments of employment taxes under sections 6402 and 6414.

These amendments are proposed in connection with the IRS's development of new forms to report adjustments to employment taxes which will replace the existing process of reporting adjustments of employment taxes on regularly filed employment tax returns. These proposed amendments affect taxpayers that file Form 941, "Employer's QUARTERLY Federal Tax Return," Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees," Form 944, "Employer's ANNUAL Federal Tax Return," Form 945, "Annual Return of Withheld Federal Income Tax," and Form CT-1, "Employer's Annual Railroad Retirement Tax Return," and any related Spanish-language returns or returns for U.S. possessions.

This document contains proposed amendments to regulations relating to the return requirements under section 6011 to reflect the changes to the adjustment and refund processes, and to reflect additional statutory and process updates. This document also contains proposed amendments

to the regulations under section 6302 to clarify deposit obligations with respect to interest-free adjustments of underpayments and the effect of adjustments and refunds on the deposit schedule of a Form 943 filer.

This document also provides notice of a public hearing on these proposed amendments to the regulations.

DATES: Written or electronic comments must be received by March 27, 2008. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for April 17, 2008, must be received by March 27, 2008.

Applicability Dates: See the Proposed Dates of Applicability section of the SUPPLEMENTARY INFORMATION.

Effective Date: See the Proposed Effective Date section of the SUPPLEMENTARY INFORMATION.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-111583-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-111583-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-111583-07). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, please contact Ligeia M. Donis of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622-0047; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, please contact Richard Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§31.6011(a)-1, 31.6011(a)-4, 31.6011(a)-5, 31.6205-1, 31.6402(a)-2, 31.6413(a)-1, 31.6413(a)-2, and 31.6414-1. This information is required by the IRS to verify compliance with return requirements under section 6011, employment tax adjustments under sections 6205 and 6413, and claims for refund of overpayments of employment taxes under sections 6402 and 6414. This information will be used to determine whether the amount of tax has been reported and calculated correctly. The likely respondents are employers.

Estimated total annual reporting and/or recordkeeping burden: 15,000,000 hours.

Estimated average annual burden per respondent: 10 hours.

Estimated number of respondents: 1,500,000.

Estimated annual frequency of responses: on occasion.

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

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

Background

These proposed regulations are part of the IRS's effort to reduce taxpayer burden by permitting employers to make employment tax adjustments on a separately filed form as soon as an error is ascertained, rather than as a line adjustment on the employer's regularly filed employment tax return.

These proposed regulations amend the Employment Tax Regulations (26 CFR part 31) under section 6011 relating to the requirement to file a return, under sections 6205(a) and 6413(a) relating to the process for making adjustments of underpayments and overpayments, respectively, of employment taxes, under section 6302 relating to deposit obligations, and under sections 6402 and 6414 relating to the process of filing a claim for refund for an overpayment of employment taxes. For purposes of these proposed amendments to the regulations, the term *employment taxes* means the Federal Insurance Contributions Act (FICA) tax (both the social security and Medicare portions) imposed on both the employer and the employee, the Railroad Retirement Tax Act (RRTA) tax imposed on both the employer and employee, and federal income tax withholding (ITW). To the extent that other types of withholding are treated as ITW under section 3402(a) (that is, gambling withholding, pension withholding, and backup withholding as set forth in sections 3402(q)(7), 3405(f), and 3406(h)(10), respectively), these other types of withholding are included in the term "employment taxes".

Interest-free Adjustments

Generally, the Internal Revenue Code (Code) requires that interest be paid to the IRS on any underpayment of tax and that interest be allowed and paid to the taxpayer on any overpayment of tax. See sections 6601(a) and 6611(a), respectively. An exception to the general rule, however, applies uniquely to employment taxes. Where an amount other than the correct amount of tax imposed by sections 3101 (employee FICA tax), 3111 (employer FICA tax), 3201 (employee RRTA tax), 3221 (employer RRTA tax), or 3402 (ITW) is reported to the IRS with respect to any payment of wages or compensation, sections 6205(a) and 6413(a) permit employers to make interest-free adjustments for underpayments and overpayments, respectively. Where the correct amount of tax has been reported but not paid, no adjustment to the amount is necessary; accordingly, the interest-free adjustment rules do not apply.

The legislative history of the predecessors to sections 6205 and 6413 indicates that the interest-free adjustment process was envisioned as a way to fix errors made in prior return periods as soon as they were discovered, without the need to go through more burdensome procedures. The adjustment process was designed to permit the employer to adjust, without interest, overpayments and underpayments of tax without the necessity in the former case of requiring the filing of a claim for refund and in the latter case of a notice and demand by the IRS for additional tax. Thus, the legislative history shows that Congress envisioned a process whereby the employer would correct prior errors, separate from the refund and notice and demand processes. Moreover, the legislative history indicates that Congress assumed that an overpayment adjustment would be accepted by the IRS only after the employer had returned to the employee any amount of previously overwithheld tax.

The existing regulations under section 6205(a) set forth the procedures for making interest-free adjustments for underpayments of employment taxes. They provide that if a return is filed and less than the correct amount of employee or employer portions of FICA or RRTA tax is reported and paid, the employer shall adjust the un-

derpayment (a) by reporting the additional amount due as an adjustment on a current return, or (b) by reporting such additional amount on a supplemental return. The IRS has not issued guidance or procedures for filing a supplemental return, other than indicating that the forms used to accept an assessment of employment taxes after an examination (that is, Form 2504, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)", and Form 2504-WC, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)") constitute supplemental returns for purposes of permitting the assessment to be made without interest. See Rev. Rul. 75-464, 1975-2 C.B. 474. Accordingly, outside of the examination context, interest-free adjustments of employment tax are made on a current return. (See §601.601(d)(2)(i)(b)).

The reporting of an underpayment of FICA tax or RRTA tax constitutes an interest-free adjustment when the underpayment is reported on a current return only if the current return is filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. If the amount of the underpayment is paid to the IRS by the due date for reporting the adjustment, it is paid without interest. However, if the underpayment is reported but the amount is not paid when due, interest begins to accrue from the due date for reporting the adjustment. The rules are the same for adjusting underpayments of ITW when less than the correct amount has been withheld, except that adjustments on the current return can only be made on a return for a return period in the same calendar year in which the wages or compensation is paid. Although the regulations do not address it, the relevant forms and instructions permit employers to adjust administrative errors involving ITW, that is, errors involving the inaccurate reporting of the amount withheld, and errors discovered as part of an examination for previous calendar years.

The existing regulations provide that an interest-free adjustment for an underpayment may not be made after a taxpayer has

received notice and demand from the IRS for payment of the amount based on an assessment or after a taxpayer has received a Notice of Determination of Worker Classification.

An underpayment adjustment may only be made within the period of limitations for assessment under section 6501(a) (generally 3 years from the date the original return is filed). Section 6501(b)(2) provides that, for purposes of section 6501, employment tax returns reporting FICA tax or ITW for any return period ending with or within a calendar year filed before April 15 of the succeeding calendar year will be deemed filed on April 15 of such succeeding calendar year.

The regulations also provide that where an employer fails to collect the correct amount of employee tax (either the employee share of FICA tax, the employee share of RRTA tax) or ITW with respect to wages or compensation paid during a given return period and discovers that error before it files the return for such return period, the employer is still required to report and pay the correct amount on a timely basis. If the employer fails to report and pay the correct amount, any subsequent correction of that error will not qualify as an interest-free adjustment. However, if the employer files a FICA tax return and should have filed a RRTA tax return, or vice versa, and reports and pays less than the correct amount of tax, an interest-free adjustment may be made by filing the correct type of return for each return period and reporting the additional amount of tax.

The existing regulations under section 6413(a) set forth the procedures for making interest-free adjustments for overpayments of employment taxes. They provide that, if an employer ascertains an overpayment error within the applicable period of limitations on credit or refund, the employer is required to repay or reimburse its employees the amount of overcollected employee FICA tax or employee RRTA tax prior to the due date of the return for the return period after the return period in which the error was ascertained and prior to the expiration of the applicable period of limitations. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. An employer "reimburses" an employee by applying the overwithheld amount against taxes to be withheld on future wages. The employer

must retain appropriate records to reflect that the employee has been repaid or reimbursed and that the employee has not filed a claim for refund of such tax or that any filed claim has been rejected.

The applicable period of limitations is set forth in section 6511 and is generally 3 years from the date the original return was filed or 2 years from the date the tax was paid, whichever is later. Section 6513(c)(1) provides that, for purposes of section 6511, employment tax returns reporting FICA tax or ITW for any return period ending with or within a calendar year filed before April 15 of the succeeding calendar year will be deemed filed on April 15 of such succeeding calendar year. Section 6513(c)(2) provides that if FICA tax or ITW with respect to remuneration or other amount paid during any return period ending with or within a calendar year is paid before April 15 of the succeeding calendar, for purposes of section 6511 such tax will be deemed paid on April 15 of such succeeding calendar year.

Once an employer repays or reimburses an employee, the employer may report both the employee and employer portions of FICA or RRTA tax as an overpayment on a current return. The reporting of the overpayment constitutes an interest-free adjustment if the overpayment is reported on a current return filed on or before the last day on which the return is required to be filed for the return period following the return period in which the error was ascertained. Because of the requirement to repay or reimburse employees, employers are given an extra return period in which to repay or reimburse their employees and make the adjustment. Similar rules apply for making interest-free adjustments for overpayments of ITW, except that an interest-free adjustment may only be made if the employer ascertains the error and repays or reimburses its employees within the same calendar year that the wages were paid and reports the adjustment on a return for such calendar year. For example, if an employer who is a Form 941 filer discovers an overpayment of ITW on December 15, 2009 for wages paid in June 2009, the employer must repay or reimburse its employees by December 31, 2009 and must report the adjustment on the fourth quarter 2009 Form 941.

An overpayment adjustment under section 6413(a) must be made within the pe-

riod of limitations for credit or refund of the overpayment, as set forth in section 6511 and described above. The adjustment may be limited in amount under section 6511(b)(2). An interest-free adjustment for an overpayment may not be made once a claim for refund has been filed.

Currently, an interest-free adjustment, whether for an underpayment or an overpayment, is made by entering the amount as a line adjustment on a current return and including the amount in calculating the current return period's liability on the return. The current return period adjustment can be made on Form 941, "Employer's QUARTERLY Federal Tax Return," Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees," Form 944, "Employer's ANNUAL Federal Tax Return," Form 945, "Annual Return of Withheld Federal Income Tax," or Form CT-1, "Employer's Annual Railroad Retirement Tax Return," and on any related Spanish-language returns or returns for U.S. possessions. The return on which the underpayment or overpayment adjustment is entered must include an attached statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations and by the instructions relating to the return. Form 941c, "Supporting Statement to Correct Information," qualifies as such attached statement and includes the necessary certifications to establish that the employer has satisfied the requirements to repay or reimburse its employee for overpayment adjustments and to obtain statements that the employee has not filed a claim for refund or that the claim has been rejected.

Claims for Refund

For overpayments of employment taxes, section 6413(b) permits the filing of a claim for refund when an interest-free adjustment cannot be made. The existing regulations under section 6413(a) provide that an adjustment cannot be made after a claim for refund is filed. Under the regulatory authority in section 6413(b), the IRS has permitted taxpayers to choose between filing a claim for refund pursuant to section 6402(a) and making an interest-free adjustment pursuant to section 6413(a) to correct an overpayment of employment

taxes. The preamble to T.D. 6472, 1960–2 C.B. 351, which promulgated the existing regulations, indicated an intent to make the overpayment adjustment process permissive. An extensive evaluation of these regulations in the late 1970’s confirmed the optional nature of the overpayment adjustment process, and is reflected in Rev. Rul. 81–310, 1981–2 C.B. 241. (See §601.601(d)(2)(ii)(b)).

Under section 6402(a), the IRS, within the applicable period of limitations on credit or refund, may credit the amount of an overpayment, including any interest, against any tax liability of the person who made the overpayment and shall, subject to certain offsets, refund any balance to such person. A claim for refund under section 6402(a) must be filed within the period of limitations on credit or refund as set forth in section 6511. Such refund may be limited in amount pursuant to section 6511(b)(2). Claims for refund are not granted automatically and the IRS is not required to act on the refund claim. Section 6532(a) provides that a taxpayer cannot file a suit for refund before the expiration of 6 months from the date of filing a claim for refund unless the IRS renders a decision on the claim within that time. The taxpayer must file suit within 2 years of the date the claim was disallowed.

The existing regulations under section 6402(a) set out the procedures for filing a claim for refund of overpaid FICA and RRTA taxes. The regulations permit an employer to file a claim for refund for an overpayment of FICA or RRTA tax, but require the employer to include a statement that the employer has repaid the employee’s share of FICA or RRTA tax to the employee or has secured the written consent of the employee to allowance of the refund or credit. The employer must retain appropriate records reflecting that it has repaid its employee or obtained the employee’s consent and that the employee has not filed a claim for refund of such tax or that any filed claim has been rejected.

Section 6414 permits refunds of ITW only to the extent the amount of the ITW overpayment was not actually deducted and withheld from an employee. The existing regulations under section 6414 set out the procedures for filing a claim for refund of overpaid ITW and are similar to the procedures for filing a claim for refund of overpaid FICA or RRTA tax, except

that an employer may not file a claim for an overpayment of ITW for an amount the employer deducted or withheld from an employee.

An employer makes a claim for refund by filing Form 843, “*Claim for Refund and Request for Abatement*”, with a Form 941c attached (or an equivalent statement). Form 941c includes the amounts to be refunded and the necessary certifications to establish that the employer has repaid the employee or obtained the employee’s consent to filing the claim for refund, and has obtained a statement that the employee has not filed a claim for refund or that the claim has been rejected.

Reason for Amendments

The current process for adjusting underpayments or overpayments of employment taxes raises a number of issues both for employers and the IRS, primarily because the current process requires employers to make adjustments to past return periods in connection with the filing of their current returns. The IRS believes it will reduce the burden for taxpayers, as well as improve tax administration, if the adjustment process for employment tax returns is revised by creating a separate “adjusted return” to make adjustments to past return periods that can be filed independently of a return for any other return period.

Explanation of Provisions

Adjusted Return Replaces Current Return Process

The proposed amendments change the process by which employers can make interest-free adjustments to correct underpayments or overpayments of employment tax. The proposed amendments to the regulations eliminate the existing process that uses the current return to make adjustments and replace it with a new process which will use a separately filed adjusted return to make adjustments. Unlike Form 941c, the new adjusted return will not be filed as an attachment to a current return and will not affect the liability reported on the current return.

The proposed amendments to the regulations also eliminate any reference to the use of supplemental returns to make adjustments. The proposed amendments provide that Forms 2504 and 2504–WC will

be treated as adjusted returns under the same rationale and criteria that they have been treated as supplemental returns under Rev. Rul. 75–464. Thus, corrections reported on these forms following an examination will continue to be eligible for interest-free adjustment treatment. See §601.601(d)(2)(ii)(b).

The proposed amendments to the regulations do not affect the existing rules on correcting undercollections of employee tax (either the employee share of FICA or RRTA tax), or ITW when an employer discovers the error during the return period in which the undercollection occurred. In such case, the employer must report and pay the correct amount on a timely basis as if the correct amount of tax had been collected. If the employer fails to report and pay the correct amount, any subsequent correction of that error will not be an interest-free adjustment.

Time for Filing Adjusted Return

An employer may file an adjusted return correcting an underpayment or an overpayment as soon as the employer ascertains the underpayment or overpayment error, rather than waiting to report the adjustment with the regularly filed employment tax return. The adjusted return for an underpayment may only be filed within the applicable period of limitations for assessing the underpayment, and the adjusted return for an overpayment may only be filed before the 90th day prior to the expiration of the applicable period of limitations on credit or refund. If the original return reporting FICA tax or ITW for the return period in which the wages were paid was timely filed and the taxes were timely paid, the limitations period for both assessment and credit or refund begins to run on April 15 of the year following the year in which the wages were paid and ends three years after that. Thus, for example, if wages are paid on June 6, 2009, and an original employment tax return reporting those wages is filed July 31, 2009 and the reported taxes are timely paid, the period of limitations for assessment or for credit or refund would expire April 15, 2013. An adjusted return reporting an underpayment must be filed by April 15, 2013. An adjusted return reporting an overpayment must be filed by January 15, 2013, the date which is 90 days before the

expiration of the period of limitations on credit or refund. A claim for refund for the same overpayment will be timely if filed by April 15, 2013.

The proposed amendments to the regulations provide that an adjustment will be interest-free only if it is reported on an adjusted return within a certain amount of time after it is discovered. Specifically, the adjusted return reporting an underpayment must be filed by the due date of the return for the return period in which the error is ascertained; the amount of the underpayment must be paid by the time the adjusted return is filed, or interest will begin to accrue from the date the adjusted return is filed. In addition, subject to limited exceptions, for underpayments of ITW where the incorrect amount was withheld, an adjusted return may be filed only for errors ascertained during the calendar year in which the wages were paid and must be filed by the due date of the return for the return period in which the error is ascertained. In addition, for overpayments of ITW where the incorrect amount was withheld, the adjusted return may be filed only for errors ascertained during the calendar year in which the wages were paid, the employer must repay or reimburse the employees within the same calendar year that the wages were paid, and the adjusted return must be filed by the due date of the return for the return period following the return period in which the error is ascertained.

Treatment as Interest-Free Adjustment Where Original Return Never Filed

The proposed amendments to the regulations also provide that interest-free adjustments for underpayments of FICA tax, RRTA tax, and ITW are available under certain circumstances where the underpayment arises because the employer failed to file an original return. As in the existing regulations, an interest-free adjustment is available if an employer filed a FICA tax return when a RRTA tax return should have been filed, or vice versa. In addition, interest-free adjustment treatment is generally available if an employer failed to file a return for a return period solely because the employer failed to treat any individuals as employees. The latter interest-free adjustment provision was originally proposed in 1992 (EE-12-92, 57

FR 58423) and is being re-proposed as part of these proposed amendments to the regulations. The proposed regulations in EE-12-92 will be withdrawn once these proposed amendments to the regulations are finalized.

To constitute an interest-free adjustment in these circumstances, the employer must file an original return of the correct type for each return period for which the employer failed to file the correct return and report on the return the additional amount of tax. Generally, such reporting will constitute an interest-free adjustment if the return is filed by the due date of the return for the return period in which the error is ascertained. The amount reported must be paid by the time the original return is filed or interest will accrue from that date.

Repayment or Reimbursement of Employees Required for Interest-free Adjustments of Overpayments

When an overpayment error is ascertained, the proposed amendments to the regulations retain the rule that the employer must repay or reimburse the employee's share of FICA or RRTA tax before making the overpayment adjustment of both the employees' and employer's taxes. Such repayment or reimbursement must occur by the due date of the return for the return period following the return period in which the error is ascertained and within the applicable period of limitations on credit or refund. However, the requirement to repay or reimburse does not apply to the extent that taxes were not withheld from the employee or if, after reasonable efforts, the employer cannot locate the employee; in such case, the employer may make an adjustment for only the employer share of FICA or RRTA tax. The adjusted return reporting the overpayment may only be filed once the employer has repaid or reimbursed its employees to the extent required. The employer must certify on the adjusted return that it has repaid or reimbursed its employees to the extent required. Because repayment or reimbursement of overwithheld ITW must be made within the same calendar year, and annual Forms 943, 944, and 945 are normally filed after the close of the calendar year, there can be no repayment or reimbursement of ITW after filing such

annual returns. Thus, no overpayment adjustments of ITW can generally be made for such returns, except for administrative errors, that is, errors involving the inaccurate reporting of the amount actually withheld. Note that in the case of backup withholding reported on Form 945, repayment of erroneous withholding is not required and is permitted only in certain circumstances. See §31.6413(a)-3.

Deposits, Payments, and Credits

The proposed amendments to the regulations under section 6302 provide that an employer making an interest-free adjustment must pay the amount of the adjustment by the time it files an adjusted return; such timely payment will satisfy the employer's deposit obligations with respect to the adjustment. In addition, the proposed amendments to the regulations governing agricultural employers (Form 943 filers) provide that for purposes of determining the amount of accumulated taxes in the employer's lookback period (which determines the employer's deposit schedule), adjustments to tax liability made pursuant to the filing of adjusted returns or claims for refund will not be taken into account. This rule is consistent with the rule already in effect with respect to Form 941 and Form 944 filers that adjustments to prior return periods are not taken into account in determining the employment tax liability for such prior return period. See §31.6302-1T(b)(4).

For interest-free adjustments of underpayments, the amount must be paid when the adjusted return is filed. If the amount is not paid when the adjusted return is filed, interest will begin to accrue as of the date the adjusted return is filed.

Consistent with the legislative history of section 6413, the adjusted overpayment amount will be applied as a credit toward payment of the employer's liability for the calendar quarter (or calendar year for annual returns being adjusted) in which the adjusted return is filed, unless the IRS notifies the employer that the credit will be applied to a different return period or that the employer is not entitled to the adjustment under applicable laws or procedures.

Refunds for Overpayments

As in the existing regulations, in lieu of making an interest-free adjustment for an

overpayment, employers may file a claim for refund pursuant to section 6402 or 6414 for the amount of the overpayment. Furthermore, if an employer cannot make an interest-free adjustment with respect to an overpayment because the period of limitations for claiming a credit or refund for such overpayment will expire within 90 days or because the IRS has otherwise notified the employer that it is not entitled to the adjustment, the employer may recover the overpayment only by filing a claim for refund. The proposed amendments to the regulations under section 6414 continue to provide that an employer can only file a claim for refund for ITW that was not withheld from the employee. Prior to filing a claim for refund under section 6402 for FICA or RRTA tax, employers must either repay or reimburse the employees or obtain the employees' consents to the allowance of the refund, except to the extent that the overpayment does not include taxes withheld from the employee or, after reasonable efforts, the employer cannot locate the employee or the employee will not provide the requested consent. The employer must certify that it has either repaid or reimbursed the employee or obtained the employee's consent to the extent required.

Under the proposed amendments to the regulations, employers will file the prescribed form to claim a refund. However, Form 941c will no longer be used as an attachment to a claim for refund.

Tax Returns or Statements

This notice of proposed rulemaking also proposes amendments to the regulations for reporting employment taxes under section 6011 to reflect the changes to the adjustment and refund processes. In particular, the proposed amendments remove references to Form 941c from the regulations under section 6011 because Form 941c will no longer be used. The proposed amendments also remove references to other obsolete tax returns, add references to current tax returns in use, and make minor stylistic changes to the text of the regulations.

The proposed amendments also update the section 6011 regulations to conform to current law due to the enactment of section 3510, added to the Code by section 2(b)(1)

of the Social Security Domestic Employment Reform Act of 1994 (Public Law 103-387), which mandates annual returns for domestic service employment taxes, and to reflect current procedures. Schedule H (Form 1040), rather than Form 942, is the prescribed form for reporting wages for domestic service in a private home paid in calendar years beginning after December 31, 1994. If an employer is required to file Form 941, Form 943, or Form 944, the employer may choose to report wages with respect to domestic workers on Form 941, Form 943, or Form 944, instead of reporting such wages on Schedule H (Form 1040).

Proposed Effective Date

The amendments to the regulations as proposed will be effective on the date they are published as final regulations in the **Federal Register**.

Proposed Dates of Applicability

With respect to the regulations under Code sections 6205, 6302, 6402, 6413, and 6414, the regulations, as proposed, apply to any error ascertained on or after January 1, 2009.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

Because the regulations under section 6302 do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

The proposed amendments to the regulations under section 6011, 6205, 6402, 6413, and 6414 affect all taxpayers that file employment tax returns. Therefore, the IRS has determined that these proposed amendments will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the proposed amendments to the regulations will

not be significant. The proposed amendments to the regulations require taxpayers who file employment tax returns and who make interest-free adjustments to their employment taxes for either underpayments or overpayments or who file claims for refund for an overpayment of employment tax to provide an explanation setting forth the basis for the correction or the claim in detail, designating the return period in which the error was ascertained and the return period being corrected, and setting forth such other information as may be required by the instructions to the form. In addition, for adjustments of overpayments and for claims for refund, taxpayers must also obtain and retain the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee. For purposes of overpayment adjustments and claims for refund of employee FICA and RRTA tax overcollected in an earlier year, the employer must also obtain and retain the written statement from the employee providing that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

This collection of information is not new to the proposed regulations and has been in existence since the 1960's when the existing regulations were promulgated. In addition, the proposed amendments to the regulations are being made in conjunction with a project of the Office of Taxpayer Burden Reduction which seeks to revise the process for making corrections to employment tax returns to make it less burdensome to taxpayers. The filing of a claim for refund and the making of an interest-free adjustment pursuant to both the existing and proposed regulations are voluntary on the part of taxpayers.

Based on these facts, the IRS hereby certifies that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration

for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for April 17, 2008, at 10:00 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 27, 2008.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.6011(a)-1 is amended by revising paragraphs (a)(2), (a)(3), (a)(4) and (c) to read as follows:

§31.6011(a)-1 Returns under Federal Insurance Contributions Act.

(a) * * *

(2) *Employers of agricultural workers.* Every employer who pays wages for agricultural labor with respect to taxes imposed by the Federal Insurance Contributions Act must make a return for the first calendar year in which the employer pays such wages and for each subsequent calendar year (whether or not wages are paid) until the employer has filed a final return in accordance with §31.6011(a)-6. Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees," is the form prescribed for making the annual return required by this section, except that, if the employer's principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico, the return must be made on Form 943-PR, "Planilla para la Declaración ANUAL de la Contribución Federal del Patrono de Empleados Agrícolas."

(3) *Employers of domestic workers.* Schedule H (Form 1040), "Household Employment Taxes," is the form prescribed for use by every employer in making a return as required under paragraph (a)(1) of this section in respect of wages, as defined in the Federal Insurance Contributions Act, paid by the employer in any calendar year for domestic service as defined in section 3510. Schedule H (Form 1040) is generally filed as an attachment to an income tax return, however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H

(Form 1040) may be filed as a separate return. If, however, the employer is required under paragraph (a)(1) of this section to make a return on Form 941, "Employer's QUARTERLY Federal Tax Return," or under paragraph (a)(2) of this section to make a return on Form 943, "Employer's Annual Federal Tax Return For Agricultural Employees," or under paragraph (a)(5) of this section to make a return on Form 944, "Employer's ANNUAL Federal Tax Return," the employer may choose instead to report wages with respect to domestic workers on such Form 941, Form 943 or Form 944. If such wages are included on Form 941, Form 943 or Form 944, the employer must also include Federal unemployment tax for the employee(s) on Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," under the provisions of §31.6011(a)-3.

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* Form 941-PR, "Planilla para la Declaración Federal TRIMESTRAL del Patrono," (or Form 944-PR, "Planilla para la Declaración Federal ANUAL del Patrono," if the IRS notified the employer that the Form 944-PR must be filed in lieu of Form 941-PR) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Form 941-SS, "Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)," (or Form 944-SS, "Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)," if the IRS notified the employer that Form 944-SS must be filed in lieu of Form 941-SS) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. However,

Form 941 (or Form 944 if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making such return in the case of every such employer who is required pursuant to §31.6011(a)-4 to make a return of income tax withheld from wages.

* * * * *

(c) *Adjustments and refunds.* For rules applicable to adjustments and refunds of employment taxes, see sections 6205, 6402, 6413, and 6414, and the applicable regulations.

* * * * *

Par. 3. Section 31.6011(a)-4 is amended by revising paragraph (a)(2) to read as follows:

§31.6011(a)-4 Returns of income tax withheld.

(a) * * *

(2) *Wages paid for domestic service.* Schedule H (Form 1040), “*Household Employment Taxes*,” is the form prescribed for making the return required under paragraph (a)(1) of this section with respect to income tax withheld, pursuant to an agreement under section 3402(p), from wages paid for domestic service in a private home of the employer. Schedule H (Form 1040) is generally filed as an attachment to an income tax return; however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H (Form 1040) may be filed as a separate return. The preceding sentence shall not apply in the case of an employer who has chosen under §31.6011(a)-1(a)(3) to use Form 941, “*Employer’s QUARTERLY Federal Tax Return*,” Form 943, “*Employer’s Annual Federal Tax Return for Agricultural Employees*,” or Form 944, “*Employer’s ANNUAL Federal Tax Return*,” as the return with respect to such payments for purposes of the Federal Insurance Contributions Act. For the requirements relating for Schedule H (Form 1040) with respect to qualified State individual income taxes, see §301.6361-1(d)(3)(iv) of this chapter.

* * * * *

Par. 4. Section 31.6011(a)-5 is amended by revising paragraph (a) to read as follows:

§31.6011(a)-5 Monthly returns.

(a) *In general—(1) Requirement.* The provisions of this section are applicable in respect of the taxes reportable on returns required pursuant to §31.6011(a)-1 or §31.6011(a)-4. An employer (or other person) who is required by §31.6011(a)-1 or §31.6011(a)-4 to make quarterly or annual returns on any such form shall, in lieu of making such quarterly or annual returns, make returns of such taxes in accordance with the provisions of this section if the employer is so notified in writing by the IRS. Every employer (or other person) notified by the IRS shall make a return for the calendar month in which the notice is received, for each of the prior calendar months in the return period, and for each calendar month afterwards (whether or not wages are paid in any such month) until the employer has filed a final return or is required to make quarterly or annual returns pursuant to notification as provided in paragraph (a)(2) of this section. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer (or other person) under the provisions of §31.6011(a)-1 or §31.6011(a)-4, except that, if some other form is furnished by the IRS for use in lieu of such prescribed form, the return shall be made on such other prescribed form. The IRS may notify any employer (or other person)—

(i) Who by reason of notification as provided in §301.7512-1 of this chapter (Regulations on Procedure and Administration), is required to comply with the provisions of such §301.7512-1; or

(ii) Who failed to—

(A) Make any return required pursuant to §31.6011(a)-1 or §31.6011(a)-4;

(B) Pay tax reportable on any such form; or

(C) Deposit any such tax as required under the provisions of §31.6302(c)-1.

(2) *Termination of requirement.* The IRS, in its discretion, may notify the employer in writing that the employer shall discontinue the filing of monthly returns under this section. If the employer is so notified, the IRS will provide the employer with instructions for filing the final monthly return. Afterwards, the employer shall make quarterly or annual

returns in accordance with the provisions of §31.6011(a)-1 or §31.6011(a)-4.

* * * * *

Par. 5. Section 31.6205-1 is amended to read as follows:

§31.6205-1 Adjustments of underpayments.

(a) *In general.* (1) An employer who has undercollected or underpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) No correction will be eligible for interest-free adjustment treatment if the failure to report relates to an issue that was raised in an examination of a prior return period or if the employer knowingly underreported its employment tax liability.

(3) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the prescribed form that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(4) Every adjusted return on which an underpayment is corrected pursuant to this section shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the form.

(5) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(6) No correction will be eligible for interest-free adjustment treatment pursuant to this section after the earlier of the following:

(i) Receipt from the IRS of notice and demand for payment thereof based upon an assessment.

(ii) Receipt from the IRS of a Notice of Determination of Worker Classification (Notice of Determination) in connection with such underpayment. Prior to receipt of a Notice of Determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit that would have the effect of stopping the accrual of any interest, but would not deprive the taxpayer of its right to receive a Notice of Determination and to petition the Tax Court under section 7436.

(7) Subject to the exceptions specified in paragraphs (a)(2) and (a)(6) of this section, Form 2504, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)," and Form 2504-WC, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)," constitute adjusted returns for purposes of this section.

(8) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-1 of this chapter. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-2 of this chapter.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of employee tax. If the employer does not report and pay the correct amount of tax on a timely basis in these circumstances, the employer may not later correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* (i) If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of employee or employer FICA or RRTA tax with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(ii) If an employer files a return reporting FICA tax for a return period although the employer was required to file a return reporting RRTA tax, or vice versa, and reports on the return less than the correct amount that should have been reported on the return required to be filed, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an original return for the correct tax for the return period for which the incorrect return was filed, accompanied by a detailed explanation of the amount being reported on the original return and any other information as may be required by the regu-

lations in this section and by the instructions relating to the form. The reporting of the additional amount for the period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting the correct tax for the return period in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any employer or employee FICA or RRTA tax with respect to wages or compensation paid to the employees), and if the employer ascertains the error after the due date of the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the amount due on an original return for the return period for which the employer failed to file a return, accompanied by a detailed explanation of the amount being reported on the original return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(c) *Income tax required to be withheld from wages*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of income tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which the withheld tax

is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of tax required to be withheld. If the employer does not report and pay the correct amount of tax on a timely basis in these circumstances, the employer may not correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* If an employer files a return on which income tax required to be withheld from wages is required to be reported and reports on the return less than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the form. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid, unless the underpayment is attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount actually withheld, or the adjustment is reported on a Form 2504 or Form 2504-WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employ-

ees for the return period (and, therefore, failed to withhold and pay any income tax required to be withheld from wages), the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the correct amount on an original return for the return period for which the employer failed to file a return and pay the tax to the IRS. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the return is filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid or section 3509 applies to determine the amount of the underpayment. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(d) *Deductions from employee—(1) Federal Insurance Contributions Tax Act and Railroad Retirement Tax Act.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, the employer must collect the amount of the undercollection by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The correct amount of an undercollection of employee tax from an employee must be reported and paid, as provided in paragraph (b) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(1), and even if the deduction is made after the return on which the employee tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If an employer makes an erro-

neous collection of employee tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §31.3102-1(d). This paragraph (d)(1) does not apply if section 3509 applies to determine the employer's liability.

(2) *Income tax required to be withheld from wages.* If an employer collects less than the correct amount of income tax required to be withheld from wages during a calendar year, the employer must collect the amount of the undercollection on or before the last day of the year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. The correct amount of an undercollection of income tax from an employee must be reported and paid, as provided in paragraph (c) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(2), and even if the deduction is made after the return on which the tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer within the calendar year. If an employer makes an erroneous collection of income tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of income tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §31.3403-1. For provisions relating to the employer's liability for an underpayment of tax unless the employer can show that the income tax against which the tax under section 3402 may be credited has been paid, see §31.3402(d)-1. This paragraph (d)(2) does not apply if section 3509 applies to determine the employer's liability.

Par. 6. Section 31.6302-0 is amended by adding a new entry for §31.6302-1 paragraph (c)(7) to read as follows:

§31.6302-0 Table of contents.

* * * * *

§31.6302-1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(c) * * *

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.*

* * * * *

Par. 7. Section 31.6302-1 is amended by adding paragraph (c)(7) and revising paragraph (g)(4) to read as follows:

§31.6302-1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(c) * * *

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.* An employer filing an adjusted return under §31.6205-1 to report taxes that were accumulated in a prior return period shall pay the amount of the adjustment by the time it files the adjusted return, and the amount timely paid will be deemed to have been timely deposited by the employer. The payment may accompany the adjusted return, be made by electronic funds transfer, or be made by other methods of payment as provided by the instructions relating to the adjusted return.

* * * * *

(g) * * *

(4) *Lookback period.* The tax liability shown on the original return for the return period is the amount taken into account in determining whether the accumulated taxes for the lookback period exceed \$50,000. The employer does not take into account any adjustments to tax liability made pursuant to the filing of adjusted returns or claims for refund pursuant to sec-

tions 6205, 6402, 6413 and 6414 filed after the due date of the original return when determining accumulated taxes for the lookback period.

* * * * *

Par. 8. Section 31.6402(a)-1 is amended by revising paragraph (a) to read as follows:

§31.6402(a)-1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§31.6402(a)-2, 31.6402(a)-3, and 31.6414-1. For regulations under section 6402 of general application to credits or refunds, see §§301.6402-1 and 301.6402-2 of this chapter (Regulations on Procedure and Administration). For provisions relating to adjustments without interest of overpayments of taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act or income tax withholding, see §§31.6413(a)-1 and 31.6413(a)-2.

* * * * *

Par. 9. Section 31.6402(a)-2 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

§31.6402(a)-2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act

(a) *Claim by person who paid tax to IRS—(1) In general.* (i) Any person may file a claim for credit or refund for an overpayment (except to the extent that the overpayment must be credited pursuant to §31.3503-1) if the person paid to the IRS more than the correct amount of employee tax under section 3101 or employer tax under section 3111 of the Federal Insurance Contributions Act (FICA), employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221 of the Railroad Retirement Tax Act (RRTA), or interest, addition to the tax, additional amount, or penalty with respect to any such tax.

(ii) The claim for credit or refund must be made in the manner and subject to the conditions stated in this section. The claim for credit or refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set

forth such other information as may be required by this section and by the instructions relating to the form used to make such claim. No refund or credit pursuant to this section for employer tax will be allowed unless the employer has first repaid or reimbursed its employee or has secured the employee's consent to the allowance of the claim for refund and includes a claim for the refund of such employee tax. However, this requirement does not apply to the extent that the taxes were not withheld from the employee or, after the employer makes reasonable efforts to repay or reimburse the employee or secure the employee's consent, the employer cannot locate the employee or the employee will not provide consent. No refund or credit of employee FICA or RRTA tax overcollected in an earlier year will be allowed if the employee has claimed a refund or credit of the amount of the overcollection which has not been rejected or if the employee has taken the amount of such tax into account in claiming a credit against or refund of the employee's income tax, including instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see §31.6413(c)-1).

(iii) For adjustments without interest of overpayments of taxes under the FICA or the RRTA, see §31.6413(a)-2.

(iv) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-1 of this chapter. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-2 of this chapter.

(v) For the period of limitations on credit or refund of taxes, see §301.6511(a)-1 of this chapter (Regulations on Procedure and Administration).

(2) *Statements supporting employer's claims for employee tax.* (i) Every claim, filed by an employer, for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee must include a certification that the employer has repaid or reimbursed the tax to its employee or has secured the employee's written consent to allowance of the filing of the

claim for refund except to the extent that the taxes were not withheld from the employee. The employer must retain as part of its records the written receipt of the employee showing the date and amount of the repayment, evidence of reimbursement, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim, filed by an employer, for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also must include a certification that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount. The employer must retain the employee's written statement as part of the employer's records.

* * * * *

Par. 10. Section 31.6413(a)-1 is revised to read as follows:

§31.6413(a)-1 Repayment or reimbursement by employer of tax erroneously collected from employee.

(a) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—(1) Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employee Railroad Retirement Tax Act (RRTA) tax under section 3201, and if the employer ascertains the error before filing the return on which the employee tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the IRS on the return

for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (a)(2) of this section.

(iii) For purposes of this paragraph (a)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of such limitations period. However, this paragraph (d)(2) does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee. This paragraph (d)(2) has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit, and the employer chooses to secure the written consent of the employee to the allowance of the refund or credit under the procedure provided in §31.6402(a)-2.

(ii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iii) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. The employer shall reimburse the employee by applying the amount of the overcollection against the employee FICA or RRTA tax which attaches to wages or compensation paid by the employer to the employee prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of the applicable period of limitations on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee

tax, the excess amount shall be repaid to the employee as required by this section.

(iv) If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee FICA or RRTA tax that was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of its records a written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of such amount. For this purpose, a claim for refund or credit by the employee includes instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see §31.6413(c)-1).

(v) For purposes of this paragraph (a)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(vi) For the period of limitations on credit or refund of taxes, see §301.6511(a)-1 of this chapter (Regulations on Procedure and Administration).

(b) *Income tax withheld from wages—(1) Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which such tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period and before the end of the calendar year in which the overcollection was made, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (b)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(iii) For purposes of this paragraph (b)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which tax required to be withheld from wages is reported, collects from an employee and pays to the IRS more than the correct amount of the tax required to be withheld from wages, and if the employer ascertains the error after filing the return but before the end of the calendar year in which the wages were paid, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the end of the calendar year and by the expiration of the return period following the return period in which the error is ascertained. However, this paragraph does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee.

(ii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iii) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. The employer shall reimburse the employee by applying the amount of the overcollection against the tax under section 3402, which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made and prior to the expiration of the return period following the return period in which the error is ascertained. If the amount of the overcollection exceeds the amount so applied against such tax, the excess amount shall be repaid to the employee as required by this section.

(iv) For purposes of this paragraph (b)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

Par. 11. Section 31.6413(a)-2 is revised to read as follows:

§31.6413(a)-2 Adjustments of overpayments.

(a) *In general.* (1) An employer who has overcollected or overpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, and has repaid the amount of the overcollection of such tax to the employee, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an overpayment of tax shall be made on the prescribed form that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(3) Every adjusted return on which an overpayment is corrected pursuant to this section shall include a certification that the employer has repaid or reimbursed its employee, except where taxes were not withheld from the employee or where, after reasonable efforts, the employer cannot locate the employee. Every adjusted return shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by this section and §31.6413(a)-1 and by the instructions relating to the form. Every adjusted return, filed by an employer, for overpayment of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the adjusted return is filed, must also include a certification that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-1 of this chapter. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-2 of this chapter.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—(1) Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of employee FICA or RRTA tax from an employee, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, and repays or reimburses the employee under §31.6413(a)-1(a)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under §31.6413(a)-1(a)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(2) *Error ascertained after return is filed—(i) Employee tax.* If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employee FICA or RRTA tax, and if the employer ascertains the error after filing the return, and repays or reimburses the employee the amount of the overcollection of employee tax, as provided in §31.6413(a)-1(a)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjust-

ment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained and before the expiration of the period of limitations on credit or refund. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(ii) *Employer tax.* If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employer FICA or RRTA tax, and if the employer ascertains the error after filing the return, the employer may correct the error through an interest-free adjustment as provided in this section. The employer must first repay or reimburse the employee the amount of any overcollection of employee tax, if any, pursuant to §31.6413(a)-1(a)(2), before making the adjustment for the employer share, unless the employer could not locate the employee after reasonable efforts. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained and before the expiration of the period of limitations on credit or refund. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not

permitted under paragraph (d) of this section.

(c) *Income tax withheld from wages—(1) Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of income tax required to be withheld from wages, and if the employer ascertains the error before filing the return on which the tax is required to be reported, and repays or reimburses the employee under §31.6413(a)-1(b)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under §31.6413(a)-1(b)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the reporting and payment of the overcollection may be treated as an error ascertained after the return is filed for purposes of paragraph (c)(2) of this section.

(2) *Error ascertained after return is filed.* If an employer files a return for a return period on which income tax required to be withheld from wages is required to be reported and reports on the return more than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, and repays or reimburses the employee in the amount of the overcollection as provided in §31.6413(a)-1(b)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required in paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date of the return for the return period following the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected. If the amount of the overcollection is not repaid or reimbursed to the employee under §31.6413(a)-1(b)(2), there is no overpayment to be adjusted

under this section. However, the employer may adjust an overpayment of tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(d) *Adjustments not permitted—(1) In general.* If an adjustment cannot be made, a claim for refund or credit may be filed in accordance with §31.6402(a)-2 or §31.6414-1.

(2) *90-day exception.* No adjustment in respect of an overpayment may be made if the overpayment relates to a return period for which the period of limitations on credit or refund of such overpayment will expire within 90 days of filing the adjusted return.

(3) *No adjustment after claim for refund filed.* No adjustment in respect of an overpayment may be made after the filing of a claim for credit or refund of such overpayment under §31.6402(a)-2.

(4) *No adjustment after IRS notification.* No adjustment may be made upon notification by the IRS that the adjustment is not permitted.

Par. 12. Section 31.6414-1 is amended by revising paragraph (a) to read as follows:

§31.6414-1 Credit or refund of income tax withheld from wages.

(a) *In general.* (1) Any employer who pays to the IRS more than the correct amount of income tax required to be withheld from wages under section 3402 or interest, addition to the tax, additional amount, or penalty with respect to such tax, may file a claim for refund of the overpayment in the manner and subject to the conditions stated in this section. The claim for refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the form. No refund to the employer will be allowed under this section for the amount of any

overpayment of tax which the employer deducted or withheld from an employee.

(2) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-1. For provisions relating to filing information

returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-2.

(3) For interest-free adjustments of overpayments of income tax withheld from wages, see §31.6413(a)-2.

* * * * *

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on December 28, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2007, 72 F.R. 74233)

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

Announcement 2008-5

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.

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attor-

ney, certified public accountant, enrolled agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Cohen, Peter	Edison, NJ	CPA	June 01, 2004
Brunelle, Roswell J.	Queensbury, NY	CPA	June 10, 2004
Cohick, Jeffrey S.	Newville, PA	Enrolled Agent	October 30, 2004
Cotroneo, Nicholas	McLean, VA	CPA	February 28, 2007
Layson, David A.	Corydon, IN	Attorney	October 06, 2007
Tomasulo, Maria V.	Wantagh, NY	CPA	October 16, 2007
Emeziem, Kelechi C.	Antioch, CA	Attorney	October 17, 2007
Johnston, Gregory A.	Muscatine, IA	Attorney	October 17, 2007
Shapiro, Sidney C.	West Palm Beach, FL	CPA	October 29, 2007
Hubbard, Cynthia A.	Geneva, IL	Attorney	October 31, 2007

Name	Address	Designation	Date of Reinstatement
Moss, Steve E.	Henderson, NC	CPA	November 29, 2007
Schaffer, Robert J.	Baiting Hollow, NY	CPA	December 04, 2007
Woods, Dalton C.	Carrollton, TX	Enrolled Agent	December 04, 2007
Brown, Arthur I.	Miami, FL	CPA	December 14, 2007

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
Bauman, John J.	Battle Creek, MI	CPA	Indefinite from October 1, 2007
Montgomery, Dwight M.	Redlands, CA	Attorney	Indefinite from October 1, 2007
Deku, John V.	Toledo, OH	Attorney	Indefinite from October 8, 2007
Ying, William F.	Beverly Hills, CA	CPA	Indefinite from October 9, 2007
Brill, Ann M.	Sheboygan, WI	CPA	Indefinite from October 10, 2007
Benvin, Anne C.	Phoenix, AZ	Enrolled Agent	Indefinite from October 22, 2007
Kingman, William B.	San Antonio, TX	Attorney	Indefinite from October 22, 2007
Nurney, J. Christopher	Hatboro, PA	CPA	Indefinite from October 22, 2007
Wren, Gary M.	Redding, CA	Enrolled Agent	Indefinite from October 29, 2007

Name	Address	Designation	Date of Suspension
Beck, Brian S.	Boston, MA	CPA	Indefinite from November 1, 2007
Draper, Jeffrey L.	Olathe, KS	CPA	Indefinite from November 1, 2007
Ehrlich, Gary P.	Chevy Chase, MD	CPA	Indefinite from November 1, 2007
Garrison, John C.	Prairie Village, KS	CPA	Indefinite from November 1, 2007
Greenslit, Wayne	Keene, NH	CPA	Indefinite from November 1, 2007
Moran, Philip D.	Salem, MA	Attorney	Indefinite from November 1, 2007
Wright, Cory	Reno, NV	CPA	Indefinite from November 1, 2007
Turbeville, Mary A.	Geyserville, CA	Enrolled Agent	Indefinite from November 16, 2007
Saffold, Rodger P.	Cleveland, OH	CPA	Indefinite from December 1, 2007
Voss, Patrick W.	Metairie, LA	CPA	Indefinite from December 1, 2007
Rosner, Ronald I.	Manahawkin, NJ	CPA	Indefinite from December 13, 2007
Johnson, Jr., Stanley	Miami, FL	Attorney	Indefinite from December 14, 2007

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
Crotts, William P.	Phoenix, AZ	Attorney	Indefinite from October 16, 2007
Daugherty, Troy L.	Olathe, KS	Attorney	Indefinite from October 16, 2007
Driscoll, Jr., Wilfred C.	Somerset, MA	Attorney	Indefinite from October 16, 2007
Shah, Ashok S.	Manalapan, NJ	CPA	Indefinite from October 16, 2007
Sheline, Calvin L.	Camp Verde, AZ	CPA	Indefinite from October 16, 2007
Bosse, Leigh D.	Hillsborough, NH	Attorney	Indefinite from October 24, 2007
Webb, James E.	Nashville, TN	CPA	Indefinite from October 25, 2007
Gottschalk, Don E.	Cedar Falls, IA	Attorney	Indefinite from October 31, 2007
Joy, Steven B.	Paton, IA	Attorney	Indefinite from October 31, 2007
Smallwood, Teresa L.	Durham, NC	Attorney	Indefinite from November 2, 2007
Donaldson, James F.	Denver, CO	Attorney	Indefinite from November 15, 2007
Roux, Johnathan M.	Fair Oaks, CA	CPA	Indefinite from November 20, 2007

Name	Address	Designation	Date of Suspension
Linville, Wiley T.	Denver, CO	Attorney	Indefinite from December 4, 2007
Andrade, Sergio R.	Inver Grove Hghts, MN	Attorney	Indefinite from December 13, 2007
Arzani, Mitzi H.	Charlotte, NC	CPA	Indefinite from December 13, 2007
Catron, Stephen B.	Knoxville, TN	Attorney	Indefinite from December 13, 2007
Coulagouri, Louis A.	Moorestown, NJ	Attorney	Indefinite from December 13, 2007
Crown, Charles K.	Blakeslee, PA	CPA	Indefinite from December 13, 2007
George, Philip J.	Great Falls, VA	Attorney	Indefinite from December 13, 2007
Heitz, John P.	Oneill, NE	Attorney	Indefinite from December 13, 2007
Jones, William F.	Park Rapids, MN	Attorney	Indefinite from December 13, 2007
Khoury, Arthur M.	Lawrence, MA	Attorney	Indefinite from December 13, 2007
McGree, Charles A.	Fort Payne, AL	Attorney	Indefinite from December 13, 2007
Nason, George H.	Franklin, TN	Attorney	Indefinite from December 13, 2007
Owen, Thomas A.	Arlington, TX	Attorney	Indefinite from December 13, 2007
Ozulumba, Michael	Boston, MA	Attorney	Indefinite from December 13, 2007
Phillips, Mark A.	Elm Grove, WI	Attorney	Indefinite from December 13, 2007

Name	Address	Designation	Date of Suspension
Simpson, Joseph H.	Amite, LA	Attorney	Indefinite from December 13, 2007
Sipes, Laura A.	St. Charles, MO	Attorney	Indefinite from December 13, 2007
Sullivan, Joseph O.	Warwick, NY	Attorney	Indefinite from December 13, 2007
Szegda, Michael A.	Old Tappan, NJ	Attorney	Indefinite from December 13, 2007
Misch, Paul M.	Akron, OH	Attorney	Indefinite from December 17, 2007
Brenner, Allen L.	Long Beach, NY	Attorney	Indefinite from December 20, 2007
Cook, Rirchard B.	Cockeysville, MD	Attorney	Indefinite from December 20, 2007
Shang, Wade V.	S. San Francisco, CA	CPA	Indefinite from December 20, 2007

Suspensions From Practice Before the Internal Revenue Service After Appeal

Under Title 31, Code of Federal Regulations, Part 10, after a decision is issued by an Administrative Law Judge, either party may appeal to the Secretary of the Treasury. The following individuals have been placed under suspension from practice before the Internal Revenue Service **AFTER** an appeal:

Name	Address	Designation	Effective Date
Andrews, Ted E.	Avon, IN	CPA	Indefinite from October 19, 2007

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 opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Ruocchio, Raymond	Havertown, PA	CPA	April 30, 2007
Roseman, Eric W.	Scottsdale, AZ	CPA	August 20, 2007
Solomon, Stanley	Brooklyn, NY	CPA	September 04, 2007
Marks, Robert	Medfield, MA	Attorney	October 15, 2007

Censure Issued by Consent

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

Name	Address	Designation	Date of Censure
Villarreal, Ricardo	Houston, TX	EA	September 24, 2007
Meisgeier, Deborah K.	Richmond, TX	EA	October 16, 2007
O'Brien, Colleen D.	Winter Park, FL	CPA	October 24, 2007
Staver, Peter J.	Southgate, MI	Attorney	November 06, 2007
Weiss, Ira	Pittsburgh, PA	Attorney	November 29, 2007
Orr, William S.	Kerrville, TX	CPA	December 04, 2007
Whitsitt, Richard	Panama City, FL	CPA	December 04, 2007

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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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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