Internal Revenue
bulletin

Bulletin No. 2000–28
July 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. 2068, page 109.

Claims in bankruptcy court. The Supreme Court has affirmed that when the substantive law creating a tax obligation puts the burden of proof on a taxpayer, the burden of proof on the tax claim in bankruptcy court remains with the taxpayer.

Rev. Proc. 2000–30, page 113.

Gross income; information reporting; *de minimis* premiums. For administrative convenience, the Service will not require a depositor who receives a "*de minimis* premium" to treat the value of the premium as includible in gross income or to reduce the basis in the account, and will not require a financial institution that provides a "*de minimis* premium" to treat it as interest for purposes of information reporting under section 6049. Rev. Proc. 2000–30 is effective for "*de minimis* premiums" provided after December 31, 1999.

EMPLOYMENT TAX

Page 112.

Railroad retirement; rate determination; quarterly. The Railroad Retirement Board has determined that the rate of tax imposed by section 3221 of the Code shall be 26 1/2 cents for the quarter beginning April 1, 2000.

ADMINISTRATIVE

Rev. Proc. 2000–29, page 113.

Election to treat certain debt substitutions as realization events. This revenue procedure modifies Rev. Proc. 99–18, 1999–11 I.R.B. 7, by removing the sunset date of June 30, 2000. Rev. Proc. 99–18 modified.

Announcement 2000–57, page 115.

This document contains corrections to final regulations (T.D. 8883, 2000–23 I.R.B. 1151) under section 1032 of the Code relating to the treatment of a disposition of an issuing corporation's stock by an acquiring entity in a taxable transaction.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and 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 1001.—Determination of Amount of and Recognition of Gain or Loss

26 CFR 1.1001–3: Modification of debt instruments.

Rev. Proc. 2000–29 modifies Rev. Proc. 99–18, 1999–11 I.R.B. 7, by removing the sunset date of June 30, 2000. Rev. Proc. 99–18 provides taxpayers with an election that allows them to treat a debt substitution, in certain circumstances, as a realization event even though it does not result in a significant modification under section 1.1001–3 of the Income Tax Regulations. See Rev. Proc. 2000–29, page 113.

Section 1273.—Determination of Amount of Original Issue Discount

26 CFR 1.1273–2: Determination of issue price and issue date.

Will the Service require a depositor who receives a "*de minimis* premium" to treat the value of the premium as includible in gross income or to reduce the basis in the account, and will it require a financial institution that provides a "*de minimis* premium" to treat it as interest for purposes of information reporting under section 6049. See Rev. Proc. 2000–30, page 113.

Section 1275.—Other Definitions and Special Rules

26 CFR 1.1275–2: Special rules relating to debt instruments.

Rev. Proc. 2000–29 modifies Rev. Proc. 99–18, 1999–11 I.R.B. 7, by removing the sunset date of June 30, 2000. Rev. Proc. 99–18 provides taxpayers with an election that allows them to treat a debt substitution, in certain circumstances, as a realization event even though it does not result in a significant modification under section 1.1001–3 of the Income Tax Regulations. See Rev. Proc. 2000–29, page 113.

Section 1398. — Rules Relating to Individuals' Title 11 Cases

Ct. D. 2068

SUPREME COURT OF THE UNITED STATES
RALEIGH, chapter 7 trustee for the ESTATE OF STOECKER v. ILLINOIS DEPARTMENT OF REVENUE

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

No. 99—387. Argued April 17, 2000–Decided May 30, 2000

While debtor Stoecker was its president, a now-defunct Illinois company purchased a plane out of State and moved it to Illinois. Respondent claims that this purchase was subject to the State's use tax. When such tax is unpaid, respondent issues a Notice of Tax Liability to the taxpayer and may issue a Notice of Penalty Liability against any corporate officer responsible for paying the tax who willfully fails to file the return or make the payment. By the time respondent discovered that the tax was unpaid in this case, the company was defunct and Stoecker was in bankruptcy, with petitioner as his trustee. Respondent filed, *inter alia*, a Notice of Penalty Liability against Stoecker. The fact that there was no affirmative proof that he was responsible for or willfully evaded the payment was not dispositive, for Illinois law shifts the burden of proof, both on production and persuasion, to the responsible officer once a Notice of Penalty Liability is issued. The Seventh Circuit ruled for respondent, holding that the burden of proof remained with petitioner, just as it would have been on Stoecker had the proceedings taken place outside of bankruptcy, and finding that petitioner had not satisfied the burden of persuasion.

Held: When the substantive law creating a tax obligation puts the burden of proof on a taxpayer, the burden of proof on the tax claim in bankruptcy court remains where the substantive law put it (in this case, on the trustee in bankruptcy). Pp. 4—10.

(a) Creditors' entitlements in bankruptcy arise from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary Bankruptcy Code provisions. See *Butner* v. *United States*, 440 U.S. 48, 55. The basic federal rule in bankruptcy is that state law governs the substance of claims. *Id.*, at 57. In this case, Illinois tax law establishes the estate's obligation to respondent, placing the burden of proof on the responsible officer. That burden of proof is a substantive aspect of such a claim, given its importance to the outcome of cases. See, *e.g.*, *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 512 U.S. 267, 271. Tax law is no candidate for exception from the general rule, for the very fact that the burden has often been shifted to the taxpayer indicates how critical it is. Several compelling rationales for this shift–the government's vital interest in acquiring its revenue, the taxpayer's readier access to the relevant information, and the importance of encouraging voluntary compliance–are powerful justifications not to be disregarded lightly. The Bankruptcy Code makes no provision for altering the burden of proof on a tax claim, and its silence indicates that no change was intended. Pp. 4—6.

(b) The trustee's appeals to Code silence are rejected. The state of pre-Code law does not indicate that the Code is silent because it was predicated on an alteration of the substantive law of obligations once a taxpayer enters bankruptcy. And although *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, suggested that "allowance" of claims is a federal matter, that case concerned distribution of assets, not the validity of claims in the first instance, which, *Vanston* specifically states, is to be determined by reference to state law, *id.*, at 161. Nor is the trustee helped by the reference, in *City of New York* v. *Saper*, 336 U.S. 328, 332, to "prov[ing]" government claims in the same manner as other debts, for that reference was to the procedure by which proof of claim was submitted, not to the validity of the claim. Finally, the trustee's argument that the Code-mandated priority enjoyed by taxing authorities over other creditors requires a compensating equality of treatment when it comes to demonstrating validity of claims distorts a bankruptcy court's legitimate powers and begs the question about the relevant principle of equality. Pp. 6—10.

179 F.3d 546, affirmed.

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

SUPREME COURT OF THE UNITED STATES

No. 99—387

THOMAS E. RALEIGH, chapter 7 trustee for the ESTATE OF WILLIAM J. STOECKER, PETITIONER v. ILLINOIS DEPARTMENT OF REVENUE

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

[May 30, 2000]

JUSTICE SOUTER delivered the opinion of the Court.

The question raised here is who bears the burden of proof on a tax claim in bankruptcy court when the substantive law creating the tax obligation puts the burden on the taxpayer (in this case, the trustee in bankruptcy). We hold that bankruptcy does not alter the burden imposed by the substantive law.

I

The issue of state tax liability in question had its genesis in the purchase of an airplane by Chandler Enterprises, Inc., a now-defunct Illinois company. William J. Stoecker, for whom petitioner Raleigh is the trustee in bankruptcy, was president of Chandler in 1988, when Chandler entered into a lease-purchase agreement for the plane, moved it to Illinois, and ultimately took title under the agreement. See *In re Stoecker*, 179 F.3d 546, 548 (CA7 1999).

According to respondent State Department of Revenue, the transaction was subject to the Illinois use tax, a sales-tax substitute imposed on Illinois residents such as Chandler who buy out of State. If the seller does not remit the tax, the buyer must, and, when buying a plane, must file a return and pay the tax within 30 days after the aircraft enters the State. Ill. Comp. Stat., ch. 35, §105/10 (1999). Chandler failed to do this.

When the State discovers a failure to file and pay taxes, its Department of Revenue (the respondent here) determines the amount of tax due and issues a Notice of Tax Liability to the taxpayer. §§105/12, 120/4. Unless the taxpayer protests within the time provided, the assessment becomes final, though still subject to judicial review in the Illinois circuit court. §§120/4, 12.

Illinois law also provides that any corporate officer "who has the control, supervision or responsibility of filing returns and making payment of the amount of any … tax … who willfully fails to file the return or make the payment … shall be personally liable for a penalty equal to the total amount of tax unpaid by the [corporation]." §735/3—7. The department determines the amount, and its determination is "prima facie evidence of a penalty due," *ibid.*, though a Notice of Penalty Liability issued under this provision is open to challenge much like the antecedent Notice of Tax Liability.

By the time the department discovered the unpaid tax in this case, Chandler was defunct and Stoecker was in bankruptcy. The department issued both a Notice of Tax Liability against Chandler and a Notice of Penalty Liability against Stoecker. See 179 F.3d, at 549.

The record evidence about Chandler's operations is minimal. A person named Pluhar acted as its financial officer. There is no evidence directly addressing Stoecker's role in the filing of Chandler's tax returns or the payment of any taxes, and so no affirmative proof that he was either responsible for or willfully evaded the payment of the use tax, see *id.*, at 550. This evidentiary dearth is not necessarily dispositive, however, due to the provision of Illinois law shifting the burden of proof, both on production and persuasion, to the responsible officer once a Notice of Penalty Liability is issued, see *Branson* v. *Department of Revenue*, 168 Ill. 2d 247, 256—261, 659 N. E. 2d 961, 966—968 (1995). The Court of Appeals for the Seventh Circuit accordingly ruled for the Department of Revenue. 179 F.3d, at 550.

The Court of Appeals thought the trustee may have satisfied his burden of production by identifying Pluhar as the financial officer but, in any event, had not satisfied his burden of persuasion. Because Stoecker was the president and, as far as the record showed, he and Pluhar were the only officers, each would have been involved in Chandler's tax affairs. *Ibid.* While it is true that failure to pay must be willful (at least grossly negligent) to justify the penalty under Illinois law, see *Branson*, *supra*, at 254—255, 659 N. E. 2d, at 965, and true that Chandler had an opinion letter from a reputable lawyer that no tax was due because of certain details of the lease-purchase agreement, there was no evidence that Stoecker ever saw the letter or relied on it, and nothing else bearing on the issue of willfulness. See 179 F.3d, at 550—551.

Obviously, the burden of proof was critical to the resolution of the case, which the Department of Revenue won because the Court of Appeals held that the burden remained on the trustee, just as it would have been on the taxpayer had the proceedings taken place outside of bankruptcy. The Courts of Appeals are divided on this point: the Seventh Circuit joined the Third and Fourth Circuits in leaving the burden on the taxpayer. See *Resyn Corp.* v. *United States*, 851 F.2d 660, 663 (CA3 1988); *In re Landbank Equity Corp.*, 973 F.2d 265, 270—271 (CA4 1992). The Courts of Appeals for the Fifth, Eighth, Ninth, and Tenth Circuits have come out the other way. See *In re Placid Oil Co.*, 988 F.2d 554, 557 (CA5 1993); *In re Brown*, 82 F.3d 801, 804—805 (CA8 1996); *In re Macfarlane*, 83 F.3d 1041, 1044—1045 (CA9 1996), cert. denied, 520 U.S. 1115 (1997); *In re Fullmer*, 962 F.2d 1463, 1466 (CA10 1992). We granted certiorari to resolve the issue, 528 U.S. 1068 (2000), and now affirm.

II

Creditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code. See *Butner* v. *United States*, 440 U.S. 48, 55 (1979); *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 161—162 (1946). The "basic federal rule" in bankruptcy is that state law governs the substance of claims, *Butner, supra,* at 57, Congress having "generally left the determination of property rights in the assets of a bankrupt's estate to state law," 440 U.S., at 54 (footnote omitted). "Unless some federal interest requires a different result, there is no reason why [the state] interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Id.,* at 55. In this case, the bankruptcy estate's obligation to the Illinois Department of Revenue is established by that State's tax code, which puts the burden of proof on the responsible officer of the taxpayer, see *Branson, supra,* at 260—262, 659 N. E. 2d, at 968.

The scope of the obligation is the issue here. Do the State's right and the taxpayer's obligation include the burden of proof? Our cases point to an affirmative answer. Given its importance to the outcome of cases, we have long held the burden of proof to be a "substantive" aspect of a claim. See, *e.g., Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries,* 512 U.S. 267, 271 (1994); *Dick* v. *New York Life Ins. Co.,* 359 U.S. 437, 446 (1959); *Garrett* v. *Moore-McCormack Co.,* 317 U.S. 239, 249 (1942). That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it.

Tax law is no candidate for exception from this general rule, for the very fact that the burden of proof has often been placed on the taxpayer indicates how critical the burden rule is, and reflects several compelling rationales: the vital interest of the government in acquiring its lifeblood, revenue, see *Arkansas* v. *Farm Credit Servs. of Central Ark.,* 520 U.S. 821, 826 (1997); the taxpayer's readier access to the relevant information, see *United States* v. *Rexach,* 482 F.2d 10, 16 (CA1), cert. denied, 414 U.S. 1039 (1973); and the importance of encouraging voluntary compliance by giving taxpayers incentives to self-report and to keep adequate records in case of dispute, see *United States* v. *Bisceglia,* 420 U.S. 141, 145 (1975). These are powerful justifications not to be disregarded lightly.[1]

Congress of course may do what it likes with entitlements in bankruptcy, but there is no sign that Congress meant to alter the burdens of production and persuasion on tax claims. The Code in several places, to be sure, establishes particular burdens of proof. See, *e.g.,* 11 U.S.C. § 362(g) (relief from automatic stay), §363(*o*) (adequate protection for creditors), §364(d)(2) (same), §547(g) (avoidability of preferential transfer), §1129(d) (confirmation of plan for purpose of avoiding taxes). But the Code makes no provision for altering the burden on a tax claim, and its silence says that no change was intended.[2]

III

The trustee looks for an advantage in the very silence of the Code, however, first by arguing that actual, historical practice favored trustees under the Bankruptcy Act of 1898 and various pre-Code revisions up to the current Code's enactment in 1978. He says that courts operating in the days of the Bankruptcy Act, which was silent on the burden to prove the validity of claims, almost uniformly placed the burden on those seeking a share of the bankruptcy estate. Because the Code generally incorporates pre-Code practice in the absence of explicit revision, the argument goes, and because the Code is silent here, we should follow the pre-Code practice even when this would reverse the burden imposed outside bankruptcy. This tradition makes sense, petitioner urges, because in bankruptcy tax authorities are no longer opposed to the original taxpayer, and the choice is no longer merely whether the tax claim is paid but whether other innocent creditors must share the bankruptcy estate with the taxing government.

We, however, find history less availing to the trustee than he says. While some pre-Code cases put the burden of proof on taxing authorities,[3] others put it on the trustee,[4] and still others cannot be fathomed.[5] This state of things is the end of the argument, for without the weight of solid authority on the trustee's side, we cannot treat the Code as predicated on an alteration of the substantive law of obligations once a taxpayer enters bankruptcy. Cf. *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 381—382 (1988) ("The at best divided [pre-Code] authority … removes all cause for wonder that the alleged departure from it should not have been commented on in the legislative history").

The trustee makes a different appeal to Code silence in pointing to language in *Vanston Bondholders Protective Comm.* v. *Green,* 329 U.S. 156 (1946), suggesting that "allowance" of claims is a federal matter. But "allowance" referred to the ordering of valid claims when that case was decided, see *id.,* at 162—163, and *Vanston,* in fact, concerned distribution of assets, not the validity of claims in the first instance, see *In re Highland Superstores, Inc.,* 154 F.3d 573, 578 (CA6 1998); *Fahs* v. *Martin,* 224 F.2d 387, 394—395 (CA5 1955). The burden of

[1] It is true that a trustee may have less access to the facts than a taxpayer with personal knowledge, but the trustee takes custody of the taxpayer's records, see 11 U.S.C. § 521(4), and may have greater access to the taxpayer than a creditor. Even if the trustee's advantage is somewhat less than the original taxpayer's, the difference hardly overcomes the compelling justifications for shifting the burden of proof. The government, of course, is in no better position than it ever was, and remains without access to sources of proof when the taxpayer has not kept sufficient documentation.

2. The legislative history indicates that the burden of proof on the issue of establishing claims was left to the Rules of Bankruptcy Procedure. See S. Rep. No. 95—989, p. 62 (1978); H. R. Rep. No. 95—595, p. 352 (1977). The Bankruptcy Rules are silent on the burden of proof for claims; while Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim (the name for the proper form for filing a claim against a debtor) is "prima facie evidence of the validity and amount of the claim," this rule does not address the burden of proof when a trustee disputes a claim. The Rules thus provide no additional guidance.

3. See, *e.g., United States* v. *Sampsell,* 224 F.2d 721, 722—723 (CA9 1955); *In re Avien, Inc.,* 390 F. Supp. 1335, 1341—1342 (EDNY 1975), aff'd, 532 F.2d 273 (CA2 1976); *In re Gorgeous Blouse Co.,* 106 F. Supp. 465 (SDNY 1952); see also *In re Highway Constr. Co.,* 105 F.2d 863, 866 (CA6 1939) (apparently accepting lower court's placement of burden of proof on tax authority).

4. See, *e.g., In re Uneco, Inc.,* 532 F.2d 1204, 1207 (CA8 1976); *Paschal* v. *Blieden,* 127 F.2d 398, 401—402 (CA8 1942); *In re Lang Body Co.,* 92 F.2d 338, 341 (CA6 1937), cert. denied *sub nom. Hipp* v. *Boyle,* 303 U.S. 637 (1938); *United States* v. *Knox-Powell-Stockton Co.,* 83 F.2d 423, 425 (CA9), cert. denied, 299 U.S. 573 (1936). Some of these cases, such as *Paschal* and *Lang Body Co.,* appear to confuse the burden of production (which ceases to be relevant upon presentation of a trustee's case) with the burden of persuasion, under tax statutes that shift the entire burden of proof to the taxpayer. Whatever we make of their reasoning, these cases do not follow the rule whose pedigree petitioner wishes to establish.

5. See, *e.g., Fiori* v. *Rothensies,* 99 F.2d 922 (CA3 1938) *(per curiam)* (discussing prima facie value of tax authority's claim, but failing to discuss burden of proof); *Dickinson* v. *Riley,* 86 F.2d 385 (CA8 1936) (resolving claim without reference to burden of proof); *In re Clayton Magazines, Inc.,* 77 F.2d 852 (CA2 1935) (same).

proof rule in question here bears only on validity, and as to that the *Vanston* opinion specifically states that "[w]hat claims of creditors are valid and subsisting obligations … is to be determined by reference to state law." 329 U.S., at 161 (footnote omitted). Nor is the trustee helped by *City of New York* v. *Saper*, 336 U.S. 328, 332 (1949), which mentions "prov[ing]" government claims in the same manner as other debts; the reference was to the procedure by which proof of claim was submitted and not to the validity of the claim. While it is true that federal law has generally evolved to impose the same procedural requirements for claim submission on tax authorities as on other creditors, *ibid.*, nothing in that evolution has touched the underlying laws on the elements sufficient to prove a valid state claim.

Finally, the trustee argues that the Code-mandated priority enjoyed by taxing authorities over other creditors, see 11 U.S.C. §§ 507(a), 503(b)(1)(B), requires a compensating equality of treatment when it comes to demonstrating validity of claims. But we think his argument distorts the legitimate powers of a bankruptcy court and begs the question about the relevant principle of equality.

Bankruptcy courts do indeed have some equitable powers to adjust rights between creditors. See, *e.g.*, §510(c) (equitable subordination). That is, within the limits of the Code, courts may reorder distributions from the bankruptcy estate, in whole or in part, for the sake of treating legitimate claimants to the estate equitably. But the scope of a bankruptcy court's equitable power must be understood in the light of the principle of bankruptcy law discussed already, that the validity of a claim is generally a function of underlying substantive law. Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides. See *United States* v. *Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 228—229 (1996); *United States* v. *Noland*, 517 U.S. 535, 543 (1996).

Moreover, even on the assumption that a bankruptcy court were to have a free hand, the case for a rule placing the burden of proof uniformly on all bankruptcy creditors is not self-evidently justified by the trustee's invocation of equality. Certainly the trustee has not shown that equal treatment of all bankruptcy creditors in proving debts is more compelling than equal treatment of comparable creditors in and out of bankruptcy. The latter sort of equality can be provided by a bankruptcy court as a matter of course, whereas the trustee's notion of equality could not be uniformly observed consistently with other bankruptcy principles. Consider the case when tax litigation is pending at the time the taxpayer files for bankruptcy. The tax litigation will be subject to an automatic stay, but the stay can be lifted by the bankruptcy court for cause, see 11 U.S.C. § 362(d)(1), which could well include, among other things, a lack of good faith in attempting to avoid tax proceedings, or in attempting to favor private creditors who might escape the disadvantage of a priority tax claim under the trustee's proposed rule. See generally 3 Collier on Bankruptcy ¶362.07[6][a], pp. 362—101 to 362—102 (rev. 15th ed. 2000) (noting that bad faith commencement of case justifies lifting stay); *Internal Revenue Service* v. *Bacha*, 166 B. R. 611, 612 (Bkrtcy. Ct. Md. 1993) (lifting automatic stay when bankruptcy filing was attempt to avoid tax proceedings). If the bankruptcy court exercises its discretion to lift the stay, the burden of proof will be on the taxpayer in the pre-existing tax litigation, and a tax liability determination will be final. See 11 U.S.C. § 505(a)(2)(A). We see no reason that Congress would have intended the burden of proof (and consequent vindication of this trustee's vision of equality) to depend on whether tax authorities have initiated proceedings against a debtor before a bankruptcy filing. Thus, the uncertainty and increased complexity that would be generated by the trustee's position is another reason to stick with the simpler rule, that in the absence of modification expressed in the Bankruptcy Code the burden of proof on a tax claim in bankruptcy remains where the substantive tax law puts it.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Section 3221.—Rate of Tax

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221 (c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 2000, shall be at the rate of 26 1/2 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 2000, 37.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 62.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated March 1, 2000.
By authority of the Board.

Beatrice Ezerski,
Secretary to the Board.

(Filed by the Office of the Federal Register on March 16, 2000, 8:45 a.m., and published in the issue of the Federal Register for March 17, 2000, 65 F.R. 14636)

Section 6049.—Returns Regarding Payments of Interest

26 CFR 1.6049–4: Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

Will the Service require a depositor who receives a "*de minimis* premium" to treat the value of the premium as includible in gross income or to reduce the basis in the account, and will it require a financial institution that provides a "*de minimis* premium" to treat it as interest for purposes of information reporting under section 6049. See Rev. Proc. 2000–30, page 113.

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 1001; 1.1001–3, 1.1275–2.)

Rev. Proc. 2000-29

SECTION 1. PURPOSE

In response to comments, this revenue procedure removes the sunset date in Rev. Proc. 99-18, 1999–11 I.R.B. 7.

SECTION 2. BACKGROUND

.01 Rev. Proc. 99-18 provides an election that facilitates the substitution of newly issued debt instruments for outstanding debt instruments. Under the election, taxpayers can treat a substitution of debt instruments, in certain circumstances, as a realization event for federal income tax purposes even though it does not result in a significant modification under § 1.1001–3 of the Income Tax Regulations (and, therefore, is not otherwise an exchange for purposes of § 1.1001–1(a)). Under section 4 of Rev. Proc. 99-18, taxpayers do not recognize any realized gain or loss on the date of the substitution. Instead, the gain or loss generally is taken into account as income or deductions over the term of the new debt instruments. Rev. Proc. 99-18 is effective for substitutions that occur between March 1, 1999, and June 30, 2000.

.02 The Internal Revenue Service requested comments on Rev. Proc. 99-18, including comments on whether the revenue procedure should be made permanent. In response to the request for comments, taxpayers asked that Rev. Proc. 99-18 be made permanent. In addition, taxpayers asked for several other changes, including the coordination of Rev. Proc. 99-18 with the regulations dealing with qualified reopenings of debt instruments. *See* § 1.1275-2T(d) of the temporary Income Tax Regulations and § 1.1275-2(k) of the proposed Income Tax Regulations published in the Federal Register on November 5, 1999 (64 Fed. Reg. 60395).

.03 This revenue procedure modifies only the effective period of Rev. Proc. 99-18. The Treasury Department and the Internal Revenue Service plan to reconsider the other provisions of Rev. Proc. 99-18 when the regulations dealing with qualified reopenings are finalized.

SECTION 3. APPLICATION

Section 5 of Rev. Proc. 99-18 is modified to read as follows: This revenue procedure applies to substitutions that occur on or after March 1, 1999.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 99–18, 1999–11 I.R.B. 7, is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 22, 2000.

CONTACT PERSON

For further information regarding this revenue procedure, contact William E. Blanchard of the Office of Assistant Chief Counsel (Financial Institutions and Products) on (202) 622–3950 (not a toll-free call).

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26 CFR 1.61-7: Interest.
(Also Part I, §§ 1273, 6049; 1.1273-2, 1.6049-4.)

Rev. Proc. 2000-30

SECTION 1. PURPOSE

This revenue procedure provides guidance to depositors who receive "*de minimis* premiums" (as defined below) from financial institutions. It also provides guidance to financial institutions on their information reporting obligations for those premiums.

SECTION 2. BACKGROUND

.01 Banks and other financial institutions sometimes provide premiums as inducements to depositors to open new accounts or add to existing accounts. Questions have arisen as to a depositor's tax treatment of non-cash premiums and the financial institution's information reporting obligations for the premiums.

.02 Interest (including original issue discount) generally is includible in a recipient's gross income under § 61(a)(4) of the Internal Revenue Code and § 1.61-7 of the Income Tax Regulations. The term "interest" means amounts paid for the use or forbearance of money, which includes amounts, whether or not designated as interest, paid on savings accounts and other deposit arrangements. Under § 1.1273-2, a payment from a financial institution to a depositor upon the origination of an account reduces the issue price of the account and, in effect, the depositor's basis in the account. The reduction generally creates original issue discount on the account. In addition, payments made on an account over its term are first treated as a payment of accrued but unpaid interest and then as a payment of principal. See §§ 1.446-2(e) and 1.1275-2(a).

.03 Under § 6049 and § 1.6049-4, a person who pays interest aggregating $10 or more to another person during a calendar year generally must file a return setting forth certain required information.

SECTION 3. DEFINITION

For purposes of this revenue procedure, a "*de minimis* premium" is a non-cash inducement, provided by a financial institution (as defined in § 265(b)(5)) to a depositor to open or add to an account, that does not have a value in excess of $10 for a deposit of less than $5,000 or $20 for a deposit of $5,000 or more. The cost to the financial institution of the premium is used in determining whether the dollar limitations are met.

SECTION 4. APPLICATION

.01 *Depositor*. For administrative convenience, the Internal Revenue Service will not require a depositor who receives a "*de minimis* premium" to treat the value of the premium as includible in gross income. In addition, the Service will not require the depositor to reduce the basis in the account by the "*de minimis* premium."

.02 *Financial Institution*. For administrative convenience, the Service will not require a financial institution that provides a "*de minimis* premium" to treat it as interest for purposes of information reporting under § 6049.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for "*de minimis* premiums" provided after December 31,1999.

DRAFTING INFORMATION

The principal author of this revenue procedure is G. Channing Horton of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure contact Mr. Horton on (202) 622-4920 (not a toll free call).

Part IV. Items of General Interest

Guidance Under Section 1032 Relating to the Treatment of a Disposition by an Acquiring Entity of the Stock of a Corporation in a Taxable Transaction; Correction

Announcement 2000–57

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8883 (2000–23 I.R.B. 1151), which was published in the **Federal Register** on Tuesday, May 16, 2000 (65 FR 31073), which provides guidance under section 1032 of the Internal Revenue Code, relating to the treatment of a disposition by an acquiring entity of the stock of a corporation in a taxable transaction.

EFFECTIVE DATE: This correction is effective on May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Filiz Serbes at (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to correction are under section 1032 of the Internal Revenue Code.

Need for Correction

As published, Treasury Decision 8883 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8883), which was the subject of FR Doc. 00-11900, is corrected as follows:

§1.1032-3 [Corrected]

On page 31076, column 3, §1.1032-3(c)(1), is corrected to read as follows:

§1.1032-3 Disposition of stock or stock options in certain transactions not qualifying under any other nonrecognition provision.

* * * * *

(c) * * *

(1) The acquiring entity acquires stock of the issuing corporation directly or indirectly from the issuing corporation in a transaction in which, but for this section, the basis of the stock of the issuing corporation in the hands of the acquiring entity would be determined, in whole or in part, with respect to the issuing corporation's basis in the issuing corporation's stock under section 362(a) or 723 (provided that, in the case of an indirect acquisition by the acquiring entity, the transfers of issuing corporation stock through intermediate entities occur immediately after one another);

* * * * *

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on June 14, 2000, 8:45 a.m., and published in the issue of the Federal Register for June 15, 2000, 65 F.R. 37481)

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]

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2000–1 through 2000–26 is in Internal Revenue Bulletin 2000–27, dated July 3, 2000.

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