Bulletin No. 2000–15
April 10, 2000

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

Ct. D. 2066, page 867.

Tax considered paid. Remittances of estimate tax and withholding tax are deemed paid on the due date of the taxpayer's income tax return under section 6513 of the Code. **Baral v. United States.**

Ct. D. 2067, page 863.

Liens. The Supreme Court has held that when determining what is property for purposes of federal tax liens, the Code provides that state law determines the taxpayer's rights or interest, but federal law determines whether those rights or interests constitute "property" or "rights to property." **Drye v. United States.**

EMPLOYEE PLANS

T.D. 8878, page 857.
REG–117162–99, page 871.

Proposed and final regulations under section 125 of the Code relate to the tax treatment of cafeteria plans.

ADMINISTRATIVE

Announcement 2000–26, page 876.

This document contains corrections to final regulations (T.D. 8864, 2000–7 I.R.B. 614) relating to certain business expenses under section 274 of the Code affecting individuals and other taxpayers who claim or reimburse certain business expenses.

Announcement 2000–27, page 876.

This document contains corrections to final regulations (T.D. 8859, 2000–5 I.R.B. 429) relating to the low-income housing tax credit under section 42 of the Code.

Announcement 2000–28, page 876.

This document contains corrections to final regulations (T.D. 8849, 2000–2 I.R.B. 245) relating to separate share rules applicable to estates under section 663(c) of the Code.

Announcement 2000–29, page 877.

This document contains corrections to final regulations (T.D. 8874, 2000–8 I.R.B. 644) relating to travel and tour activities of tax exempt organizations under section 513 of the Code.

Announcement 2000–30, page 877.

This document contains corrections to final regulations (T.D. 8867, 2000–7 I.R.B. 620) relating to the new mark-to-market election for stock of a passive foreign investment company.

Announcement 2000–31, page 877.

This document contains corrections to final regulations (T.D. 8856, 2000–3 I.R.B. 298) relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

Announcement 2000–32, page 879.

This document contains corrections to Announcement 2000–18 (2000–13 I.R.B. 846) relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

Announcement 2000–33, page 878.

This document contains corrections to final regulations (T.D. 8853, 2000–4 I.R.B. 377) relating to the recharacterization of financing arrangements involving fast-pay stock.

Announcement 2000–34, page 879.

This document contains corrections to final regulations (T.D. 8870, 2000–8 I.R.B. 647) relating to making and maintaining qualified electing fund (QEF) elections.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

The first 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 first Bulletin of the succeeding semiannual period, respectively.

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

Section 125.—Cafeteria Plans

26 CFR 1.125–4: Permitted election changes.

T.D. 8878

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to section 125 cafeteria plans. The final regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The final regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage or group-term life insurance coverage.

DATES: *Effective Date*: These regulations are effective March 23, 2000.

Applicability Date: These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. See the *Scope of Regulations and Effective Date* portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer or Christine L. Keller at (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and "qualified benefits." A qualified benefit generally is any benefit that is excludable from gross income under an express provision of the Internal Revenue Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[2] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[3] Specifically, Q&A-8 of §1.125–1 and Q&A-6(b), (c), and (d) of §1.125–2 permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[4]

These final regulations, which replace the 1997 temporary regulations, clarify the circumstances under which a cafeteria plan may permit an employee to revoke an existing election with respect to accident or health coverage, or group-term life insurance coverage, and make a new election during a period of coverage.

Explanation of Provisions

A. *Summary*.

These regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. The regulations generally follow the existing temporary regulations, and include a variety of examples illustrating how the rules apply in specific situations.

The final regulations include two principal changes that have been made in response to public comments. First, the regulations differ from the 1997 regulations with respect to change in status events resulting from a change in employment. Commentators requested a loosening of the rules regarding when a cafeteria plan election can be changed. In response, the final rules incorporate a more flexible rule under which any change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan constitutes a change in status for purposes of permitting a mid-year election change. Second, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, the final regulations permit the employee to elect either to increase group-term life insurance coverage or to decrease group-

[1] The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

[2] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[3] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), an FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

[4] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS Announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of those proposed and temporary regulations so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

term life insurance coverage. A similar rule applies with respect to disability income plans.

These final regulations were developed as part of an integrated package with proposed regulations REG–117162–99, page 871. Those proposed regulations provide guidance on election changes on account of changes in status with respect to dependent care assistance and adoption assistance and provide guidance on election changes on account of changes in cost or coverage with respect to dependent care assistance, adoption assistance, accident or health coverage, and group-term life insurance coverage. The integrated package of final and proposed regulations is intended to provide clear standards for plan administration and for administration of the tax law. The standards are designed to accommodate the most common types of events of independent significance that do not occur on a regular, periodic basis and that are likely to affect an employee's decisions with respect to qualified benefits coverage.

B. *Changes in Status*.

Commentators on the 1997 temporary and proposed regulations requested that the description of changes in status be expanded to include work-related changes of an employee, the employee's spouse, or the employee's dependent in addition to termination or commencement of employment or change in worksite. In response to these comments, the description of changes in status has been broadened to include a strike or lockout, and a commencement of or return from an unpaid leave of absence. In addition, the final rules incorporate a more flexible rule for other change in employment status events. Specifically, if there is a change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan, then that change constitutes a change in status. For example, if an employee switches from salaried to hourly-paid status, resulting in the employee ceasing to be eligible for coverage under the plan, then that change constitutes a change in status.

Some commentators expressed concern that the 1997 temporary and proposed regulations did not permit an employee to make an election change to cover additional individuals under an accident or health plan when an employer changed its policy (e.g., to permit coverage for a parent or for a domestic partner pursuant to local law requirements). Under the 1997 temporary and proposed regulations, a change in status includes an event that causes an employee's dependent to satisfy or cease to satisfy the eligibility requirements for coverage under a plan. Thus, if an individual who is a dependent of an employee becomes eligible for coverage under the employer's health plan as a result of an amendment made to the plan during the year, that is a change in status event and, accordingly, the cafeteria plan may permit an election change by the employee to cover the individual. These final regulations retain the rule from the 1997 temporary and proposed regulations.

These final regulations do not address when a bona fide termination of employment occurs. However, these regulations retain the example (*Example 8* under paragraph (c)(4) of these final regulations) from the 1997 temporary and proposed regulations addressing the situation in which an employee terminates and resumes employment within 30 days. The effect of this example is to provide a practical safe harbor that generally may be applied by cafeteria plans without regard to other facts and circumstances. Under this example, if an employee terminates and resumes employment within 30 days and the cafeteria plan provides that the employee's election is automatically reinstated, the employer is not required to determine whether a bona fide change in status has occurred with respect to termination of employment. Conversely, the cafeteria plan may permit an employee who resumes employment more than 30 days following termination to be automatically reinstated to the prior election or to make a new election.[5]

C. *Consistency Rule*.

As under the 1997 temporary and proposed regulations, the final regulations require that an election change as a result of a change in status also satisfy a consistency requirement. In response to comments, the final regulations expand and clarify the consistency requirement with respect to change in status events for group-term life insurance. Under the 1997 regulations, in the case of a commencement of employment, marriage, birth, adoption, or placement for adoption, an employee could elect to increase (but not decrease) group-term life insurance coverage. The 1997 regulations also permitted an employee to elect to decrease (but not to increase) group-term life insurance coverage in the case of divorce, legal separation, annulment, or death of a spouse or dependent. Commentators suggested that these rules were too restrictive. For example, in the case of divorce, an employee may reasonably seek to increase coverage because the employee may become the sole wage-earner for the family unit as a result of the divorce. Accordingly, the final regulations provide flexibility by stating that, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, an employee may elect either to increase group-term life insurance coverage or to decrease group-term life insurance coverage. Also, in response to comments, a similar rule has been added that applies to election changes made with respect to disability income coverage (i.e., accident or health coverage that is neither for medical care as defined under section 213(d) nor for payments described in section 105(c)).

D. *Other Changes*.

Some commentators requested that the regulations prescribe a period of time by which election changes, as a result of a change in status, should be made. Consistent with the approach taken in the 1997 regulations and in the interest of providing employers and plan administrators flexibility, the final regulations do not prescribe such a period. However, nothing in the final regulations would prevent a cafeteria plan by its terms from requiring that any election change (other than those made in connection with rights for which there are specific minimum election periods, such as under section 9801 (as added by HIPAA) and section 4980B (relating to COBRA coverage)), must be made within a specified period after a

[5] Alternatively, the cafeteria plan may prohibit an employee from participating in the cafeteria plan for that plan year upon reemployment.

change in status event. The consistency rule in the final regulations does require that an election change made pursuant to a change in status be "on account of" a gain or loss of eligibility for coverage. This requirement follows the "on account of" language contained in the 1989 proposed regulations under §1.125–2, Q&A-6(c), and is intended to add a general condition that the election change not be made so long after the event permitting the election change that the election is not on account of the event.

In accordance with comments, examples in the regulations clarify that if, in accordance with special enrollment rights provided by HIPAA, an employee, spouse, or new dependent is entitled to enroll in a group health plan, a cafeteria plan may permit the employee to elect to enroll pre-existing dependents in the underlying group health plan.[6] Likewise, the examples clarify that if, in accordance with the change in status rules relating to a new spouse or dependent, an employee is entitled to elect family coverage under a group health plan, then other family members are permitted to become covered under the family coverage as a result of the election change.[7]

In response to comments, the final regulations also clarify that, in the event of a loss of Medicare or Medicaid entitlement by an employee or by the employee's spouse or dependent, a cafeteria plan may permit the employee to add health coverage under the employer's accident or health plan (and may permit cancellation or reduction in coverage if an employee, spouse, or dependent who is enrolled in an accident or health plan becomes entitled to Medicare or Medicaid).

Scope of Regulations and Effective Date

These final regulations address all of the changes in status for which a cafeteria plan may permit election changes with respect to an accident or health plan or group-term life insurance plan. However, future guidance under the cost or coverage change provision (reserved at paragraph (f) of these final regulations and included in paragraph (f) of the proposed regulations [REG–117162–99], on page 871), rather than the change in status rules, would determine whether a cafeteria plan may permit affected employees to elect a new HMO option that is made available during a period of coverage. Similarly, election changes may be made under the special rules relating to changes in elections by employees taking leave under the Family and Medical Leave Act of 1993 (Public Law 103–3)[8] (as referenced at paragraph (g) of these final regulations).

Finally, these regulations do not override other cafeteria plan requirements. For example, although an employee's termination of employment is a change in status, some election changes made with respect to coverage under a health FSA on account of the termination of employment would fail to be consistent with the requirement that the operation of such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance under §1.125–1, Q&A-17 and §1.125–2, Q&A-7 of the proposed regulations. Thus, a cafeteria plan could not permit individuals terminating employment to change their health FSA elections to match the amount of premiums paid prior to termination (i.e., stop paying premiums), and continue to receive health FSA reimbursements with respect to the remainder of the period of coverage.

These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. Until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may rely on these regulations. In addition, until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may continue to rely on the change in status rules in the 1997 regulations, as well as the change in family status rules in the pre-1997 proposed regulations.

Pursuant to section 7805(e), the 1997 temporary regulations §1.125–4T will expire within three years of the date of issuance (November 7, 2000). This Treasury decision amends the 1997 temporary regulations to add this expiration in the text of the regulations (§1.125–4T(l).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Janet A. Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. §1.125–4 is added to read as follows:

§1.125–4 Permitted election changes.

(a) *Election changes*. A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (g) of this section. Section 125 does not require a cafeteria plan to permit any of these changes. See paragraph (h) of this section for special provisions relating to qualified cash

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[6] No inference is intended from these or any other examples in the final regulations concerning the interpretation of special enrollment rights under section 9801(f).

[7] Provisions in paragraph (b) of the final regulation allowing election changes in connection with special enrollment under section 9801(f) may overlap the provisions in paragraphs (c) through (e) of the final regulations permitting election changes in other circumstances. Thus, no inference is intended that an election change permitted under paragraphs (c) through (e) is not also permitted under paragraph (b).

[8] See '1.125–3, published as a proposed rule at 60 FR 66229 (December 21, 1995).

or deferred arrangements, and paragraph (i) of this section for special definitions used in this section.

(b) *Special enrollment rights* — (1) *In general.* A cafeteria plan may permit an employee to revoke an election for coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f).

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. (i) Employer *M* provides health coverage for its employees pursuant to a plan that is subject to section 9801(f). Under the plan, employees may elect either employee-only coverage or family coverage. *M* also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. *M*'s employee, *A*, is married to *B* and they have a child, *C*. In accordance with *M*'s cafeteria plan, Employee *A* elects employee-only health coverage before the beginning of the calendar year. During the year, *A* and *B* adopt a child, *D*. Within 30 days thereafter, *A* wants to revoke *A*'s election for employee-only health coverage and obtain family health coverage for *A*'s spouse, *C*, and *D* as of the date of *D*'s adoption. Employee *A* satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that *A* may enroll in family coverage under *M*'s accident or health plan in order to provide coverage effective as of the date of *D*'s adoption.

(ii) *M*'s cafeteria plan may permit *A* to change A's salary reduction election to family coverage for salary not yet currently available. The increased salary reduction is permitted to reflect the cost of family coverage from the date of adoption. (*A*'s adoption of *D* is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under paragraph (c) of this section, *M*'s cafeteria plan could permit *A* to elect family coverage prospectively in order to cover *B*, *C*, and *D* for the remaining portion of the period of coverage.)

Example 2. (i) The employer plans and permissible coverage are the same as in *Example 1.* Before the beginning of the calendar year, Employee *E* elects employee- only health coverage under *M*'s cafeteria plan. Employee *E* marries *F* during the plan year. *F*'s employer, *N*, offers health coverage to *N*'s employees, and, prior to the marriage, *F* had elected employee-only coverage. Employee *E* wants to revoke the election for employee-only coverage under *M*'s cafeteria plan, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) *M*'s cafeteria plan may permit *E* to change *E*'s salary reduction election to reflect the change to family coverage under *M*'s group health plan because the marriage would result in special enrollment rights under section 9801(f), pursuant to which an election of family coverage under *M*'s group health plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan. (*E*'s marriage to *F* is also a change in status under paragraph (c) of this section, as illustrated in *Example 1* of paragraph (c)(4) of this section.)

(c) *Changes in status* — (1) *In general* — (i) *Change in status rule.* A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances —

(A) A change in status described in paragraph (c)(2) of this section occurs; and

(B) The election change satisfies the consistency rule of paragraph (c)(3) of this section.

(ii) *Application to accident or health plans and group-term life insurance plans.* This paragraph (c) applies to plans providing accident or health coverage and plans providing group-term life insurance coverage.

(iii) *Application to other qualified benefits.* [RESERVED]

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including the following: marriage; death of spouse; divorce; legal separation; and annulment.

(ii) *Number of dependents.* Events that change an employee's number of dependents, including the following: birth; death; adoption; and placement for adoption.

(iii) *Employment status.* Any of the following events that change the employment status of the employee, the employee's spouse, or the employee's dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the employer of the employee, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this paragraph (c) (e.g., if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid with the consequence that the employee ceases to be eligible for the plan, then that change constitutes a change in employment status under this paragraph (c)(2)(iii)).

(iv) *Dependent satisfies or ceases to satisfy eligibility requirements.* Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(v) *Residence.* A change in the place of residence of the employee, spouse, or dependent.

(3) *Consistency rule* — (i) *Application to accident or health coverage and group-term life insurance.* An election change satisfies the requirements of this paragraph (c)(3) with respect to accident or health coverage or group-term life insurance only if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan.

(ii) *Application to other qualified benefits.* [Reserved]

(iii) *Application of consistency rule.* If the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, an employee's election under the cafeteria plan to cancel accident or health insurance coverage for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent, or the dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that change in status. Thus, if a dependent dies or ceases to satisfy the eligibility requirements for coverage, the employee's election to cancel accident or health coverage for any other dependent, for the employee, or for the employee's spouse fails to correspond with that change in status. In addition, if an employee,

spouse, or dependent gains eligibility for coverage under a family member plan (as defined in paragraph (i)(5) of this section) as a result of a change in marital status under paragraph (c)(2)(i) of this section or a change in employment status under paragraph (c)(2)(iii) of this section, an employee's election under the cafeteria plan to cease or decrease coverage for that individual under the cafeteria plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan. However, if the change in status is a change in the employee's marital status under paragraph (c)(2)(i) of this section or a change in the employment status of the employee's spouse or dependents under paragraph (c)(2)(iii) of this section, an election to increase, or an election to decrease, group-term life insurance or disability income coverage corresponds with that change in status.

(iv) *Exception for COBRA*. If the employee, spouse, or dependent becomes eligible for continuation coverage under the group health plan of the employee's employer as provided in section 4980B or any similar state law, a cafeteria plan may permit the employee to elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Examples*. The following examples illustrate the application of this paragraph (c):

Example 1. (i) Employer *M* provides health coverage (including a health FSA) for its employees through its cafeteria plan. Before the beginning of the calendar year, Employee *A* elects employee-only health coverage under *M*'s cafeteria plan and elects salary reduction contributions to fund coverage under the health FSA. Employee *A* marries *B* during the year. Employee *B*'s employer, *N*, offers health coverage to *N*'s employees (but not including any health FSA), and, prior to the marriage, *B* had elected employee-only coverage. Employee *A* wants to revoke the election for employee-only coverage, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) Employee *A*'s marriage to *B* is a change in status under paragraph (c)(2)(i) of this section, pursuant to which *B* has become eligible for coverage under M's health plan under paragraph (c)(3)(i) of this section. Two possible election changes by *A* correspond with the change in status: Employee *A* may elect family health coverage under *M*'s plan to cover *A* and *B*; or *A* may cancel coverage under *M*'s plan, if *B* elects family health coverage under *N*'s plan to cover *A* and *B*. Thus, *M*'s cafeteria plan may permit *A* to make either election change.

(iii) Employee *A* may also increase salary reduction contributions to fund coverage for *B* under the health FSA.

Example 2. (i) Employee *C*, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer *O*. Employee *C* and *C*'s 21-year old child, *D*, are covered under *O*'s health plan. During the year, *D* graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. Employee *C* wants to revoke *C*'s election for family health coverage and obtain employee-only coverage under *O*'s cafeteria plan.

(ii) *D*'s loss of eligibility for coverage under the terms of the health plan is a change in status under paragraph (c)(2)(iv) of this section. A revocation of *C*'s election for family coverage and new election for employee-only coverage corresponds with the change in status. Thus, *O*'s cafeteria plan may permit *C* to elect employee-only coverage.

Example 3. (i) Employee *E* is married to *F* and they have one child, *G*. Employee *E* is employed by Employer *P*, and *P* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, *E* elects family health coverage for *E*, *F*, and *G*. *E* and *F* divorce during the year and *F* loses eligibility for coverage under *P*'s plan. *G* does not lose eligibility for health coverage under *P*'s plan upon the divorce. *E* now wants to revoke *E*'s election under the cafeteria plan and elect no coverage.

(ii) The divorce is a change in status under paragraph (c)(2)(i). A change in the cafeteria plan election to cancel health coverage for *F* is consistent with that change in status. However, an election change to cancel *E*'s or *G*'s health coverage does not satisfy the consistency rule under paragraph (c)(3)(iii) of this section regarding cancellation of coverage for an employee's other dependents in the event of divorce. Therefore, the cafeteria plan may not permit *E* to elect no coverage. However, an election to change to employee-plus-one-dependent health coverage would correspond with the change in status, and thus the cafeteria plan may permit *E* to elect employee- plus-one-dependent health coverage.

Example 4. (i) Employer *R* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees who work in the respective service areas of the two HMOs. Employee *A*, who works in the service area of HMO #1, elects the HMO #1 option. During the year, *A* is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) The transfer is a change in status under paragraph (c)(2)(iii) of this section (relating to a change in worksite), and, under the consistency rule in paragraph (c)(3) of this section, the cafeteria plan may permit *A* to make an election change to either the indemnity option or HMO #2.

Example 5. (i) Employer *S* maintains a calendar year cafeteria plan that allows employees to elect coverage under an accident or health plan providing indemnity coverage and coverage under a health FSA. Prior to the beginning of the calendar year, Employee *B* elects employee-only indemnity coverage, and elects salary reduction contributions of $600 during the year to fund coverage under the health FSA for up to $600 of reimbursements for the year. Employee *B*'s spouse, *C*, has employee-only coverage under an accident or health plan maintained by *C*'s employer. During the year, *C* terminates employment and loses coverage under that plan. *B* now wants to elect family coverage under *S*'s accident or health plan and increase *B*'s FSA election.

(ii) *C*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, the cafeteria plan may permit *B* to elect family coverage under *S*'s accident or health plan and to increase *B*'s FSA coverage.

Example 6. (i) Employer *T* provides group-term life insurance coverage as described under section 79. Under *T*'s plan, an employee may elect life insurance coverage in an amount up to $50,000. *T* also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Employee *D* has a spouse and a child. Before the beginning of the year, *D* elects $10,000 of group-term life insurance coverage. During the year, *D* is divorced.

(ii) The divorce is a change in status under paragraph (c)(2)(i) of this section. Under paragraph (c)(3)(iii) of this section, either an increase or a decrease in coverage is consistent with this change in status. Thus, *T*'s cafeteria plan may permit *D* to increase or to decrease *D*'s group-term life insurance coverage.

Example 7. (i) Employee *E* is married to *F* and they have one child, *G*. Employee *E*'s employer, *U*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *U*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *E* elects family health coverage and no vision coverage under *U*'s cafeteria plan. Employee *F*'s employer, *V*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by V, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *F* elects no health coverage and employee-only vision coverage under *V*'s plan. During the year, *F* terminates employment with *V* and loses vision coverage under *V*'s plan. Employee *E* now wants to elect family vision coverage under *U*'s group health plan.

(ii) *F*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, *U*'s cafeteria plan may permit *E* to elect family vision coverage (covering *E* and *G* as well as *F*) under *U*'s group health plan.

Example 8. (i) Before the beginning of the year, Employee *H* elects to participate in a cafeteria plan maintained by *H*'s employer, *W*. However, in order to change the election during the year so as to cancel coverage, and by prior understanding with *W*, *H* terminates employment and resumes employment one week later.

(ii) In this *Example 8*, under the facts and circumstances, a principal purpose of the termination

of employment was to alter the election, and reinstatement of employment was understood at the time of termination. Accordingly, *H* does not have a change in status under paragraph (c)(2)(iii) of this section.

(iii) However, H's termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if *H*'s original cafeteria plan election for the period of coverage was reinstated upon resumption of employment (for example, if *W*'s cafeteria plan contains a provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

(iv) If, instead, *H* terminates employment and cancels coverage during a period of unemployment, and then returns to work more than 30 days following termination of employment, the cafeteria plan may permit *H* the option of returning to the election in effect prior to termination of employment or making a new election under the plan. Alternatively, the cafeteria plan may prohibit *H* from returning to the plan during that plan year.

(d) *Judgment, decree, or order* — (1) *Conforming election change.* This paragraph (d) applies to a judgment, decree, or order (order) resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order as defined in section 609 of the Employee Retirement Income Security Act of 1974 (Public Law 93-406 (88 Stat. 829))) that requires accident or health coverage for an employee's child or for a foster child who is a dependent of the employee . A cafeteria plan will not fail to satisfy section 125 if it —

(i) Changes the employee's election to provide coverage for the child if the order requires coverage for the child under the employee's plan; or

(ii) Permits the employee to make an election change to cancel coverage for the child if the order requires the spouse, former spouse, or other individual to provide coverage for the child.

(2) *Example*. The following example illustrates the application of this paragraph (d):

Example. (i) Employer *M* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. *M*'s employee, *A*, is married to *B* and they have one child, *C*. Before the beginning of the year, *A* elects employee-only health coverage. Employee *A* divorces *B* during the year and, pursuant to *A*'s divorce agreement with B, *M*'s health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act of 1974) during the plan year. The order requires *M*'s health plan to cover *C*.

(ii) Under this paragraph (d), *M*'s cafeteria plan may change *A*'s election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover *C*.

(e) *Entitlement to Medicare or Medicaid*. If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVIII of the Social Security Act (Medicare)(Public Law 89-97 (79 Stat. 291)) or Title XIX of the Social Security Act (Medicaid)(Public Law 89-97 (79 Stat. 343)), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make a prospective election change to cancel or reduce coverage of that employee, spouse, or dependent under the accident or health plan. In addition, if an employee, spouse, or dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the cafeteria plan may permit the employee to make a prospective election to commence or increase coverage of that employee, spouse, or dependent under the accident or health plan.

(f) *Significant cost or coverage changes*. [Reserved]

(g) *Special requirements relating to the Family and Medical Leave Act*. An employee taking leave under the Family and Medical Leave Act (FMLA)(Public Law 102-530 (88 Stat. 829)) may revoke an existing election of group health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

(h) *Elective contributions under a qualified cash or deferred arrangement*. The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with section 401(k) and (m) and the regulations thereunder.

(i) *Definitions.* Unless otherwise provided, the definitions in paragraphs (i)(1) though (8) of this section apply for purposes of this section.

(1) *Accident or health coverage.* Accident or health coverage means coverage under an accident or health plan as defined in regulations under section 105.

(2) *Benefit package option.* A benefit package option means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents.

(4) *Disability income coverage.* Disability income coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents, and does not provide for payments described in section 105(c).

(5) *Family member plan.* A family member plan means a cafeteria plan or qualified benefit plan sponsored by the employer of the employee's spouse or the employee's dependent.

(6) *FSA, health FSA.* An FSA means a qualified benefits plan that is a flexible spending arrangement as defined in section 106(c)(2) . A health FSA means a health or accident plan that is an FSA.

(7) *Placement for adoption.* Placement for adoption means placement for adoption as defined in regulations under section 9801.

(8) *Qualified benefits plan.* A qualified benefits plan means an employee benefit plan governing the provision of one or more benefits that are qualified benefits under section 125(f).

(j) Effective date. This section is applicable for cafeteria plan years beginning on or after January 1, 2001.

Par. 3. §1.125–4T is amended by revising paragraph (l) to read as follows:

§1.125–4T Permitted election changes (temporary).

* * * * *

(l) Effective date. This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved February 23, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on March 22, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 23, 2000, 65 F.R. 15548)

Section 6321—Lien for Taxes

Ct. D. 2067

SUPREME COURT OF THE UNITED STATES

No. 98–1101

ROHN F. DRYE, JR., ET AL., PETITIONER *v.* UNITED STATES

528 U.S. _____(1999)

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[December 7, 1999]

Syllabus

In 1994, Irma Drye died intestate, leaving a $233,000 estate in Pulaski County, Akansas. Petitioner Rohn Drye, her son, was sole heir to the estate under Arkansas law. Drye was insolvent at the time of his mother's death and owed the Federal Government some $325,000 on unpaid tax assessments. The Internal Revenue Service (IRS) had valid tax liens against all of Drye's "property and rights to property" pursuant to 26 U.S.C. Sec. 6321. Drye petitioned the Pulaski County Probate Court for appointment as administrator of his mother's estate, and was so appointed. Several months after his mother's death, Drye resigned as administrator after filing in the Probate Court and county land records a written disclaimer of all interests in the estate. Under Arkansas law, such a disclaimer creates the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant's share of the estate passes to the person next in line to receive that share. The disavowing heir's creditors, Arkansas law provides, may not reach property thus disclaimed. Here, Drye's disclaimer caused the estate to pass to his daughter, Theresa Drye, who succeeded her father as administrator and promptly established the Drye Family 1995 Trust (Trust). The Probate Court declared Drye's disclaimer valid and accordingly ordered final distribution of the estate to Theresa, who then used the estate's proceeds to fund the Trust, of which she and, during their lifetimes, her parents are the beneficiaries. Under the Trust's terms, distributions are at the discretion of the trustee, Drye's counsel, and may be made only for the health, maintenance, and support of the beneficiaries. The Trust is spendthrift, and under state law, its assets are therefore shielded from creditors seeking to satisfy the debts of the Trust's beneficiaries. After Drye revealed to the IRS his beneficial interest in the Trust, the IRS filed with the county a notice of federal tax lien against the Trust as Drye's nominee, served a notice of levy on accounts held in the Trust's name by an investment bank, and notified the Trust of the levy. The Trust filed a wrongful levy action against the United States in the United States District Court for the Eastern District of Arkansas. The Government counterclaimed against the Trust, the trustee, and the trust beneficiaries, seeking to reduce to judgment the tax assessments against Drye, confirm its right to seize the Trust's assets in collection of those debts, foreclose on its liens, and sell the Trust property. On cross-motions for summary judgment, the District Court ruled in the Government's favor. The Court of Appeals for the Eighth Circuit affirmed, reading this Court's precedents to convey that state law determines whether a given set of circumstances creates a right or interest, but federal law dictates whether that right or interest constitutes "property" or the "righ[t] to property" under Sec. 6321.

Held: Drye's disclaimer did not defeat the federal tax liens. The Internal Revenue Code's prescriptions are most sensibly read to look to state law for delineation of the taxpayer's rights or interests in the property the Government seeks to reach, but to leave to federal law the determination whether those rights or interests constitute "property" or "rights to property" under Sec. 6321. Once it has been determined that state law creates sufficient interests in the taxpayer to satisfy the requirements of the federal tax lien provision, state law is inoperative to prevent the attachment of the federal liens. *United States* v. *Bess*, 357 U.S. 51, 5657. Pp. 5-11.

(a) To satisfy a tax deficiency, the Government may impose a lien on any "property" or "rights to property" belonging to the taxpayer. Secs. 6321, 6331(a). When Congress so broadly uses the term "property," this Court recognizes that the Legislature aims to reach every species of right or interest protected by law and having an exchangeable value. *E.g., Jewett* v. *Commissioner*, 455 U.S. 305, 309. Sec. 6334(a), which lists items exempt from levy, is corroborative. Section 6334(a)'s list is rendered exclusive by Sec. 6334(c), which provides that no other "property or rights to property shall be exempt." Inheritances or devises disclaimed under state law are not included in Sec. 6334(a)'s catalog of exempt property. See, *e.g., Bess*, 357 U.S. at 57. The absence of any recognition of disclaimers in Secs. 6321, 6322, 6331(a), and 6334(a) and (c), the relevant tax collection provisions, contrasts with Sec. 2518(a), which renders qualifying state law disclaimers "with respect to any interest in property" effective for federal wealthtransfer tax purposes, and for those purposes only. Although this Court's decisions in point have not been phrased so meticulously as to preclude the argument that state law is the proper guide to the critical determination whether Drye's interest constituted "property" or "rights to property" under Sec. 6321, the Court is satisfied that the Code and interpretive case law place under federal, not state, control the ultimate issue whether a taxpayer has a beneficial interest in any property subject to levy for unpaid federal taxes. Pp. 5-7.

(b) The question whether a state-law right constitutes "property" or "rights to property" under Sec. 6321 is a matter of federal law. *United States* v. *National Bank of Commerce*, 472 U.S. 713, 727. This Court looks initially to state law to determine what rights the taxpayer has in

the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state delineated rights qualify as "property" or "rights to property" within the compass of the federal tax lien legislation. Cf. *Morgan* v. *Commissioner*, 309 U.S. 78, 80. Just as exempt status under state law does not bind the federal collector, *United States* v. *Mitchell*, 403 U.S. 190, 204, so federal tax law is not struck blind by a disclaimer, *United States* v. *Irvine*, 511 U.S. 224, 240. Pp 7-9.

(c) The Eighth Circuit, with fidelity to the relevant Code provisions and this Court's case law, determined first what rights state law accorded Drye in his mother's estate. The Court of Appeals observed that, under Arkansas law, Drye had, at his mother's death, a valuable, transferable, legally protected right to the property at issue, and noted, for example, that a prospective heir may effectively assign his expectancy in an estate under Arkansas law, and the assignment will be enforced when the expectancy ripens into a present estate. Drye emphasizes his undoubted right under Arkansas law to disclaim the inheritance, a right that is indeed personal, and not marketable. But Arkansas law primarily gave him a right of considerable value – the right either to inherit or to channel the inheritance to a close family member (the next lineal descendant). That right simply cannot be written off as a mere personal right to accept or reject a gift. In pressing the analogy to a rejected gift, Drye overlooks this crucial distinction. A donee who declines an *inter vivos* gift restores the status quo *ante*, leaving the donor to do with the gift what she will. The disclaiming heir or devisee, in contrast, does not restore the status quo, for the decedent cannot be revived. Thus, the heir inevitably exercises dominion over the property. He determines who will receive the property – himself if he does not disclaim, a known other if he does. This power to channel the estate's assets warrants the conclusion that Drye held "property" or a "righ[t] to property" subject to the Government's liens under Sec. 6321. Pp. 9-11.

152 F. 3d 892, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 98-1101

ROHN F. DRYE, JR., ET AL., PETITIONER *v.* UNITED STATES

528 U.S. _____(1999)

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[December 7, 1999]

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the respective provinces of state and federal law in determining what is property for purposes of federal tax lien legislation. At the time of his mother's death, petitioner Rohn F. Drye, Jr., was insolvent and owed the Federal Government some $325,000 on unpaid tax assessments for which notices of federal tax liens had been filed. His mother died intestate, leaving an estate with a total value of approximately $233,000 to which he was sole heir. After the passage of several months, Drye disclaimed his interest in his mother's estate, which then passed by operation of state law to his daughter. This case presents the question whether Drye's interest as heir to his mother's estate constituted "property" or a "righ[t] to property" to which the federal tax liens attached under 26 U.S.C. Sec. 6321, despite Drye's exercise of the prerogative state law accorded him to disclaim the interest retroactively.

We hold that the disclaimer did not defeat the federal tax liens. The Internal Revenue Code's prescriptions are most sensibly read to look to state law for delineation of the taxpayer's rights or interests, but to leave to federal law the determination whether those rights or interests constitute "property" or "rights to property" within the meaning of Sec. 6321. "[O]nce it has been determined that state law creates sufficient interests in the [taxpayer] to satisfy the requirements of [the federal tax lien provision], state law is inoperative to prevent the attachment of liens created by federal statutes in favor of the United States." *United States* v. *Bess*, 357 U.S. 51, 5657 (1958).

I

A

The relevant facts are not in dispute. On August 3, 1994, Irma Deliah Drye died intestate, leaving an estate worth approximately $233,000, of which $158,000 was personalty and $75,000 was realty located in Pulaski County, Arkansas. Petitioner Rohn F. Drye, Jr., her son, was sole heir to the estate under Arkansas law. See Ark. Code Ann. Sec. 28-9-214 (1987) (intestate interest passes "[f]irst, to the children of the intestate"). On the date of his mother's death, Drye was insolvent, and owed the Government approximately $325,000, representing assessments for tax deficiencies in years 1988, 1989, and 1990. The Internal Revenue Service (IRS or Service) had made assessments against Drye in November, 1990 and May, 1991, and had valid tax liens against all of Drye's "property and rights to property" pursuant to 26 U.S.C. Sec. 6321.

Drye petitioned the Pulaski County Probate Court for appointment as administrator of his mother's estate, and was so appointed on August 17, 1994. Almost six months later, on February 4, 1995, Drye filed in the Probate Court and land records of Pulaski County a written disclaimer of all interests in his mother's estate. Two days later, Drye resigned as administrator of the estate.

Under Arkansas law, an heir may disavow his inheritance by filing a written disclaimer no later than nine months after the death of the decedent. Ark. Code Ann. Secs. 28-2-101, 28-2-107 (1987). The disclaimer creates the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant's share of the estate passes to the person next in line to receive that share. The disavowing heir's creditors, Arkansas law provides, may not reach property thus disclaimed. Sec. 28-2-108. In the case at hand, Drye's disclaimer caused the estate to pass to his daughter, Theresa Drye, who succeeded her father as administrator and promptly established the Drye Family 1995 Trust (Trust).

On March 10, 1995, the Probate Court declared valid Drye's disclaimer of all interest in his mother's estate, and accordingly ordered final distribution of the estate to Theresa Drye. Theresa Drye then used the estate's proceeds to fund the Trust, of which she and, during their lifetimes, her

parents are the beneficiaries. Under the Trust's terms, distributions are at the discretion of the trustee, Drye's counsel Daniel M. Traylor, and may be made only for the health, maintenance, and support of the beneficiaries. The Trust is spendthrift, and, under state law, its assets are therefore shielded from creditors seeking to satisfy the debts of the Trust's beneficiaries.

Also in 1995, the IRS and Drye began negotiations regarding Drye's tax liabilities. During the course of the negotiations, Drye revealed to the Service his beneficial interest in the Trust. Thereafter, on April 11, 1996, the IRS filed with the Pulaski County Circuit Clerk and Recorder a notice of federal tax lien against the Trust as Drye's nominee. The Service also served a notice of levy on accounts held in the Trust's name by an investment bank, and notified the Trust of the levy.

B

On May 1, 1996, invoking 26 U.S.C. Sec. 7426(a)(1), the Trust filed a wrongful levy action against the United States in the United States District Court for the Eastern District of Arkansas. The Government counterclaimed against the Trust, the trustee, and the trust beneficiaries, seeking to reduce to judgment the tax assessments against Drye, confirm its right to seize the Trust's assets in collection of those debts, foreclose on its liens, and sell the Trust property. On cross-motions for summary judgment, the District Court ruled in the Government's favor.

The United States Court of Appeals for the Eighth Circuit affirmed the District Court's judgment. *Drye Family 1995 Trust* v. *United States*, 152 F.3d 892 (1998). The Court of Appeals understood our precedents to convey that "state law determines whether a given set of circumstances creates a right or interest; federal law then dictates whether that right or interest constitutes "property" or the "right to property" under Sec. 6321." *Id*. at 898.

We granted certiorari, 526 U.S. __ (1999), to resolve a conflict between the Eighth Circuit's holding and decisions of the Fifth and Ninth Circuits.[1] We now affirm.

II

Under the relevant provisions of the Internal Revenue Code, to satisfy a tax deficiency, the Government may impose a lien on any "property" or "rights to property" belonging to the taxpayer. Section 6321 provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 26 U.S.C. Sec. 6321. A complementary provision, Sec. 6331(a), states:

> "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax . . . by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.[2]

The language in Secs. 6321 and 6331(a), this Court has observed, "is broad, and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." *United States* v. *National Bank of Commerce*, 472 U.S. 713, 719720 (1985) (citing 4 B. Bittker, Federal Taxation of Income, Estates and Gifts Par. 111.5.4, p. 111100 (1981)); see also *Glass City Bank* v. *United States*, 326 U.S. 265, 267 (1945) ("Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes."). When Congress so broadly uses the term "property," we recognize, as we did in the context of the gift tax, that the Legislature aims to reach "`every species of right or interest protected by law and having an exchangeable value.'" *Jewett* v. *Commissioner*, 455 U.S. 305, 309 (1982) (quoting S.Rep. No. 665, 72d Cong., 1st Sess., 39 (1932); H.R.Rep. No. 708, 72d Cong., 1st Sess., 27 (1932)).

Section 6334(a) of the Code is corroborative. That provision lists property exempt from levy. The list includes 13 categories of items; among the enumerated exemptions are certain items necessary to clothe and care for one's family, unemployment compensation, and workers' compensation benefits. Secs. 6334(a)(1), (2), (4), (7). The enumeration contained in Sec. 6334(a), Congress directed, is exclusive: "Notwithstanding any other law of the United States . . . , no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a)." Sec. 6334(c). Inheritances or devises disclaimed under state law are not included in Sec. 6334(a)'s catalog of property exempt from levy. See *Bess*, 357 U.S. at 57 ("The fact that . . . Congress provided specific exemptions from distraint is evidence that Congress did not intend to recognize further exemptions which would prevent attachment of [federal tax] liens[.]"); *United States* v. *Mitchell*, 403 U.S. 190, 205 (1971) ("Th[e] language [of Sec. 6334] is specific, and it is clear, and there is no room in it for automatic exemption of property that happens to be exempt from state levy under state law."). The absence of any recognition of disclaimers in Secs. 6321, 6322, 6331(a), and 6334(a) and (c), the relevant tax collection provisions, contrasts with Sec. 2518(a) of the Code, which renders qualifying state law disclaimers "with respect to any interest in property" effective for federal wealth-transfer tax purposes and for those purposes only.[3]

Drye nevertheless refers to cases indicat-

[1] In the view of those courts, state law holds sway. Under their approach, in a State adhering to an acceptance-rejection theory, under which a property interest vests only when the beneficiary accepts the inheritance or devise, the disclaiming taxpayer prevails and the federal liens do not attach. If, instead, the State holds to a transfer theory, under which the property is deemed to vest in the beneficiary immediately upon the death of the testator or intestate, the taxpayer loses and the federal lien runs with the property. See *Leggett* v. *United States*, 120 F. 3d 592, 594 (CA5 1997); *Mapes* v. *United States*, 15 F. 3d 138, 140 (CA9 1994); accord, *United States* v. *Davidson*, 55 F. Supp. 2d 1152, 1155 (Colo. 1999). Drye maintains that Arkansas adheres to the acceptance-rejection theory.

[2] The Code further provides:
"Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time." 26 U.S.C. Sec. 6322.

[3] See Pennell, Recent Wealth Transfer Tax Developments, in Sophisticated Estate Planning Techniques 69, 117-118 (ALI-ABA Continuing Legal Ed. 1997) ("The fact that a qualified disclaimer by an estate beneficiary is deemed to relate back to the decedent's death for state property law or federal gift tax purposes is not sufficient to preclude a federal tax lien for the disclaimant's delinquent taxes from attaching to the disclaimed property as of the moment of the decedent's death. . . . [T]he qualified disclaimer provision in Sec. 2518 only applies for purposes of Subtitle B and the lien provisions are in Subtitle F.").

ing that state law is the proper guide to the critical determination whether his interest in his mother's estate constituted "property" or "rights to property" under Sec. 6321. His position draws support from two recent appellate opinions: *Leggett* v. *United States*, 120 F.3d 592, 597 (CA5 1997) ("Section 6321 adopts the state's definition of property interest."); and *Mapes* v. *United States*, 15 F.3d 138, 140 (CA9 1994) ("For the answer to th[e] question [whether taxpayer had the requisite interest in property], we must look to state law, not federal law."). Although our decisions in point have not been phrased so meticulously as to preclude Drye's argument,[4] we are satisfied that the Code and interpretive case law place under federal, not state, control the ultimate issue whether a taxpayer has a beneficial interest in any property subject to levy for unpaid federal taxes.

III

As restated in *National Bank of Commerce*: "The question whether a state law right constitutes 'property' or 'rights to property' is a matter of federal law." 472 U.S. at 727. We look initially to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as "property" or "rights to property" within the compass of the federal tax lien legislation. Cf. *Morgan* v. *Commissioner*, 309 U.S. 78, 80 (1940) ("State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed.").

In line with this division of competence, we held that a taxpayer's right under state law to withdraw the whole of the proceeds from a joint bank account constitutes "property" or the "righ[t] to property" subject to levy for unpaid federal taxes, although state law would not allow ordinary creditors similarly to deplete the account. *National Bank of Commerce*, 472 U.S. at 723-727. And we earlier held that a taxpayer's right under a life insurance policy to compel his insurer to pay him the cash surrender value qualifies as "property" or a "righ[t] to property" subject to attachment for unpaid federal taxes, although state law shielded the cash surrender value from creditors' liens. *Bess*, 357 U.S. at 5657.[5] By contrast, we also concluded, again as a matter of federal law, that no federal tax lien could attach to policy proceeds unavailable to the insured in his lifetime. *Id.* at 55-56 ("It would be anomalous to view as "property" subject to lien proceeds never within the insured's reach to enjoy.").[6]

Just as "exempt status under state law does not bind the federal collector," *Mitchell*, 403 U.S. at 204, so federal tax law "is not struck blind by a disclaimer," *United States* v. *Irvine*, 511 U.S. 224, 240 (1994). Thus, in Mitchell, the Court held that, although a wife's renunciation of a marital interest was treated as retroactive under state law, that state law disclaimer did not determine the wife's liability for federal tax on her share of the community income realized before the renunciation. See 403 U.S. at 204 (right to renounce does not indicate that taxpayer never had a right to property).

IV

The Eighth Circuit, with fidelity to the relevant Code provisions and our case law, determined first what rights state law accorded Drye in his mother's estate. It is beyond debate, the Court of Appeals observed, that, under Arkansas law, Drye had, at his mother's death, a valuable, transferable, legally protected right to the property at issue. See 152 F.3d at 895 (although Code does not define "property" or "rights to property," appellate courts read those terms to encompass "state law rights or interests that have pecuniary value and are transferable"). The court noted, for example, that a prospective heir may effectively assign his expectancy in an estate under Arkansas law, and the assignment will be enforced when the expectancy ripens into a present estate. See *id.* at 895-896 (citing several Arkansas Supreme Court decisions, including: *Clark* v. *Rutherford*, 227 Ark. 270, 270-271, 298 S.W. 2d 327, 330 (1957); *Bradley Lumber Co. of Ark.* v. *Burbridge*, 213 Ark. 165, 172, 210 S.W. 2d 284, 288 (1948); *Leggett* v. *Martin*, 203 Ark. 88, 94, 156 S.W. 2d 71, 74-75 (1941)).[7]{7}

Drye emphasizes his undoubted right under Arkansas law to disclaim the inheritance, see Ark.Code Ann. Sec. 28-2-101 (1987), a right that is indeed personal and not marketable. See Brief for Petitioners 13 (right to disclaim is not transferable and has no pecuniary value). But Arkansas law primarily gave Drye a right of considerable value–the right either to inherit or to channel the inheritance to a close family member (the next lineal descendant). That right simply cannot be written off as a mere "personal right . . . to accept or reject [a] gift." Brief for Petitioners 13.

In pressing the analogy to a rejected gift, Drye overlooks this crucial distinc-

[4] See, e.g., *United States* v. *National Bank of Commerce*, 472 U.S. 713, 722 (1985) ("[T]he federal statute 'creates no property rights, but merely attaches consequences, federally defined, to rights created under state law.'") (quoting *United States* v. *Bess*, 357 U.S. 51, 55 (1958)).

[5] 5. Accord, *Bank One Ohio Trust Co.* v. *United States*, 80 F. 3d 173, 176 (CA6 1996) ("Federal law did not create [the taxpayer's] equitable income interest [in a spendthrift trust], but federal law must be applied in determining whether the interest constitutes 'property' for purposes of Sec. 6321."); 21 *West Lancaster Corp.* v. *Main Line Restaurant, Inc.*, 790 F. 2d 354, 357358 (CA3 1986) (although a liquor license did not constitute "property" and could not be reached by creditors under state law, it was nevertheless "property" subject to federal tax lien); W. Plumb, Federal Tax Liens 27 (3d ed. 1972) ("[I]t is not material that the economic benefit to which the [taxpayer's local law property] right pertains is not characterized as 'property' by local law.").

[6]Compatibly, in *Aquilino* v. *United States*, 363 U.S. 509 (1960), we held that courts should look first to state law to determine "'the nature of the legal interest'" a taxpayer has in the property the Government seeks to reach under its tax lien. *Id.* at 513 (quoting *Morgan* v. *Commissioner*, 309 U.S. 78, 82 (1940)). We then reaffirmed that federal law determines whether the taxpayer's interests are sufficient to constitute "property" or "rights to property" subject to the Government's lien. *Id.* at 513-514. We remanded in *Aquilino* for a determination whether the contractor-taxpayer held any beneficial interest, as opposed to "bare legal title," in the funds at issue. Id. at 515-516; see also Note, Property Subject to the Federal Tax Lien, 77 Harv. L. Rev. 1485, 1491 (1964) ("*Aquilino* supports the view that the Court has chosen to apply a federal test of classification, for the contractor concededly had legal title to the funds and yet in remanding the Court indicated that this statecreated incident of ownership was not a sufficient 'right to property' in the contract proceeds to allow the tax lien to attach. In this sense *Aquilino* follows *Bess* in requiring that the taxpayer must have a beneficial interest in any property subject to the lien." (footnote omitted)).

[7]In recognizing that state law rights that have pecuniary value and are transferable fall within Sec. 6321, we do not mean to suggest that transferability is essential to the existence of "property" or "rights to property" under that section. For example, although we do not here decide the matter, we note that an interest in a spendthrift trust has been held to constitute "'property' for purposes of Sec. 6321" even though the beneficiary may not transfer that interest to third parties. See *Bank One*, 80 F. 3d at 176. Nor do we mean to suggest that an expectancy that has pecuniary value and is transferable under state law would fall within Sec. 6321 prior to the time it ripens into a present estate.

tion. A donee who declines an *inter vivos* gift generally restores the status quo *ante*, leaving the donor to do with the gift what she will. The disclaiming heir or devisee, in contrast, does not restore the status quo, for the decedent cannot be revived. Thus, the heir inevitably exercises dominion over the property. He determines who will receive the property – himself if he does not disclaim, a known other if he does. See Hirsch, The Problem of the Insolvent Heir, 74 Cornell L. Rev. 587, 607-608 (1989). This power to channel the estate's assets warrants the conclusion that Drye held "property" or a "righ[t] to property" subject to the Government's liens.

* * * *

In sum, in determining whether a federal taxpayer's state law rights constitute "property" or "rights to property," "[t]he important consideration is the breadth of the control the [taxpayer] could exercise over the property." *Morgan,* 309 U.S. at 83. Drye had the unqualified right to receive the entire value of his mother's estate (less administrative expenses), see *National Bank of Commerce*, 472 U.S. at 725 (confirming that unqualified "right to receive property is itself a property right" subject to the tax collector's levy), or to channel that value to his daughter. The control rein he held under state law, we hold, rendered the inheritance "property" or "rights to property" belonging to him within the meaning of Sec. 6321, and hence subject to the federal tax liens that sparked this controversy.

For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is

Affirmed.

Section 6513 — Time Return Filed and Tax Considered Paid

Ct. D. 2066

SUPREME COURT OF THE UNITED STATES

No. 98-1667

DAVID H. BARAL, PETITIONER v. UNITED STATES

528 U.S. ___(2000)

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[February 22, 2000]

Syllabus

Two remittances were made to the Internal Revenue Service toward petitioner Baral's income tax liability for the 1988 tax year: a withholding of $4,104 from Baral's wages throughout 1988 by his employer, and an estimated income tax of $1,100 remitted in January 1989 by Baral. Baral's income tax return for 1988 was due on April 15, 1989. Though he received an extension until August 15, he missed this deadline and did not file the return until June 1, 1993. On the return, he claimed a $1,175 overpayment and asked the Service to apply this excess as a credit toward his outstanding tax obligations for the 1989 tax year. The Service denied the requested credit, concluding that the claim exceeded the ceiling imposed by 26 U.S.C. Sec. 6511(b)(2)(A), which states that the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. Since Baral filed his return on June 1, 1993, and received a 4-month extension from the initial due date, the relevant look-back period under Sec. 6511(b)(2)(A) extended from June 1, 1993, back to February 1, 1990 (i.e., three years plus four months). According to the Service, Baral had paid no portion of the overpaid tax during that period, and so faced a ceiling of zero on any allowable refund or credit. Baral commenced this suit for refund in the Federal District Court, which granted the Service summary judgment. The Court of Appeals affirmed, concluding that both remittances were "paid" on April 15, 1989.

Held: Remittances of estimated income tax and withholding tax are "paid" on the due date of a calendar year taxpayer's income tax return. Sections 6513(b)(1) and (2) unequivocally provide that the two remittances were "paid" on April 15, 1989, for purposes of Sec. 6511(b)(2)(A), so that they precede the look-back period, which began on February 1, 1990. Subsection (1) resolves when the remittance of Baral's employer's withholding tax was "paid," and subsection (2) determines when his remittance of estimated income tax was "paid." Because neither these remittances nor any others were "paid" within the look-back period, the ceiling on Baral's requested $1,175 credit is zero, and the Service was correct to deny that credit. Contrary to Baral's claim, the withholding tax and estimated tax are not taxes in their own right (separate from the income tax), that are converted into income tax only on the income tax return. Rather, they are methods for collecting income taxes. And the Tax Code directly contradicts Baral's notion that income tax is "paid" under Sec. 6511(b)(2)(A) only when the income tax is assessed. See Sec. 6151(a). His position also finds no support in *Rosenman* v. *United States*, 323 U.S. 658, and would work to the detriment of timely taxpayers, who would be denied interest for the time between filing a return claiming a refund or credit and the Service's assessment. Pp. 3-9.

172 F. 3d 918 affirmed.

THOMAS, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 98-1667

DAVID H. BARAL, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[February 22, 2000]

JUSTICE THOMAS delivered the opinion of the Court.

Internal Revenue Code Sec. 6511(b)(2)(A) imposes a ceiling on the amount of credit or refund to which a taxpayer is entitled as compensation for an overpayment of tax: "[T]he amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." 26 U.S.C. Sec. 6511(b)(2)(A). We are called upon in this case to decide

when two types of remittance are "paid" for purposes of this section: a remittance by a taxpayer of estimated income tax, and a remittance by a taxpayer's employer of withholding tax. The plain language of a nearby Code section, Sec. 6513(b), provides the answer: these remittances are "paid" on the due date of the taxpayer's income tax return.

I

The relevant facts are not disputed. Two remittances were made to the Internal Revenue Service toward petitioner David H. Baral's income tax liability for the 1988 tax year. The first, a withholding of $4,104 from Baral's wages throughout 1988, was a garden-variety collection of income tax by the employer, see Sec. 3402. The second, an estimated income tax of $1,100 remitted in January 1989, was sent by Baral himself out of concern that his employer's withholding might be inadequate to meet his tax obligation for the year, see Sec. 6654. In the ordinary course, Baral's income tax return for 1988 was due to be filed on April 15, 1989. Though he applied for and received an extension of time until August 15, Baral missed this deadline; he did not file the return until nearly four years later, on June 1, 1993. The Service, on July 19, 1993, assessed the tax liability reported on this belated return.

On the return, Baral claimed that he (and his employer on his behalf) had remitted $1,175 more with respect to the 1988 taxable year than he actually owed. Baral requested that the Service apply this excess as a credit toward his outstanding tax obligations for the 1989 taxable year. The Service denied the requested credit. It did not dispute that Baral had timely filed the request under the relevant filing deadline — "within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later." Sec. 6511(a); see Sec. 6511(b)(1). But the Service concluded that the claim exceeded the ceiling imposed by Sec. 6511(b)(2)(A). That provision states that "the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return." *Ibid.*; see generally *Commissioner* v. *Lundy*, 516 U.S. 235, 240 (1996) (explaining that Sec. 6511 contains two separate timeliness provisions: (1) Sec. 6511(b)(1)'s filing deadline and (2) Sec. 6511(b)(2)'s ceilings, which are defined by reference to that provision's "look-back period[s]"). Since Baral had filed his return on June 1, 1993, and had earlier received a 4-month extension from the initial due date, the relevant look-back period under Sec. 6511(b)(2)(A) extended from June 1, 1993, back to February 1, 1990 (i.e., three years plus four months). According to the Service, Baral had paid no portion of the overpaid tax during that period, and so faced a ceiling of zero on any allowable refund or credit.

Baral then commenced the instant suit for refund in Federal District Court. That court sustained the Service's position and granted summary judgment in its favor. The Court of Appeals affirmed. App. to Pet. for Cert. A-1, judgt. order reported at 172 F. 3d 918 (CADC 1999). The Court of Appeals looked to Sec. 6513(b)(1), which states that amounts of tax withheld from wages "shall . . . be deemed to have been paid by [the taxpayer] on the 15th day of the fourth month following the close of his taxable year," and to Sec. 6513(b)(2), which makes similar provision for amounts submitted as estimated income tax, and concluded that, under these subsections, both of the remittances at issue were "paid" on April 15, 1989. Accord, *e.g., Dantzler* v. *United States*, 183 F. 3d 1247, 1250-1251 (CA11 1999) (estimated income tax); *Ertman* v. *United States*, 165 F. 3d 204, 207 (CA2 1999) (same); *Ehle* v. *United States*, 720 F. 2d 1096, 1096-1097 (CA9 1983) (withholding from wages). In view of apparent tension between this approach and a decision of the Court of Appeals for the Fifth Circuit, *Ford* v. *United States*, 618 F. 2d 357, 360-361, and n. 4 (1980) (suggesting that a remittance respecting any sort of tax is "paid" under Sec. 6511 only when the Service assesses the tax liability), we granted certiorari, 527 U.S. 1067 (1999).

II

The parties renew before us the contentions advanced below. The Government submits that Sec. 6513(b)(1) and (2) unequivocally provide that the two remittances at issue were "paid" on April 15, 1989 for purposes of Sec. 6511(b)(2)(A), so that they precede the look-back period, which, as noted, commenced on February 1, 1990. Baral, on the other hand, urges that a tax cannot be "paid" within the meaning of Sec. 6511(b)(2)(A) until the tax liability is assessed (*i.e.*, the value of the liability is definitively fixed). According to Baral, the requisite assessment might be made either when the taxpayer files his return (here June 1, 1993) or when the Service, under Sec. 6201, formally assesses the liability (here July 19, 1993), though he seems to prefer the latter date. See Brief for Petitioner 9 ("Payment of the income tax . . . occurred at the earliest on June 1, 1993, when the amount of that tax first became known, and more precisely on July 19, 1993, when the income tax was assessed").

We agree with the Government that Sec. 6513(b)(1) and (2) settle the matter. We set out these provisions in full:

> "(b) Prepaid Income Tax
> "For purposes of section 6511 or 6512 —
> "(1) Any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31.
> "(2) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return)."

Subsection (1) resolves when the remittance of withholding tax by Baral's employer was "paid": Since Baral is a calendar year taxpayer, the $4,104 withheld from his wages during the 1988 calendar year was "paid" on April 15, 1989. Subsection (2) determines when Baral's remittance of estimated income tax was "paid": Since the referenced Sec. 6012 together with Sec. 6072(a) require that a calendar year taxpayer like Baral file his income tax return on the April 15th following the close of the calendar year, the $1,100 remitted as an estimated income tax in respect of Baral's 1988 tax liability

was likewise "paid" on April 15, 1989. And both of these statutorily defined payment dates apply "[f]or purposes of section 6511," the provision directly at issue in this case. This means that, under Sec. 6511(b)(2)(A), both remittances at issue (the withholding and the estimated income tax) fall before, and hence outside, the look-back period, which commenced on February 1, 1990. Because neither these remittances nor any others were "paid" within the look-back period (February 1, 1990, to June 1, 1993), the ceiling on Baral's requested credit of $1,175 is zero, and the Service was correct to deny the requested credit.

Baral disputes this reading of Sec. 6513(b). He claims that Secs. 6513(b)(1) and (2) establish a "deemed paid" date for payment of *estimated tax* and *withholding tax*, but in no sense prescribe when the *income* tax is "paid," which is the crucial inquiry under Sec. 6511(b)(2)(A). According to Baral, withholding tax and estimated tax are taxes in their own right (separate from the income tax), and are converted into income tax only on the income tax return. (On this view, payment of the income tax occurred no earlier than June 1, 1993, when Baral filed the return.) This reading is evident, he says, from the significance that the Treasury Regulations place on the filing of the return, see 26 CFR Sec. 301.6315-1 (1999) ("The aggregate amount of the payments of estimated tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return"); Sec. 301.6402-3(a)(1) (providing that "in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return"), and from the fact that the Code's provisions regarding withholding and estimated tax are found in different subtitles (C and F, respectively) from the provisions governing income tax (A).

We disagree. Withholding and estimated tax remittances are not taxes in their own right, but methods for collecting the income tax. Thus, Sec. 31(a)(1) of the Code provides that amounts withheld from wages "shall be allowed to the recipient of the income as a credit against the [income] tax," and Sec. 6315 states that "[p]ayment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year." Similarly, one of the regulations cited by Baral explains that a remittance of estimated income tax "shall be considered payment *on account of the income tax* for the taxable year for which the estimate is made." 26 CFR Sec. 301.6315-1 (1999) (emphasis added). Baral's reading fails, moreover, to give any meaning to 26 U.S.C. Sec. 6513. That section exists "[f]or purposes of section 6511," and Sec. 6511 concerns credits and refunds, which result only when the aggregate of remittances (such as withholding tax and estimated income tax) *exceed* the tax liability, see Sec. 6401. Thus, the concepts of credit or refund have no meaning as applied to Baral's notion of withholding taxes and estimated taxes as freestanding taxes. Not surprisingly, the caption to Sec. 6513(b) describes withholding and estimated income tax remittances as "[p]repaid income tax."

Taking a more metaphysical tack, Baral contends that income tax is "paid" under Sec. 6511(b)(2)(A) only when the income tax is assessed — here, June 1 or July 19, 1993, see *supra* at 4– because the concept of payment makes sense only when the liability is "defined, known, and fixed by assessment," Brief for Petitioner 9. But the Code directly contradicts the notion that payment may not occur before assessment. See Sec. 6151(a) ("[T]he person required to make [a return of tax] shall, *without assessment* or notice and demand from the Secretary, *pay* such tax . . . at the time and place fixed for filing the return" (emphasis added)); Sec. 6213(b)(4) ("Any amount *paid* as a tax or in respect of a tax *may be assessed upon the receipt of such payment"* (emphasis added)). Nor does Baral's argument find support in our decision in *Rosenman* v. *United States*, 323 U.S. 658 (1945), where we applied Sec. 6511's predecessor to a remittance of estimated estate tax. To be sure, a part of our opinion seems to endorse petitioner's view that payment only occurs at assessment:

> "It is [the] erroneous assessment that gave rise to a claim for refund. Not until then was there such a claim as could start the time running for presenting the claim. In any responsible sense payment was then made by the application of the balance credited to the petitioners in the suspense account . . .." *Id*., at 661.

But the remittance in *Rosenman*, unlike the ones here, was not governed by a "deemed paid" provision akin to Sec. 6513, and we therefore had no occasion to consider the implications of such a provision for determining when a tax is "paid" under the predecessor to Sec. 6511. See *ibid*. (noting that "no extraneous relevant aids to construction have been called to our attention"). Moreover, if the quoted passage had represented our holding, we would have broadly rejected the Government's argument that payment occurred when the remittance of estimated estate tax was made, instead of rejecting the argument, as we did, only because it was not in accord with the "tenor" of the "business transaction," *id.* at 663.[1]

We observe, finally, that Baral's position — to the extent he submits that payment occurs only at the Service's assessment — would work to the detriment of taxpayers who timely file their returns and claim a refund or credit as compensation for an overpayment. The Service will not always assess the taxpayer's liability immediately upon receiving the return; the Service generally has three years in which to do so, see 26 U.S.C. Sec. 6501(a) (1994 ed., Supp. III). The Code does allow for payment of interest to the taxpayer on overpayments once the return has been filed and the tax paid, 26 U.S.C. Sec. 6611 (1994 ed. and Supp. III), but, under Baral's view, no interest could accrue during the time between the filing of the return and the Service's assessment. Fortunately for the timely taxpayer, the Code definitively rejects Baral's position in this setting. Section 6611(d) of 26 U.S.C. explains that the date of payment

[1] Central to our analysis in this regard was a concern that the Service should not be able to treat the same remittance as a *payment* for statute of limitations purposes—disadvantaging the taxpayer by decreasing the time in which a refund claim could be filed—and as a deposit for purposes of accrual of interest on overpayments—disadvantaging the taxpayer by starting the accrual of interest only at assessment. *Rosenman*, 323 U.S. at 662-663. Indeed, we suggested that an amendment to the Code disapproving of the Service's treatment of remittances as deposits for interest purposes might change the analysis. *Id.* at 663 (citing Current Tax Payment Act of 1943, Sec. 4(d), 57 Stat. 140) (presently codified at 26 U.S.C. Sec. 6401(c)).

is determined according to the provisions of Sec. 6513, which, as noted, *supra* at 5, plainly set a deemed date of payment for remittances of withholding and estimated income tax on the April 15 following the relevant taxable year.[2]

* * * *

For the foregoing reasons, we affirm the judgment below.

It is so ordered.

[2] We need not address the proper treatment under Sec. 6511 of remittances that, unlike withholding and estimated income tax, are not governed by a "deemed paid" provision akin to Sec. 6513(b). Such remittances might include remittances of estimated estate tax, as in *Rosenman*, or remittances of any sort of tax by a taxpayer under audit in order to stop the running of interest and penalties, see, *e.g., Moran* v. *United States*, 63 F. 3d 663 (CA7 1995). In the latter situation, the taxpayer will often desire treatment of the remittance as a deposit — even if this means forfeiting the right to interest on an overpayment-in order to preserve jurisdiction in the Tax Court, which depends on the existence of a deficiency, 26 U.S.C. Sec. 6213 (1994 ed. and Supp. III), a deficiency that would be wiped out by treatment of the remittance as a payment. We note that the Service has promulgated procedures to govern classification of a remittance as a deposit or payment in this context. See Rev. Proc. 84–58, 1984–2 Cum. Bull. 501.

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Tax Treatment of Cafeteria Plans

REG–117162–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; amendment to notice of proposed rulemaking; and notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** on March 7, 1989 and amends proposed regulations under section 125. These proposed regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The proposed regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage, group-term life insurance coverage, dependent care assistance, and adoption assistance.

DATES: Written and electronic comments and requests for a public hearing must be received by June 22, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer or Christine L. Keller at (202) 622–6080; concerning submissions or to request a public hearing, LaNita Van Dyke at (202) 622-7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 125 [1] permits an employer to offer employees the choice between taxable income and certain nontaxable or "qualified benefits"[2] through a cafeteria plan, without the employees having to recognize the taxable income. In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[3] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[4] Specifically, §§1.125–1, Q&A–8 and 1.125–2, Q&A-6(b), (c) and (d) permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[5] The 1997 regulations are being published as final regulations in T.D. 8878, page 857.

Explanation of Provisions

A. *Summary.*

The proposed regulations being published in this notice of proposed rulemaking were developed as part of an integrated package with the final regulations that are being published at the same time. These proposed regulations supplement the final regulations by permitting a mid-year cafeteria plan election change in connection with dependent care assistance and adoption assistance under change in status standards that are the same as the standards in the final regulations for accident or health plans and for group-term life insurance, and by adding change in status standards that are specific to dependent care and adoption assistance. These proposed regulations also refine and expand upon the approach adopted in the 1989 proposed regulations (at §1.125–2, Q&A-6(b)) by providing that a cafeteria plan may permit employees to make mid-year election changes with respect to group-term life insurance, dependent care assistance, and adoption assistance as well as accident or health coverage, on account of changes in cost or coverage. This expansion of the cost or coverage rules would also allow employees to make election changes if, during a period of coverage, (1) a new benefit package option is offered, or a benefit package option is eliminated, under the plan or (2) a

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[1] Revenue Act of 1978, Public Law 95-600 (November 6, 1978): Sen. Rep. 95-1263, 95th Cong., 2d Sess., 74–78, 186–187 (October 1, 1978); H.R. Rep. No. 95–1445, 95th Cong., 2d Sess., 63–66 (August 4, 1978); H.R. Rep. No. 95–250, 96th Cong., 2d Sess., 206–207, 253–254 (October 15, 1978).

[2] "Qualified benefits" are generally any benefits excluded from income, including coverage under an employer-provided accident or health plan under sections 105 and 106; group-term life insurance under section 79; elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k); dependent care assistance under section 129; and adoption assistance under section 137. The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132. Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

[3] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[4] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), an FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

[5] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS Announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of these temporary regulations (§1.125–4T) and proposed regulations (§1.125–4) so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

coverage change is made under a plan of the employer of an employee's spouse or dependent. These proposed regulations include a variety of examples illustrating how the rules apply in specific situations.

B. *Change in Status.*

The proposed regulations published in this notice of proposed rulemaking complement the final regulations being published in T.D. 8878, page 857, with respect to special enrollment rights and changes in status for accident or health coverage and group-term life insurance coverage. These proposed regulations take into account comments received on the 1997 temporary and proposed regulations, including comments suggesting the desirability of uniformity in the rules for different types of qualified benefits to the extent appropriate given the nature of the benefits.

In response to comments, the new proposed regulations address circumstances under which a cafeteria plan may permit an employee to change an election for dependent care assistance under section 129 and adoption assistance under section 137 during a plan year. The proposed change in status rules for dependent care assistance and adoption assistance parallel the change in status rules for accident or health coverage and group-term life insurance coverage contained in the final regulations, with some additional rules specific to dependent care and adoption assistance. For example, while a change in the number of dependents is a status change for other types of qualified benefits, a change in the number of qualifying individuals, as defined in section 21(b)(1), is a change in status for purposes of dependent care assistance. Likewise, these proposed regulations allow an additional change in status event for adoption assistance (the commencement or termination of an adoption proceeding). The consistency rule in the proposed regulations is the same as the consistency rule in the final regulations, with certain provisions that are specific to dependent care and adoption assistance changes.[6]

[6] Conforming changes have also been made to Q&A-8 of the 1984 proposed regulations under §1.125-1.

C. *Change in Cost or Coverage.*

The new proposed regulations also address election changes to reflect significant cost and coverage changes for all types of qualified benefits provided under a cafeteria plan. The new proposed regulations refine and expand upon the approach taken in the 1989 proposed regulations at §1.125–2, Q&A-6 with respect to changes in cost or coverage under the plan. For example, in response to comments, the new proposed regulations provide that if a plan adds a new benefit package option (such as a new HMO option), the cafeteria plan may permit affected participants to elect that option and make a corresponding election change with respect to other benefit package options during a period of coverage.

The new proposed regulations also generally extend the cost or coverage rules under §1.125–2, Q&A-6(b) to permit election changes for self-insured accident or health plans, group-term life insurance, dependent care assistance and adoption assistance coverage under a cafeteria plan. Thus, for example, if the cost of a self-insured accident or health plan increases, a plan may automatically make a corresponding change in the salary reduction charge. In addition, the new proposed regulations treat a change of dependent care provider as similar to the addition of a new HMO option under an accident or health plan, with the result that a corresponding election change can be made when one dependent care provider is replaced by another. While the coverage change rules apply to dependent care regardless of whether the dependent care provider is related to the employee, the cost change rules do not apply to dependent care if the dependent care provider is a relative of the employee making the election.

Commentators on the 1997 temporary and proposed regulations also raised a concern that when the plan of the employer of a spouse conducts annual open enrollment for group health benefits beginning at a different time of the year than the annual open enrollment for group health benefits offered by the employee's employer, the employee is unnecessarily restricted from making election changes that correspond with elections made by the employee's spouse. These commentators suggested that if one spouse makes an election change during an open enrollment period, a corresponding change should be permitted for the other spouse. In response to these comments, the new proposed regulations provide that a cafeteria plan may permit an employee to make an election change, during a period of coverage, corresponding with an open enrollment period change made by a spouse or dependent when the plan of that individual's employer has a different period of coverage.

In addition, the new proposed regulations provide that a cafeteria plan may permit an employee to make an election change in the event that a spouse or dependent makes an election change under a cafeteria plan (or qualified benefits plan) maintained by that individual's employer, provided that the spouse or dependent's election change satisfies the election change rules under the proposed regulation. For example, under this provision, if the plan of a spouse's employer adds a new HMO option to its group health plan, and the spouse elects to enroll the family in that new option, a cafeteria plan may permit the employee to drop family coverage. These new rules apply only if the change made by the employee is on account of and corresponds with the change made under the other employer's plan. This expansion of the existing cost or coverage change rules permits employees to make election changes to ensure consistent coverage of family members and eliminate duplicate coverage.

The cost or coverage rules in the new proposed regulations have not been extended to health flexible spending arrangements. This ensures that those arrangements will not permit election changes in a manner that is inconsistent with the requirement, under §§1.125–1, Q&A-17 and 1.125–2, Q&A-7 of the existing proposed regulations, that such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance.

Although the final regulations (T.D. 8878, page 857) permit election changes in the event an individual becomes eligible (or loses eligibility) for Medicare or Medicaid, these proposed regulations do not address election changes to reflect an individual's eligibility for other govern-

ment programs that pay for or subsidize health coverage.[7] For example, the new rules do not address the possibility that an employee's child may cease to be eligible for coverage under a state's children's health insurance program (CHIP) designed in accordance with Title XXI of the Social Security Act.[8] Comments are requested on whether eligibility or ineligibility for such a government program should be added to the types of events that allow a cafeteria plan election change (including any special administrative difficulties that employers might have in identifying this type of event) and, if so, the types of government programs that should be permitted to be taken into account.

D. *Effective Date and Reliance*.

The new proposed regulations do not specify a proposed effective date. Any effective date will be prospective, and comments are requested on the extent of lead time necessary for employers to be able to implement the new proposed regulations after they are adopted as final regulations.

Until the effective date of further guidance, taxpayers may rely on the new proposed regulations. In addition, until the effective date of further guidance, taxpayers may continue to rely on the change in family status rules in the existing proposed regulations (at §1.125–2, Q&A-6(c)) with respect to benefits other than accident and health coverage and group-term life insurance coverage, and on the cost or coverage change rules in the existing proposed regulations (at §1.125–2, Q&A-6(b)) with respect to all types of qualified benefits.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Janet A. Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, §1.125 Q&A-6(c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

Amendments to Previously Proposed Rules

The proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460), and amended on November 7, 1997 (62 FR 60196), are amended as set forth below.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In §1.125–1, as proposed to be added on May 7, 1984 (49 FR 19322), in Q&A-8, Q-8 is republished and A-8 is amended by adding two sentences at the end of the answer to read as follows:

§1.125–1 Questions and answers relating to cafeteria plans.

* * * * *

Q-8: What requirements apply to participants' elections under a cafeteria plan?

A-8: * * * For benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage under the rules set forth in §1.125–4 pertaining to permitted election changes. For additional rules governing benefit elections, see §1.125–4.

* * * * *

Par. 3. In §1.125–2, as proposed to be added on March 7, 1989 (54 FR 9500) and amended November 7, 1997 (62 FR 60197), in Q&A-6, Q-6 is republished and A-6 is amended by:

1. Adding a sentence at the end of paragraph (b)(2).
2. Revising the last sentence of paragraph (c).
3. Revising the last sentence of paragraph (d).

The additions and revisions read as follows:

§1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q-6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A-6: * * *

(b) * * *

(2) * * * For additional rules governing cafeteria plan election changes in connection with a significant cost or coverage change, see §1.125–4.

[7] The loss of coverage under a government program may give rise to a special enrollment right under section 9801(f) and, thus, the issue addressed here is relevant only in cases in which the special enrollment rules do not apply.

[8] Added to the Social Security Act by section 4901 of the Balanced Budget Act of 1997, Public Law 105-33 (August 5, 1997).

(c) *Certain changes in family status*. *** For additional rules governing cafeteria plan election changes in connection with certain changes in status, see §1.125–4.

(d) *Separation from service*. ***For additional rules governing cafeteria plan election changes in connection with an employee's separation from service, see §1.125–4.

* * * * *

Par. 4. §1.125–4 is amended as follows:

1. Paragraph (c) is amended as follows:

a. Revising paragraph (c)(1)(iii).

b. Adding paragraph (c)(2)(vi).

c. Revising paragraph (c)(3)(ii).

d. Adding paragraphs (c)(4)*Example 3*(iii) and (c)(4)*Example 9*.

2. Revising paragraph (f).

3. Revising paragraph (g).

4. Revising paragraph (i)(3).

The additions and revisions read as follows:

§1.125–4 Permitted election changes.

* * * * *

(c) * * * (1) * * *

(iii) *Application to other qualified benefits*. This paragraph (c) applies to plans providing qualified benefits other than those listed in paragraph (c)(1)(ii) of this section.

(2) * * *

(vi) *Adoption assistance*. For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) * * *

(ii) *Application to other qualified benefits*. An election change satisfies the requirements of this paragraph (c)(3) with respect to other qualified benefits if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. An election change also satisfies the requirements of this paragraph (c)(3) if the election change is on account of and corresponds with a change in status that affects expenses described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance, or expenses described in section 137 (including qualified adoption expenses as defined in section 137(d)) with respect to adoption assistance.

* * * * *

(4) * * *

Example 3. * * *

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F*'s employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *P*'s cafeteria plan.

* * * * *

Example 9. (i) Employee *A* has one child, *B*. Employee *A*'s employer, *X*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of "qualifying individual" under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects *A*'s employment-related expenses as defined in section 21(b)(2). Therefore, *A* may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

* * * * *

(f) *Significant cost or coverage changes* — (1) *In general*. Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes* — (i) *Automatic changes*. If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost increases*. If the cost of a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases during a period of coverage, the cafeteria plan may permit employees either to make a corresponding prospective increase in their payments, or to revoke their elections and, in lieu thereof, to receive on a prospective basis coverage under another benefit package option providing similar coverage. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under an HMO option.

(iii) *Application to dependent care*. This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes* — (i) *Significant curtailment*. If the coverage under a plan is significantly curtailed or ceases during a period of coverage, the cafeteria plan may permit affected employees to revoke their elections under the plan. In that case, each affected employee may make a new election on a prospective basis for coverage under another benefit package option providing similar coverage. Coverage under an accident or health plan is significantly curtailed only if there is an overall reduction in coverage provided to participants under the plan so as to constitute reduced coverage to participants generally.

(ii) *Addition (or elimination) of benefit package option providing similar coverage*. If during a period of coverage a plan adds a new benefit package option or other coverage option (or eliminates an existing benefit package option or other coverage option) the cafeteria plan may permit affected employees to elect the newly-added option (or elect another option if an option has been eliminated) prospectively on a pre-tax basis and make corresponding election changes with respect to other benefit package options providing similar coverage.

(4) *Change in coverage of spouse or dependent under other employer's plan*. A cafeteria plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse's, former spouse's or dependent's employer if - -

(i) A cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer permits participants to make an election change that

would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.

(5) *Examples*. The following examples illustrate the application of this paragraph (f):

Example 1. (i) A calendar year cafeteria plan is maintained pursuant to a collective bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit affected participants to make an election change to elect the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in copayments under the HMO option.

Example 2. (i) Employer *N* sponsors a group health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A*, is married to *B*. Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its group health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s group health plan.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001 if *B* actually elects no coverage under *O*'s group health plan for the plan year beginning on September 1, 2001.

Example 3. (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C*, elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D*, who is employed by Employer *Q*. *Q* does not maintain a cafeteria plan, but does maintain a group health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s group health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

Example 4. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply. While *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, R's cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

Example 5. (i) Employee *A* is married to Employee *B* and they have one child, *C*. Employee *A*'s employer, *M*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because A has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Thus, *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

Example 6. (i) Employee *D* is married to Employee *E* and they have one child, *F*. Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

Example 7. (i) Employee *G* is married to Employee *H* and they have one child, *J*. Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z*, *G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

(g) *Special requirements relating to the Family and Medical Leave Act*. [Reserved]

* * * * *

(i) * * *

(3) *Dependent*. A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section152(e) applies is treated as a dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

* * * * *

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on March 22, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 23, 2000, 65 F.R. 15587)

Substantiation of Business Expenses; Correction

Announcement 2000–26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This correction relates to final regulations (T.D. 8864, 2000–7 I.R.B. *614*), which were published in the **Federal Register** on Wednesday, January 26, 2000 (65 FR 4121), relating to certain business expenses under section 274 of the Internal Revenue Code affecting individuals and other taxpayers who claim or reimburse certain business expenses.

DATES: This correction is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon at (202) 622-4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8864) contain an omission in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations in TD 8864, which were the subject of FR Doc. 00–1382, is corrected as follows:

§1.274–5 [Corrected]

1. On page 4123, column 1, in §1.274–5(c), add paragraphs (c)(3) through (7) to read as follows:

§1.274–5 Substantiation requirements.

* * * * *

(c) * * *

(3) through (7) [Reserved]. For further guidance, see §1.274–5T(c)(3) through (7).

* * * * *

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 22, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 23, 2000, 65 F.R. 15547)

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit; Correction

Announcement 2000–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8859, 2000–5 I.R.B. 429), which were published in the **Federal Register** on Friday, January 14, 2000 (65 FR 2323), affecting owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Handleman at (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

Need for Correction

As published, the final regulations (TD 8859) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8859), which were the subject of FR Doc. 00–111, is corrected as follows:

§1.42–5 [Corrected]

1. On page 2327, column 2, §1.42–5(c)(1)(xi), line 14, the language "1537s" is corrected to read "1437f".

§1.42–6 [Corrected]

2. On page 2328, column 1, Instructional Par. 3, paragraph 1, in line 4, the language "Report"" is corrected to read "Report,"" and in line 6, the language "Report'" is corrected to read "Report,'".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16317)

Section 663(c); Separate Share Rules Applicable to Estates; Correction

Announcement 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8849, 2000–2 I.R.B. 245), which were published in the **Federal Register** on Tuesday, December 28, 1999 (64 FR 72540), relating to separate share rules applicable to estates under section 663(c) of the Internal Revenue Code.

DATES: This correction is effective December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Laura Howell at (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under 663(c) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8849) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8849), which were the subject of FR Doc. 99–32694, is corrected as follows:

1. On page 72542, in the preamble, 3rd column, under the heading "Effective Dates", line 4, the language "with respect to decedents who die after" is corrected to read "with respect to decedents who die on or after".

§1.663(c)–5 [Corrected]

2. On page 72544, column 3, §1.663(c)–5 *Example 4*(i), lines 6 and 7, the language, "the child in the amount needed to reduce the estate taxes to zero and a bequest of the" is corrected to read "the child of the largest amount that can pass free of Federal estate tax and a bequest of the".

§1.663(c)–6 [Corrected]

3. On page 72545, column 3, §1.663(c)–6, line 5, the language "decedents who die after December 28," is corrected to read "decedents who die on or after December 28,".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16317)

Travel and Tour Activities of Tax-Exempt Organizations; Correction

Announcement 2000–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8874, 2000–8 I.R.B. 644), which were published in the **Federal Register** on Monday, February 7, 2000 (65 FR 5771), clarifying when the travel and tour activities of tax-exempt organizations are substantially related to the purposes of which exemptions was granted.

DATES: This correction is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg at (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 513 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8874) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8874), which were the subject of FR Doc. 00–2154, is corrected as follows:

1. On page 5772, in the first column, under the caption "**Background**", in the last line of the first paragraph, the language, "circumstances test in four situations" is corrected to read "circumstances test".

§1.513–7 [Corrected]

2.On page 5774, third column, in §1.513–7(b) *Example7*, line 10, the language, "contribution to W of q dollars. Each year, W" is corrected to read "contribution to W of $q. Each year, W".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 24, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 27, 2000, 65 F.R. 16143)

Passive Foreign Investment Companies; Definition of Marketable Stock; Correction

Announcement 2000–30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 8867, 2000–7 I.R.B. 620), which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3817), relating to the new mark-to-market election for stock of a passive foreign investment company.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman at (202) 622-3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1296 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8867) contain an error in the title of the official signing the document.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8867), which were the subject of FR Doc. 00–1530, is corrected as follows:

1. On page 3820, third column, at the end of TD 8867, the title of the official signing the document, "Assistant Secretary of the Treasury." is corrected to read "Acting Assistant Secretary of the Treasury (Tax Policy)."

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 23, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 24, 2000, 65 F.R. 15862)

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Report-ing and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

Announcement 2000–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8856, 2000–3 I.R.B. 298), which were published in the **Federal Register** on Thursday, December 30, 1999 (64 FR 73408) relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd at (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8856) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8856), which were the subject of FR Doc. 99–33515, is corrected as follows:

§1.1441–1 [Corrected]

1. On page 73409, column 2, §1.1441–1(f)(2)(i), line 24, the language, "valid after December 31, 2001. The rule" is corrected to read "valid after December 31, 2000. The rule".

§1.1441–6 [Corrected]

2. On page 73410, column 2, §1.1441–6(g)(2), line 10, the language "Form 1001 or 8233 is valid on or after" is corrected to read "Form 1001 or 8233 that is valid on or after".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16319)

Passthrough of Items of an S Corporation to its Shareholders; Correction

Announcement 2000–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of a correction to final regulations.

SUMMARY: This document contains a correction to Announcement 2000–18 (2000–13 I.R.B. 846) relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders, and the treatment of distributions by an S corporation.

DATES: This correction is effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, Deane Burke, or David Shulman at (202) 622-3070, or Brenda Stewart at (202) 622-3120 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction to final regulations that are subject to this correction is under sections 1366, 1367, and 1368 of the Internal Revenue Code.

Need for Correction

As published, the correction to final regulations (TD 8852) contains a typographical error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction of the final regulations (TD 8852), which was the subject of FR Doc. 00–5244, is corrected as follows:

§1.1367–1 [Corrected]

1. On page 12471, third column, the penultimate line of the correction for §1.1367–1, the reference "§1.1377(b)(1)" is corrected to read "§1.1377–1(b)(1)".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16318)

Recharacterizing Financing Arrangements Involving Fast-Pay Stock; Correction

Announcement 2000–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8853, 2000–4 I.R.B. 377) published in the Federal Register on January 10, 2000 (65 FR 1310), that recharacterize, for tax purposes, financing arrangements involving fast-pay stock.

DATES: This correction is effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan Zelnik, (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 7701(l) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8853) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8853), which were the subject of FR Doc. 00–114, is corrected as follows:

§1.7701(l)–3 [Corrected]

1. On page 1316, in §1.7701(l)–3(g)(2)(iii) *Example 1*, paragraph (ii)(C)(*2*), in the third column of the table, the heading "Amortizable premium" is corrected to read "Accrued discount".

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16316)

General Rules for Making and Maintaining Qualified Electing Fund Elections; Correction

Announcement 2000–34

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8870, 2000–8 I.R.B. 647), which were published in the **Federal Register** on Monday, February 7, 2000 (65 FR 5777), relating to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 to treat the PFIC as a qualified electing fund, and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis.

DATES: This correction is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Margaret A. Fung, (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1291, 1293, 1295 and 1298 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8870) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8870), which were the subject of FR Doc.00–1892, is corrected as follows:

PART 1—[Corrected]

1. On page 5779, beginning in column 1, instructional Paragraph 1. and the authority citation are corrected to read as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.1291–1T, 1.1293–1T, 1.1295–1T, and 1.1295–3T, and by adding entries in numerical order to read in part as follows:"

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

Sec. 1.1291–1 also issued under 26 U.S.C. 1291. * * *

Sec. 1.1293–1 also issued under 26 U.S.C. 1293. * * *

Sec. 1.1295–1 also issued under 26 U.S.C. 1295.

Sec. 1.1295–3 also issued under 26 U.S.C. 1295. * * *

§1.1293–0 [Corrected]

2. On page 5779, column 2, a new instructional paragraph 2a. is added to read as follows:

Par. 2a. Section 1.1293–0 is amended by:

1. Removing the reference "1.1293–1T" in the introductory text of the section and adding "1.1293–1" in its place.

2. Removing the "T" and the parenthetical "(temporary)" from the entry for §1.1293–1T.

§1.1295–0 [Corrected]

3. On page 5779, column 2, instruction 5 of instructional Par. 4. is corrected by removing the reference "1.195–3", and adding "1.1295–3" in its place.

Dale D. Goode,
Federal Register Liaison,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on March 27, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 28, 2000, 65 F.R. 16319)

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 law 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 the 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 Contribution 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.—Statements of Procedral 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.

Numerical Finding List[1]

Bulletins 2000–1 through 2000–14

Announcements:

2000–1, 2000–2 I.R.B. *294*
2000–2, 2000–2 I.R.B. *295*
2000–3, 2000–2 I.R.B. *296*
2000–4, 2000–3 I.R.B. *317*
2000–5, 2000–4 I.R.B. *427*
2000–6, 2000–4 I.R.B. *428*
2000–7, 2000–6 I.R.B. *586*
2000–8, 2000–6 I.R.B. *586*
2000–9, 2000–9 I.R.B. *733*
2000–10, 2000–9 I.R.B. *733*
2000–11, 2000–10 I.R.B. *739*
2000–12, 2000–12 I.R.B. *835*
2000–13, 2000–11 I.R.B. *771*
2000–14, 2000–11 I.R.B. *772*
2000–15, 2000–12 I.R.B. *837*
2000–16, 2000–12 I.R.B. *837*
2000–17, 2000–13 I.R.B. *846*
2000–18, 2000–13 I.R.B. *846*
2000–24, 2000–14 I.R.B. *855*
2000–25, 2000–14 I.R.B. *855*

Notices:

2000–1, 2000–2 I.R.B. *288*
2000–2, 2000–9 I.R.B. *727*
2000–3, 2000–4 I.R.B. *413*
2000–4, 2000–3 I.R.B. *313*
2000–5, 2000–3 I.R.B. *314*
2000–6, 2000–3 I.R.B. *315*
2000–7, 2000–4 I.R.B. *419*
2000–8, 2000–4 I.R.B. *420*
2000–9, 2000–5 I.R.B. *449*
2000–10, 2000–5 I.R.B. *451*
2000–11, 2000–6 I.R.B. *572*
2000–12, 2000–9 I.R.B. *727*
2000–13, 2000–9 I.R.B. *732*
2000–14, 2000–10 I.R.B. *737*
2000–15, 2000–12 I.R.B. *826*
2000–16, 2000–12 I.R.B. *826*
2000–17, 2000–12 I.R.B. *827*
2000–18, 2000–13 I.R.B. *845*
2000–19, 2000–13 I.R.B. *845*
2000–20, 2000–14 I.R.B. *851*

Proposed Regulations:

REG–208280–86, 2000–8 I.R.B. *654*
REG–209135–88, 2000–8 I.R.B. *681*
REG–208254–90, 2000–6 I.R.B. *577*
REG–209601–92, 2000–12 I.R.B. *829*
REG–100276–97, 2000–8 I.R.B. *682*
REG–101492–98, 2000–3 I.R.B. *326*
REG–106012–98, 2000–2 I.R.B. *290*
REG–110311–98, 2000–11 I.R.B. *767*
REG–103831–99, 2000–5 I.R.B. *452*
REG–103882–99, 2000–8 I.R.B. *706*
REG–105089–99, 2000–6 I.R.B. *580*
REG–105279–99, 2000–8 I.R.B. *707*
REG–105606–99, 2000–4 I.R.B. *421*
REG–111119–99, 2000–5 I.R.B. *455*
REG–113572–99, 2000–7 I.R.B. *624*
REG–116048–99, 2000–6 I.R.B. *584*
REG–116567–99, 2000–5 I.R.B. *463*

Proposed Regulations—continued:

REG–116704–99, 2000–3 I.R.B. *325*
REG–100163–00, 2000–7 I.R.B. *633*
REG–103735–00, 2000–11 I.R.B. *770*
REG–103736–00, 2000–11 I.R.B. *768*

Railroad Retirement Quarterly Rate:

2000–9 I.R.B. *721*

Revenue Procedures:

2000–1, 2000–1 I.R.B. *4*
2000–2, 2000–1 I.R.B. *73*
2000–3, 2000–1 I.R.B. *103*
2000–4, 2000–1 I.R.B. *115*
2000–5, 2000–1 I.R.B. *158*
2000–6, 2000–1 I.R.B. *187*
2000–7, 2000–1 I.R.B. *227*
2000–8, 2000–1 I.R.B. *230*
2000–9, 2000–2 I.R.B. *280*
2000–10, 2000–2 I.R.B. *287*
2000–11, 2000–3 I.R.B. *309*
2000–12, 2000–4 I.R.B. *387*
2000–13, 2000–6 I.R.B. *515*
2000–15, 2000–5 I.R.B. *447*
2000–16, 2000–6 I.R.B. *518*
2000–17, 2000–11 I.R.B. *766*
2000–18, 2000–9 I.R.B. *722*
2000–19, 2000–12 I.R.B. *785*
2000–20, 2000–6 I.R.B. *553*

Revenue Rulings:

2000–1, 2000–2 I.R.B. *250*
2000–2, 2000–3 I.R.B. *305*
2000–3, 2000–3 I.R.B. *297*
2000–4, 2000–4 I.R.B. *331*
2000–5, 2000–5 I.R.B. *436*
2000–6, 2000–6 I.R.B. *512*
2000–7, 2000–9 I.R.B. *712*
2000–8, 2000–7 I.R.B. *617*
2000–9, 2000–6 I.R.B. *497*
2000–10, 2000–8 I.R.B. *643*
2000–11, 2000–10 I.R.B. *734*
2000–12, 2000–11 I.R.B. *744*
2000–13, 2000–12 I.R.B. *774*
2000–14, 2000–12 I.R.B. *779*
2000–15, 2000–12 I.R.B. *774*
2000–16, 2000–12 I.R.B. *780*
2000–17, 2000–13 I.R.B. *842*
2000–18, 2000–14 I.R.B. *847*
2000–19, 2000–14 I.R.B. *849*

Treasury Decisions:

8849, 2000–2 I.R.B. *245*
8850, 2000–2 I.R.B. *265*
8851, 2000–2 I.R.B. *275*
8852, 2000–2 I.R.B. *253*
8853, 2000–4 I.R.B. *377*
8854, 2000–3 I.R.B. *306*
8855, 2000–4 I.R.B. *374*
8856, 2000–3 I.R.B. *298*
8857, 2000–4 I.R.B. *365*
8858, 2000–4 I.R.B. *332*
8859, 2000–5 I.R.B. *429*
8860, 2000–5 I.R.B. *437*
8861, 2000–5 I.R.B. *441*
8862, 2000–6 I.R.B. *466*

Treasury Decisions—continued:

8863, 2000–6 I.R.B. *488*
8864, 2000–7 I.R.B. *614*
8865, 2000–7 I.R.B. *589*
8866, 2000–6 I.R.B. *495*
8867, 2000–7 I.R.B. *620*
8868, 2000–6 I.R.B. *491*
8869, 2000–6 I.R.B. *498*
8870, 2000–8 I.R.B. *647*
8871, 2000–8 I.R.B. *641*
8872, 2000–8 I.R.B. *639*
8873, 2000–9 I.R.B. *713*
8874, 2000–8 I.R.B. *644*
8875, 2000–11 I.R.B. *761*
8876, 2000–11 I.R.B. *753*
8877, 2000–11 I.R.B. *747*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1999–27 through 1999–52 is in Internal Revenue Bulletin 2000–1, dated January 3, 2000.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2000–1 through 2000–14

Announcements:

99–50
Modified by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

Notices:

88–125
Obsoleted by
T.D. 8870, 2000–8 I.R.B. *647*

92–48
Obsoleted by
Notice 2000–11, 2000–6 I.R.B. *572*

97–19
Modified by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

98–22
Obsoleted by
T.D. 8870, 2000–8 I.R.B. *647*

98–52
Modified by
Notice 2000–3, 2000–4 I.R.B. *413*

98–61
Modified and superseded by
Rev. Proc. 2000–15, 2000–5 I.R.B. *447*

99–8
Obsoleted by
Rev. Proc. 2000–12, 2000–4 I.R.B. *387*

2000–4
Corrected by
Announcement 2000–9, 2000–9 I.R.B. *733*

Proposed Regulations:

REG–101492–98
Corrected by
Announcement 2000–16, 2000–12 I.R.B. *837*

Revenue Procedures:

80–18
Modified by
Rev. Proc. 2000–13, 2000–6 I.R.B. *515*

89–9
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

89–13
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

90–21
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

91–66
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

92–13
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

Revenue Procedures—Continued:

92–13A
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

92–41
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

93–9
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

93–10
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

94–12
Modified, amplified, and superseded by
Rev. Proc. 2000–11, 2000–3 I.R.B. *309*

95–42
Superseded by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

96–13
Modified by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

98–22
Modified and superseded by
Rev. Proc. 2000–16, 2000–6 I.R.B. *518*

98–27
Superseded by
Rev. Proc. 2000–12, 2000–4 I.R.B. *387*

98–64
Superseded by
Rev. Proc. 2000–9, 2000–2 I.R.B. *280*

98–65
Superseded by
Rev. Proc. 2000–19, 2000–12 I.R.B. *785*

99–1
Superseded by
Rev. Proc. 2000–1, 2000–1 I.R.B. *4*

99–2
Superseded by
Rev. Proc. 2000–2, 2000–1 I.R.B. *73*

99–3
Superseded by
Rev. Proc. 2000–3, 2000–1 I.R.B. *103*

99–4
Superseded by
Rev. Proc. 2000–4, 2000–1 I.R.B. *115*

99–5
Superseded by
Rev. Proc. 2000–5, 2000–1 I.R.B. *158*

99–6
Superseded by
Rev. Proc. 2000–6, 2000–1 I.R.B. *187*

99–7
Superseded by
Rev. Proc. 2000–7, 2000–1 I.R.B. *227*

99–8
Superseded by
Rev. Proc. 2000–8, 2000–1 I.R.B. *230*

Revenue Procedures—Continued:

99–13
Modified and superseded by
Rev. Proc. 2000–16, 2000–6 I.R.B. *518*

99–31
Modified and superseded by
Rev. Proc. 2000–16, 2000–6 I.R.B. *518*

99–49
Modified and amplified by
Rev. Rul. 2000–4, 2000–4 I.R.B. *331*
Rev. Rul. 2000–7, 2000–9 I.R.B. *712*
Notice 2000–4, 2000–3 I.R.B. *313*

99–51
Superseded by
Rev. Proc. 2000–3, 2000–1 I.R.B. *103*

2000–6
Modified by
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

2000–8
Modified by
Rev. Proc. 2000–16, 2000–6 I.R.B. *518*
Rev. Proc. 2000–20, 2000–6 I.R.B. *553*

2000–16
Corrected by
Announcement 2000–17, 2000–13 I.R.B. *846*

Revenue Rulings:

88–36
Modified by
Rev. Rul. 2000–6, 2000–6 I.R.B. *512*

89–89
Obsoleted by
Rev. Rul. 2000–2, 2000–3 I.R.B. *305*

92–19
Supplemented by
Rev. Rul. 2000–17, 2000–13 I.R.B. *842*

98–30
Amplified and superseded by
Rev. Rul. 2000–8, 2000–7 I.R.B. *617*

Treasury Decisions:

8734
Modified by
T.D. 8856, 2000–3 I.R.B. *298*

8804
Modified by
T.D. 8856, 2000–3 I.R.B. *298*

8845
Corrected by
Announcement 2000–6, 2000–4 I.R.B. *428*

8846
Corrected by
Announcement 2000–3, 2000–2 I.R.B. *296*

8847
Corrected by
Announcement 2000–13, 2000–11 I.R.B. *771*

8852
Corrected by
Announcement 2000–18, 2000–13 I.R.B. *846*

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