Internal Revenue
bulletin

Bulletin No. 2001–13
March 26, 2001

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

Rev. Rul. 2001–15, page 922.

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2000 under the Disaster Relief and Emergency Assistance Act.

Rev. Rul. 2001–16, page 936.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the second calendar quarter of 2001, beginning April 1, 2001, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 5.5 percent.

T.D. 8938, page 929.

This T.D. removes temporary regulations (T.D. 7530, 1978–1 C.B. 92) under section 367(c) of the Code that are no longer necessary and, as a result, may be misleading. The corresponding proposed regulations are also being withdrawn by LR–230–76 in this Bulletin.

T.D. 8942, page 929.
REG–107186–00, page 973.

Temporary and proposed regulations under sections 6041, 6050S, 6051, and 6714 of the Code relate to the voluntary electronic furnishing of payee statements to individuals for whom Forms W-2, 1098-E, and 1098-T are filed. A public hearing on the proposed regulations is scheduled for June 4, 2001.

REG–105801–00, page 965.

Proposed regulations under section 263(g) of the Code provide guidance on capitalization of interest and carrying charges that are properly allocable to personal property that is part of a straddle. An amendment to section 1.1092(d)–1 is also proposed to clarify the status of contingent payment debt instruments. A public hearing is scheduled for May 22, 2001.

REG–107175–00, page 971.

Proposed regulations under section 1031 of the Code will affect the eligibility of certain persons to serve as escrow holders of qualified escrow accounts, trustees of qualified trusts, or as qualified intermediaries. The proposed regulations amend the regulation defining a disqualified person for like-kind exchanges to take into account changes in the banking industry brought about by the enactment of the Gramm-Leach-Bliley Act in 1999. A public hearing is scheduled for June 5, 2001.

Notice 2001–27, page 942.

Dealer in securities futures contracts. This notice solicits comments on the criteria that should be used to determine whether a taxpayer is a "dealer" in securities futures contracts (or options on such contracts) for purposes of section 1256(g)(9)(B) of the Code.

EMPLOYEE PLANS

Notice 2001–28, page 944.

Weighted average interest rate update. The weighted average interest rate for March 2001 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Announcement of Declaratory Judgement Proceedings Under Section 7428 begins on page 976.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

REG–109481–99, page 961.
Proposed regulations under section 417 of the Code relate to the special rule added by section 1451 of the Small Business Job Protection Act of 1996 which permits the required written explanation of certain annuity benefits to be provided by qualified retirement plans after the annuity starting date.

EMPLOYMENT TAX

T.D. 8942, page 929.
REG–107186–00, page 973.
Temporary and proposed regulations under sections 6041, 6050S, 6051, and 6714 of the Code relate to the voluntary electronic furnishing of payee statements to individuals for whom Forms W-2, 1098-E, and 1098-T are filed. A public hearing on the proposed regulations is scheduled for June 4, 2001.

ADMINISTRATIVE

T.D. 8942, page 929.
REG–107186–00, page 973.
Temporary and proposed regulations under sections 6041, 6050S, 6051, and 6714 of the Code relate to the voluntary electronic furnishing of payee statements to individuals for whom Forms W-2, 1098-E, and 1098-T are filed. A public hearing on the proposed regulations is scheduled for June 4, 2001.

LR–230–76, page 945.
This document withdraws proposed regulations under section 367(c) of the Code that correspond to temporary regulations that are also being removed by T.D. 8938 in this Bulletin. These regulations are being removed because they are no longer necessary and, as a result, may be misleading.

REG–106446–98, page 945.
Proposed regulations under section 6015 of the Code provide guidance to married taxpayers who elected to file a joint return and are seeking relief from joint and several liability. A public hearing is scheduled for May 30, 2001.

Notice 2001–25, page 941.
This notice provides a method for transferring the estimated tax payments made by an electing small business trust (ESBT) to the account of the deemed owner of the ESBT. The estimated tax payments made by the trust will be treated as a payment of estimated tax made by the deemed owner of the ESBT on Janaury 15, 2001. For purposes of the annualized income installment method of section 6654(d)(2)(B) of the Code, the deemed owner may take into account, as of the last day of the deemed owner's 2000 taxable year, all S corporation items allocable to stock held by the ESBT.

Notice 2001–26, page 942.
This notice allows electing section 645 trusts to use the reporting method described in Rev. Proc. 98–13, 1998–1 C.B. 370, or the reporting method described in sections 1.645–1(d)(i) and (ii)(A) of the proposed regulations.

Announcement 2001–28, page 975.
This announcement contains corrections to proposed regulations (REG–106702–00, 2001–4 I.R.B. 424) regarding the determination of basis of a partner's interest.

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.

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

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

Farmland Industries, Inc. v. Commissioner,[1]
T.C. Memo. 1999-388

[1] Acquiescence relating to whether the gains and losses that a nonexempt cooperative realized from the disposition of certain property were patronage sourced for purposes of subchapter T of the Internal Revenue Code.

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

Section 165.—Losses

26 CFR 1.165–11: Election in respect of losses attributable to a disaster.

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2000 under the Disaster Relief and Emergency Assistance Act.

Rev. Rul. 2001–15

Under § 165(i) of the Internal Revenue Code, if a taxpayer suffers a loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5204c (1988 & Supp. V 1993) (the Act), the taxpayer may elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the taxable year in which the disaster occurred. For purposes of § 165(i), a disaster includes an event declared a major disaster or an emergency under the Act.

Section 1.165–11(e) of the Income Tax Regulations provides that the election to deduct a disaster loss for the preceding year must be made by filing a return, an amended return, or a claim for refund on or before the later of (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time to file the return) for the taxable year in which the disaster actually occurred, or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time to file the return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

The provisions of § 165(i) apply only to losses that are otherwise deductible under § 165(a). An individual taxpayer may deduct losses if they are incurred in a trade or business, if they are incurred in a transaction entered into for profit, or if they are casualty losses under § 165(c)(3).

The President has determined that during 2000 the areas listed below have been adversely affected by disasters of sufficient severity and magnitude to warrant assistance by the Federal Government under the Act.

FURTHER INFORMATION

For further information regarding this revenue ruling, contact Martin Scully Jr. at (202) 622-4960 (not a toll-free call).

Disaster Area	Disaster Description	Disaster Date
Alabama		
Counties of DeKalb, Cherokee, and Jackson	FEMA-1317-DR Severe winter storm	January 20 - 29
Counties of Jefferson and Tuscaloosa	FEMA-1322-DR Severe storms and flooding	March 10 - 11
Counties of Cherokee, Dale, Etowah, Geneva, Henry, Houston, Jefferson, Limestone, Macon, St. Clair, and Tuscaloosa	FEMA-1352-DR Severe storms and tornadoes	December 16 - 22
Alaska		
Municipality of Anchorage; Boroughs of Aleutians East, Bristol Bay, Denali, Fairbanks North Star, Kenai Peninsula, Kodia Island, Lake and Peninsula, and Matanaska-Susitna; and Census Areas of Bethel, Dillingham, Southeast Fairbanks, Valdez-Cordova, and Wade Hampton	FEMA-1316-DR Severe winter storms and avalanches	December 21, 1999- February 23, 2000
Arizona		
Counties of Cochise, La Paz, Maricopa, Pinal, Santa Cruz, and Yavapai	FEMA-1347-DR Severe storms and flooding	October 21 - November 8
Arkansas		
Counties of Arkansas, Benton, Bradley, Calhoun, Clark, Cleveland, Columbia, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Garland, Grant, Hempstead, Hot Spring, Howard, Jackson, Jefferson, Johnson, Lafayette, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Monroe, Montgomery, Nevada, Ouachita, Perry, Pike, Polk,	FEMA-3159-EM Severe winter ice storm	December 12 - January 8, 2001

Disaster Area	Disaster Description	Disaster Date
Poinsett, Prairie, Pulaski, St. Francis, Saline, Scott, Sebastian, Sevier, Washington, White, Woodruff, Union, and Yell		
Counties of Arkansas, Baxter, Benton, Boone, Bradley, Calhoun, Clark, Cleburne, Cleveland, Columbia, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Jefferson, Johnson, Lafayette, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Marion, Miller, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Pike, Polk, Poinsett, Pope, Prairie, Pulaski, St. Francis, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, Stone, Union, Van Buren, Washington, White, Woodroof, and Yell	FEMA-1354-DR Severe winter ice storm	December 12 - January 8, 2001
California		
Napa County	FEMA-1342-DR Earthquake	September 3
District of Columbia		
District of Columbia	FEMA-1325-DR Severe winter storm	January 25 - 31
District of Columbia	FEMA-1338-DR Severe thunderstorms	August 7
Florida		
Counties of Bay, Calhoun, Escambia, Franklin, Gulf, Jefferson, Leon, Okaloosa, and Walkulla	FEMA-1344-DR Tropical Storm Helene	September 21 - October 4
Counties of Broward, Collier, Miami-Dade, and Monroe	FEMA-1345-DR Severe storms and flooding	October 3 - 11
Georgia		
Counties of Banks, Barrow, Bartow, Butts, Carroll, Catossa, Chattooga, Cherokee, Clarke, Cobb, Dawson, DeKalb, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Fulton, Gilmer, Gordon, Greene, Gwinnett, Habersham, Hall, Hart, Haralson, Henry, Jackson, Jasper, Jones, Lamar, Lumpkin, Monroe, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pike, Rabun, Rockdale, Spalding, Stephens, Taliaferro, Union, Upson, Walker, Walton, White, and Wilkes	FEMA-1311-DR Severe winter storm	January 22-February 1
Counties of Colquitt, Decatur, Grady, Mitchell, Tift, and Turner	FEMA-1315-DR Severe storms and tornadoes	February 14
Hawaii		
Hawaii County	FEMA-1348-DR Severe storms and flooding	October 28 - November 2

Disaster Area	Disaster Description	Disaster Date
Idaho		
Counties of Ada, Bannock, Bingham, Blaine, Boise, Clearwater, Custer, Elmore, Idaho, Jerome, Lemhi, Lewis, Lincoln, Power, and Valley; and the Fort Hall Indian Reservation	FEMA-1341-DR Wildfires	July 27-September 26
Illinois		
Counties of Bureau, Cook, DeWitt, DuPage, Ford, Fulton, Grundy, Henderson, Henry, Iroquois, Kane, Kankakee, Kendall, Lake, La Salle, Livingston, Marshall, McDonough, McHenry, McLean, Menard, Ogle, Peoria, Stark, Will, and Winnebago	FEMA-3161-EM Record/near record snow	December 10 - 31
Indiana		
Counties of Allen, Carroll, Cass, Elkhart, Fulton, Howard, Huntington, Jasper, Kosciusko, Lagrange, Lake, Miami, Noble, Pulaski, St. Joseph, Steuben, White, and Whitley	FEMA-3162-EM Record/near record snow	December 11 - 31
Kansas		
Counties of Crawford, Labette, and Neosho	FEMA-1327-DR Severe storms and tornadoes	April 19 - 20
Kentucky		
Counties of Ballard, Breckinridge, Carlisle, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Spencer, and Webster	FEMA-1310-DR Tornadoes, severe storms, torrential rains and flash flooding	January 3 - 4
Counties of Bath, Bourbon, Boyd, Carter, Fleming, Greenup, Harrison, Johnson, Lawrence, Lewis, Mason, Nicholas, Oldham, Pendleton, Robertson, and Rowan	FEMA-1320-DR Severe storms and flooding	February 18-March 2
Louisiana		
Parishes of Bienville, Claiborne, Lincoln, Ouachita, Richland, Union, Webster, and West Carroll	FEMA-1314-DR Severe winter storm	January 27 - 30
Parishes of Bienville, Bossier, Caddo, Claiborne, Lincoln, Ouachita, Union and Webster	FEMA-1357-DR Severe winter ice storm	December 11 - January 3, 2001
Maine		
Counties of Androscoggin, Aroostock, Franklin, Kennebec, Oxford, Piscataquis, Somerset, and Washington	FEMA-1326-DR Severe storms, flooding, and ice jams	March 28-April 26
Maryland		
Baltimore City; and Counties of Anne Arundel, Baltimore, Calvert, Caroline, Charles, Dorchester, Frederick, Howard, Kent, Montgomery, Prince Georges, Queen Anne's, St. Mary's, and Talbot	FEMA-1324-DR Severe winter storm	January 25 - 30
Michigan		
Counties of Oakland and Wayne	FEMA-1346-DR Severe storms and flooding	September 10 - 11

Disaster Area	Disaster Description	Disaster Date
Minnesota		
Counties of Becker, Chippewa, Clay, Clearwater, Dakota, Dodge, Faribault, Fillmore, Freeborn, Houston, Mahnomen, Mower, Norman, Ramsey, Roseau, Winona, and Yellow Medicine; and the White Earth Indian Reservation	FEMA-1333-DR Severe storms, flooding, and tornadoes	May 17- July 26
Missouri		
Counties of Crawford, Franklin, Gasconade, Jefferson, St. Charles, Ste. Genevieve, St. Francois, St. Louis County, Warren, and Washington	FEMA-1328-DR Severe thunderstorms and flash flooding	May 6 - 7
Montana		
Counties of Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Rosebud, Sanders, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Wheatland, and Yellowstone; and Indian Reservations of the Blackfeet, Crow, Flathead, Fort Belknap, Northern Cheyenne, and Rocky Boy's	FEMA-1340-DR Wildfires	July 13-September 25
Counties of Carter, Fallon, Richland, Roosevelt, Sheridan, and Wibaux	FEMA-1350-DR Severe winter storms	October 31 - November 20
New Jersey		
Counties of Morris and Sussex	FEMA-1337-DR Severe storms, flooding and mudslides	August 12 - 21
Counties of Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morries, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren	FEMA-3156-EM West Nile Virus	May 30 - November 1
New Mexico		
Counties of Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, BeBaca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sandoval, Sante Fe, Sierra, Socorro, Taos, Torrance, Union, and Valencia.	FEMA-3154-EM Severe fire threats	May 5 - July 7
Counties of Bernalillo, Chaves, Cibola, DeBaca, Dona Ana, Eddy, Guadalupe, Lincoln, Los Alamos, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, and Torrance	FEMA-1329-DR Severe forest fire	May 5 - June 9

Disaster Area	Disaster Description	Disaster Date
New York		
Counties of Albany, Allegany, Cattaraugus, Chenango, Columbia, Dutchess, Erie, Essex, Greene, Herkimer, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Onondaga, Orleans, Otsego, Rensselaer, Schenectady, Schoharie, Steuben, Sullivan, Tioga, Tompkins, Ulster, and Yates	FEMA-1335-DR Severe storms and flooding	May 3 - August 12
New York City; and Counties of Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chenango, Chemung, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates	FEMA-3155-EM West Nile Virus	May 22 - November 1
Counties of Cattaraugus, Chautauqua, and Erie	FEMA-3157-EM Near record snow	November 19 - 21
North Carolina		
Counties of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Edgecombe, Franklin, Granville, Guilford, Halifax, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Nash, Northampton, Orange, Person, Randolph, Richmond, Rockingham, Scotland, Stanly, Union, Vance, Wake, Warren, and Wilson	FEMA-1312-DR Severe winter storm	January 24-February 1
North Dakota		
Counties of Barnes, Benson, Bottineau, Burke, Burleigh, Cass, Cavalier, Dickey, Eddy, Emmons, Foster, Grand Forks, Griggs, Kidder, LaMoure, Logan, McHenry, McIntosh, McLean, Morton, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Ward, and Wells; and Indian Reservations of the Spirit Lake Tribal Reservation, the Three Affiliated Tribes, and the Turtle Mountain Band of the Chippewa.	FEMA-1334-DR Severe storms, flooding and ground saturation	April 5 - August 12
Counties of Benson, Bowman, Cavalier, Divide, Golden Valley, McKenzie, Ramsey, Towner, and Williams	FEMA-1353-DR Severe winter storms and tornadoes	November 1 - 20
Ohio		
Counties of Adams, Gallia, Jackson, Lawrence, Meigs, Pike, and Scioto	FEMA-1321-DR Severe storms and flooding	February 18-March 2
Lucas County	FEMA-1339-DR Severe storms and flooding	July 29 - August 2

Disaster Area	Disaster Description	Disaster Date
Greene County	FEMA-1343-DR Severe storms and a tornado	September 20
Oklahoma		
Counties of Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Cotton, Creek, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, LeFlore, Lincoln, Love, Marshall, McClain, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Oklahoma, Okmulgee, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, and Washington -	FEMA-3158-EM Severe winter and ice storm	December 25 - January 10, 2001
Counties of Caddo, Carter, Comanche, Cotton, Grady, Jackson, Jefferson, Kiowa, McClain, Oklahoma, and Tillman	FEMA-1349-DR Severe storms and flooding	October 21 - 29
Counties of Adair, Atoka, Beckham, Bryan, Caddo, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garvin, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Latimer, LeFlore, Lincoln, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Oklahoma, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, and Washita	FEMA-1355-DR Severe winter ice storm	December 25 - January 10, 2001
South Carolina		
Counties of Abbeville, Aiken, Allendale, Bamberg, Barnwell, Berkley, Calhoun, Clarendon, Charleston, Collenton, Cherokee, Chester, Chesterfield, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenwood, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Orangeburg, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York	FEMA-1313-DR Severe winter storm	January 22-February 1
South Dakota		
Counties of Custer, Fall River, Jackson, Pennington, and Shannon	FEMA-1330-DR Severe winter storm, flooding, landslides, and mudslides	April 18 - 20
Tennessee		
Counties of Anderson, Benton, Cheatham, Davidson, Henry, Hickman, Houston, Jackson, Knox, Lake, Obion, Perry, Pickett, Stewart, Weakley	FEMA-1331-DR Severe storms, tornadoes, and flooding	May 23 - 31
Texas		
Tarrant County	FEMA-1323-DR Severe storms, tornadoes, and flooding	March 28 - 29

Disaster Area	Disaster Description	Disaster Date
Counties of Borden, Bowie, Carson, Cass, Cherokee, Cooke, Dawson, Delta, Gains, Garza, Gray, Gregg, Grayson, Fannin, Franklin, Harrison, Hopkins, Hunt, Lamar, Lynn, Marion, Montague, Morris, Panola, Rains, Red River, Rusk, Smith, Titus, Upshur, and Wood	FEMA-1356-DR Severe winter ice storm	December 12 - January 15, 2001
Vermont		
Counties of Addison, Bennington, Orange, Rutland, Windham, and Windsor	FEMA-1336-DR Severe storms and flooding	July 14 - 18
Counties of Bennington and Rutland	FEMA-1358-DR Severe storms and flooding	December 16 - 18
Virginia		
Cities of Alexandria, Colonial Heights, Danville, Emporia, Fairfax, Franklin, Fredericksburg, Hopewell, Lynchburg, Manassas, Newport News, Norton, Petersburg, Richmond, Suffolk, Williamsburg; and Counties of Accomack, Albermarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King George, King William, King and Queen, Lancaster, Lee, Loudon, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Surry, Sussex, Tazewell, Warren, Washington, Westmoreland, Wise, Wythe, and York	FEMA-1318-DR Severe winter storm	January 25 - 30
West Virginia		
Counties of Barbour, Braxton, Cabell, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Kanawha, Lewis, Lincoln, Marion, Mason, Monongalia, Pocohontas, Preston, Putnam, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wetzel, and Wirt	FEMA-1319-DR Flooding, severe storms, and landslides	February 18 - 22
Wisconsin		
Counties of Adams, Ashland, Barron, Burnett, Columbia, Crawford, Dane, Dodge, Forest, Grant, Green, Iowa, Iron, Jackson, Juneau, Kenosha, Lafayette, Milwaukee, Monroe, Oneida, Polk, Racine, Richland, Rusk, Sauk, Sawyer, Vernon, Walworth, Waukesha, and Washburn	FEMA-1332-DR Severe storms, flooding, and tornadoes	May 26 - July 19
Counties of Dane, Door, Green, Kenosha, Kewaunee, Manitowoc, Milwaukee, Racine, Rock, Sheboygan, and Walworth	FEMA-3163-EM Record/near record snow	December 11 - 31

Disaster Area	Disaster Description	Disaster Date
Wyoming		
Counties of Crook, Goshen, Platte, and Weston	FEMA-1351-DR Severe winter storms	October 31 - November 20

Section 367.—Foreign Corporations

26 CFR 7.367(c)–1: Section 355 distribution treated as an exchange (temporary).

T.D. 8938

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 7

Requirements Relating to Certain Exchanges Involving a Foreign Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes temporary regulations under section 367(c) that are no longer necessary and, as a result, may be misleading.

DATES: Effective January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris at (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1977, the IRS and Treasury published in the **Federal Register** proposed regulations (42 FR 65204) and temporary regulations (42 FR 65152 [T.D. 7530, 1978–1 C.B. 92]) under section 367(c) of the Internal Revenue Code. The principal purpose of these regulations, §§7.367(c)–1 and 7.367(c)–2, was to distinguish between the treatment of transfers described in section 367(c) before and after the enactment of the Tax Reform Act of 1976 (the Act) (90 Stat. 1634). Before enactment of the Act, transfers described in section 367(c) were subject to a ruling requirement. After enactment of the Act, transfers described in section 367(c) were within the scope of §§7.367(b)–1 through 7.367(b)–12. In light of the substantial time that has passed since enactment of the Act and, moreover, in light of the fact that §§1.367(b)–1 through 1.367(b)–6 have substantially superceded §§7.367(b)–1 through 7.367(b)–12, §§7.367(c)–1 and 7.367(c)–2 are no longer necessary and may be misleading.

Accordingly, this document removes §§7.367(c)–1 and 7.367(c)–2.

* * * * *

Removal of Temporary Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR part 7 is amended as follows:

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Paragraph 1. The authority citation for part 7 continues to read in part as follows:

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

§§7.367(c)–1 and 7.367(c)–2 [Amended]

Par. 2. Sections 7.367(c)–1 and 7.367(c)–2 are removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved December 28, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on January 11, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 12, 2001, 66 F.R. 2821)

Section 6041.—Information at Source

26 CFR 1.6041–2T: Return of information as to payments to employees (temporary).

T.D. 8942

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 301, and 602

Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under sections 6041 and 6051 relating to the voluntary electronic furnishing of payee statements on Forms W-2, "Wage and Tax Statement," and under section 6050S relating to the voluntary electronic furnishing of statements to individuals for whom Forms 1098-T, "Tuition Payments Statement," and Forms 1098-E, "Student Loan Interest Statement," are filed. The regulations will affect persons required by the foregoing Internal Revenue Code sections to furnish these statements (furnishers) who wish to furnish these statements electronically. The regulations will also affect individuals, principally employees, students, and borrowers (recipients), who consent to receive these statements electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG–107186–00) on this subject on page 973 of this Bulletin. The temporary regulations do not affect the requirement to file copy A of Forms W-2 with the Social Security Administration or the requirement to file Forms 1098-T or Forms 1098-E with the IRS.

DATES: *Effective Date*: These regulations are effective February 14, 2001.

Applicability Date: These regulations apply to statements to recipients required to be furnished under sections 6041(d), 6050S(d), and 6051 after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Laura C. Nash at (202) 622-4910 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1729. Responses to this collection of information are required if a person required by section 6050S(d) to furnish statements to recipients for whom Forms 1098-T or Forms 1098-E are filed, or a person required by sections 6041(d) and 6051 to furnish payee statements on Forms W-2, wishes to furnish the statements electronically using website technology.

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

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking (REG–107186–00).

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to sections 6041(d) and 6050S(d), to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) relating to section 6051, and to the Regulations on Procedure and Administration (26 CFR Part 301) relating to section 6724. Sections 6041(d) and 6050S(d) generally require certain persons to furnish a statement to a person with respect to whom an information return is required to be filed with the Federal government under sections 6041(a) and 6050S(a). Section 6051 requires certain persons to furnish a written statement to an employee regarding remuneration paid by such person to the employee. The foregoing statements (specified statements) are generally required to be furnished to recipients on or before January 31 of the year following the calendar year for which the related information returns are required to be filed or in which the wages or other compensation was paid.

These temporary regulations state that furnishers may provide the written statements required by sections 6041(d), 6050S(d), and 6051 in an electronic format in lieu of a paper format. In addition, the temporary regulations provide furnishers with a method of furnishing these statements electronically using website technology. Furnishers who use this website technology and satisfy the requirements of the temporary regulations are treated as timely furnishing the statements under sections 6041(d), 6050S(d), and 6051.

The objective of the temporary regulations is to facilitate the voluntary electronic furnishing of these statements. This objective is consistent with the general goals of (i) section 2001 of the Internal Revenue Service Restructuring and Reform Act of 1998 to eliminate barriers, provide incentives, and use competitive forces to increase electronic filing over the next ten years and (ii) the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) to facilitate voluntary use of certain electronic records. However, furnishers are not required to use the website technology described in the temporary regulations if they wish to continue to provide paper statements. Thus, the temporary regulations do not require a furnisher to invest in new delivery systems or to meet any new legal requirements to furnish a statement.

A major impetus for publishing these temporary regulations was the large number of requests for published guidance from lenders, educational institutions, employers and other furnishers who want the option of delivering statements to recipients in an electronic format. In addition, the Information Reporting Program Advisory Committee of the Internal Revenue Service (IRPAC) and the Electronic Tax Administration Advisory Committee (ETAAC) also strongly support providing furnishers with the option of furnishing statements electronically.

At its May 11, 2000, public meeting, IRPAC advocated issuance of guidance permitting furnishers to use website technology to furnish statements electronically. The IRS consulted with IRPAC representatives to ensure that the temporary regulations provide furnishers with clear, practical, and administrable procedures for the voluntary electronic furnishing of the specified statements. The temporary regulations incorporate many of IRPAC's suggestions and those of other furnishers.

These temporary regulations also strike a balance between furnishers' desires to reduce costs and modernize business processes by furnishing statements electronically and the tax administration concern that employees, students, and borrowers must be able to access electronic statements so that they can timely file accurate income tax returns. The consumer consent provisions of section 101(c)(1) of the E-SIGN Act strike a similar balance between businesses' desire to transmit records electronically and concerns about consumers' abilities to access and use those records. Therefore, these temporary regulations include disclosure provisions that are consistent with the Congressionally-approved consent provisions of the E-SIGN Act. These disclosure provisions will ensure that recipients will obtain the information they need to make an informed choice to receive the statements electronically and to access them timely.

The IRS and the Treasury Department invite comments about whether the provisions of these temporary regulations should apply to statements required to be furnished to recipients under other sections of the Internal Revenue Code. In addition, comments are invited about whether furnishers will use other technologies (such as e-mail) to furnish statements electronically and whether they need guidance on the conditions under which those statements will be considered timely furnished. Finally, comments are invited on whether the final regulations should prescribe standards to ensure confidentiality of taxpayer information posted on a website. Until final regulations are issued, the Treasury Department and the IRS expect that furnishers will take reasonable precautions to ensure confidentiality of taxpayer information.

Explanation of Provisions

This temporary regulation provides guidance under §§1.6041–2T(a)(5) (by cross-reference to the regulations under section 6051), 1.6050S–1T(a), 1.6050S–2T(a), and 31.6051–1T(j) regarding the electronic furnishing of specified statements. The temporary regulations provide that the written statements required by sections 6041(d), 6050S(d), and 6051 may be furnished in an electronic format. In addition, the temporary regulations provide that a furnisher that complies with the consent, required disclosures, format, posting, notice, and retention provisions of the temporary regulations is treated as timely furnishing the specified statements under sections 6041(d), 6050S(d), and 6051.

Consent

The temporary regulations provide that a recipient must have affirmatively consented to receive the statement electronically and must not have withdrawn that consent before the statement is furnished. The consent or, alternatively, its confirmation must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. A furnisher must take certain actions, including obtaining from the recipient a new electronic consent or confirmation of consent to receive the statement electronically, if a change in the hardware or software needed to access a statement creates a material risk that the recipient will not be able to access the statement.

Required Disclosures

Prior to or at the time a recipient consents to receive a statement electronically, the furnisher must provide a clear and conspicuous statement to the recipient containing certain disclosures. These required disclosures are similar to the consumer consent provisions in the E-SIGN Act and, like those provisions, require a furnisher to inform a recipient about, for example, the scope and duration of a consent to receive an electronic statement, the ability to revoke that consent, the hardware and software required to access, print, and retain an electronic statement, and the ability to obtain a paper statement.

Format

The temporary regulations require that the electronic version of a statement furnished to a recipient contain all required information and comply with applicable revenue procedures relating to substitute statements.

Posting

The temporary regulations generally require that the furnisher post the statements on a website accessible to recipients on or before January 31 of the year following the calendar year to which the statements relate.

Notice

The temporary regulations generally require the furnisher to notify a recipient that the statement is posted on a website on or before January 31 of the year following the calendar year to which the statement relates. The notice may be delivered by mail, electronic mail, or in person and must provide instructions to the recipient on how to access and print the statement. If a furnisher later posts corrected statements on the website, the furnisher must notify the recipients of that posting within 30 days after the posting.

Retention

The temporary regulations generally require the furnisher to maintain access to the statements on the website through October 15 of the year following the calendar year to which the statements relate. In addition, the furnisher generally must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate or for 90 days after that posting, whichever is later.

Special Analyses

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

Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. However, an initial Regulatory Flexibility Analysis was prepared for the proposed regulations published elsewhere in this issue of the Federal Register. Pursuant to section 7805(f) of the Internal Revenue Code, that notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Eric Lucas, formerly of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6041–2T also issued under 26 U.S.C. 6041(d). * * *

Section 1.6050S–1T also issued under 26 U.S.C. 6050S(g).

Section 1.6050S–2T also issued under 26 U.S.C. 6050S(g).* * *

Par. 2. Section 1.6041–2T is added to read as follows:

§1.6041–2T Return of information as to payments to employees (temporary).

(a)(1) through (4) [Reserved]

(5) *Statement for employees*. An employer that is required under §1.6041–2(a) to file Form W-2 with respect to an employee is also required under section 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

(b) and (c). For further guidance, see §1.6041–2(b) and (c).

Par. 3. Sections 1.6050S–1T and 1.6050–2T are added to read as follows:

§1.6050S–1T Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses (temporary).

(a) *Electronic furnishing of statements*—(1) *In general*. A person required by section 6050S(d) to furnish a written statement (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general*. The recipient must have affirmatively consented to receive the statement in an electronic format and must not have withdrawn that consent before the statement is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) *Change in hardware or software requirements*. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iii) *Example*. The following example illustrates the rules of this paragraph (a)(2):

Example. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement*. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the withdrawal of consent is furnished.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Posting*. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) post it on a website accessible to the recipient.

(6) *Notice*—(i) *In general*. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (a)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements*. A furnisher must notify a recipient that it has posted corrected statements on a website within 30 days of such posting in the manner described in paragraph (a)(6)(i) of this section. This notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(7) *Retention*. The furnisher must maintain access to the statements on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Effective date*. This section applies to statements required to be furnished under section 6050S(d) after December 31, 2000.

§1.6050S–2T Information reporting for payments of interest on qualified education loans (temporary).

(a) *Electronic furnishing of statements*—(1) *In general*. A person required by section 6050S(d) to furnish a written statement (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general*. The recipient must have affirmatively consented to receive the statement in an electronic format and must not have withdrawn that consent before the statement is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) *Change in hardware or software requirements*. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iii) *Example*. The following example illustrates the rules of this paragraph (a)(2):

Example. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement*. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the withdrawal of consent is furnished.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Posting*. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) post it on a website accessible to the recipient.

(6) *Notice*—(i) *In general*. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX DOCUMENT RETURN AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (a)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statements*. A furnisher must notify a recipient that it has posted corrected statements on a website within 30 days of such posting in the manner described in paragraph (a)(6)(i) of this section. This notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(7) *Retention*. The furnisher must maintain access to the statements on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) *Effective date*. This section applies to statements required to be furnished under section 6050S(d) after December 31, 2000.

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

Par. 4. The authority citation for part 31 is amended to read in part as follows:

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

Section 31.6051–1T also issued under 26 U.S.C. 6051. * * *

Par. 5. Section 31.6051–1T is added to read as follows:

§31.6051–1T Statements for employees (temporary).

(a) through (i) [Reserved]. For further guidance, see §31.6051–1(a) through (i).

(j) *Electronic furnishing of statements*—(1) *In general*. A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (7) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) *Consent*—(i) *In general*. The recipient must have affirmatively consented to receive the Form W-2 in an electronic format and must not have withdrawn that consent before the Form W-2 is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) *Change in hardware or software requirements*. If a change in hardware or software required to access the Form W-2 creates a material risk that the recipient will not be able to access the Form W-2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W-2 and inform the recipient that a new consent to receive the Form W-2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i) of this section, a new consent or confirmation of consent to receive the Form W-2 electronically.

(iii) *Example*. The following example illustrates the rules of this paragraph (j)(2):

Example. Furnisher F sends Recipient R an e-mail stating that R may consent to receive Forms W-2 electronically on a website instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Forms W-2 electronically. The e-mail attachment uses the same electronic format that F will use for its electronically furnished Forms W-2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Forms W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) *Paper statement*. The recipient must be informed that the Form W-2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to Forms W-2 furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the Form W-2 required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's Form W-2 after giving the consent described in paragraph (j)(2)(i) of this section.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a Form W-2 that was furnished electronically in the manner described in this paragraph (j) before the withdrawal of consent is furnished.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when the Form W-2 will no longer be available on the website. The recipient must be informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format*. The electronic version of the Form W-2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Posting*. The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for furnishing the Forms W-2) post it on a website accessible to the recipient.

(6) *Notice*—(i) *In general*. The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for furnishing the Form W-2) notify the recipient that the Form W-2 is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (j)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected Forms W-2*. A furnisher must notify a recipient that it has posted corrected Forms W-2 on a website within 30 days of such posting in the manner described in paragraph (j)(6)(i) of this section. This notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original Form W-2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(7) *Retention*. The furnisher must maintain access to the Forms W-2 on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(b) *Effective date*. Paragraph (j) of this section applies to Forms W-2 required to be furnished under section 6051 after December 31, 2000.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 7. Section 301.6724–1T is added to read as follows:

§301.6724–1T Reasonable cause (temporary).

(a) through (d)(2) [Reserved]. For further information, see §301.6724–1 (a) through (d)(2).

(d)(3) *Special rule for furnishers of electronic statements*. A filer may seek a waiver for reasonable cause pursuant to §301.6724–1(c)(6), for failing to timely furnish a statement in the following situation. If the recipient of the statement withdraws a consent to receive the statement in an electronic format, the filer will be deemed to have acted in a responsible manner under §301.6724–1(d) if the filer furnishes a paper statement on or before the date 30 days after the date the withdrawal of consent is received.

(e) through (n) [Reserved]. For further guidance, see §301.6724–1(e) through (n).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In §602.101, paragraph (b) is amended by adding entries to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

Approved January 10, 2001.

Jonathan Talisman,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on February 13, 2001, 8:45 a.m., and published in the issue of the Federal Register for February 14, 2001, 66 F.R. 10191)

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041–2T	1545–1729
* * * * *	
1.6050S–1T	1545–1729
1.6050S–2T	1545–1729
* * * * *	
31.6051–1T	1545–1729
* * * * *	

Section 6621.— Determination of Interest Rate

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the second calendar quarter of 2001, beginning April 1, 2001, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 is 5.5 percent.

Rev. Rul. 2001–16

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning April 1, 2001, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See § 6621(c) and § 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 2001 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning April 1, 2001. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning April 1, 2001, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 2001, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Under § 6621(b)(2)(B), the 9 percent rate that applies to estimated tax underpayments for the first calendar quarter in 2001, as provided in Rev.Rul. 2000–57, 2000–50 I.R.B. 579, also applies to such underpayments for the first 15 days in April 2001.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95–17, 1995–1 C.B. 556, 570, 573, 575, and 579.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue ruling, contact Mr. Bailey at (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 - DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573

TABLE OF INTEREST RATES—Continued
FROM JAN. 1, 1987 - DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995–1 C.B.			1995–1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 - PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31 2001	9%	23	577
Apr. 1, 2001—Jun. 30 2001	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 - PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575

TABLE OF INTEREST RATES FOR

LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 - PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579

TABLE OF INTEREST RATES FOR

LARGE CORPORATE UNDERPAYMENTS—Continued

FROM JANUARY 1, 1991 - PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579

TABLE OF INTEREST RATES FOR CORPORATE

OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 - PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570

Part III. Administrative, Procedural, and Miscellaneous

Estimated Tax Election for Owners of ESBTs

Notice 2001–25

PURPOSE AND BACKGROUND

This notice provides guidance to electing small business trusts (ESBTs) and individuals who are treated as the owners of ESBTs (deemed owners) under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (subpart E), regarding estimated tax payments mistakenly made by ESBTs rather than the deemed owners of the ESBTs for taxable years ending on December 29, 30, or 31, 2000. Questions have arisen whether these estimated tax payments made by ESBTs (under the ESBTs' employer identification numbers (EINs)) for the 2000 taxable year can be credited to the accounts of the deemed owners of the ESBTs, and whether any penalties for underpayment of estimated tax are applicable.

Proposed Income Tax Regulations (REG–251701–96, 2001–4 I.R.B. 396) under § 1361(e) and § 641(c) were published in the Federal Register on December 29, 2000 (65 Fed. Reg. 82963) providing guidance with respect to ESBTs. Section 1.641(c)–1(a) provides that an ESBT is treated as two separate trusts for purposes of determining income tax. The portion of an ESBT that consists of stock in one or more S corporations (the S portion) is treated as one trust. The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust. The grantor or another person may be treated as the owner of all or a portion of either or both trusts under subpart E (grantor portion).

Section 1.641(c)–1(c) provides that the grantor or another person who is treated as the owner of a portion of the ESBT includes in computing taxable income items of income, deductions, and credits against tax attributable to that portion of the ESBT under § 671.

Section 1.641(c)–1(j) provides that § 1.641(c)–1(a), (b), and (c) are proposed to be applicable for taxable years of ESBTs that end on and after December 29, 2000.

Prior to the issuance of the proposed ESBT regulations, some taxpayers took the position that an ESBT election could be made for a grantor trust and that the rules relating to the taxation of ESBTs applied to the entire portion of the trust holding S corporation stock. Consistent with this position, these ESBTs made estimated tax payments for the 2000 taxable year under the trusts' EINs, and the deemed owners did not take into account the S corporation income in calculating their estimated tax payments for the 2000 taxable year.

Section 6654(a) provides that except as otherwise provided in § 6654, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying (1) the underpayment rate established by § 6621, (2) to the amount of the underpayment, (3) for the period of the underpayment.

Section 6654(d)(2)(B) provides that in the case of any required installment, the annualized income installment is the excess of (i) the amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over (ii) the aggregate amount of any prior required installments for the taxable year.

Section 6654(e)(3)(A) provides that no addition to tax shall be imposed under § 6654(a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

SCOPE

This notice provides a method for having the estimated tax payments that were made by an ESBT under the trust's EIN credited to the deemed owner's account for estimated tax purposes. This notice also provides that for purposes of the deemed owner's computation of annualized income installments under § 6654(d)(2)(B), the deemed owner may take into account, as of the last day of the deemed owner's 2000 taxable year, the S corporation pass-thru items allocable to stock held by the ESBT.

METHOD FOR CREDITING ESTIMATED TAX PAYMENTS TO DEEMED OWNER AND CALCULATING ANY UNDERPAYMENT OF ESTIMATED TAX PENALTY

An ESBT that wants estimated tax payments that were made by the trust under the trust's EIN to be treated as made by the deemed owner of the ESBT must file Form 1041-T, *Allocation of Estimated Tax Payments to Beneficiaries*, in the time and manner specified in the Instructions to Form 1041-T with the following modifications. At the top of the Form 1041-T, the following statement should be written, "FILED PURSUANT TO NOTICE 2001-25." Each reference in the Form 1041-T to beneficiary is deemed to refer to the deemed owner of the ESBT solely for purposes of this notice and the Form 1041-T should be completed accordingly. The trust's estimated tax payments included on Form 1041-T will be treated as a payment of estimated tax made by the deemed owner of the ESBT on January 15, 2001.

If the deemed owner of the ESBT is required to file Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*, the deemed owner may use Schedule AI, *Annualized Income Installment Method*. For this purpose, the deemed owner may take into account, as of the last day of the deemed owner's 2000 taxable year, all S corporation items allocable to the grantor portion of the ESBT.

EFFECTIVE DATE

This notice applies only for taxable years of ESBTs and of the deemed owners of those ESBTs ending on December 29, 30, or 31, 2000.

DRAFTING INFORMATION

The principal author of this notice is James A. Quinn of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Quinn at (202) 622-3060 (not a toll-free call).

Trust 645 Election

Notice 2001–26

This notice provides guidance regarding the election for a trust to be treated as part of an estate under § 645 of the Internal Revenue Code and the filing of a Form 1041, *U.S. Income Tax Return for Estates and Trusts*, for the first (short) taxable year of the trust.

Section 645 provides that a qualified revocable trust may elect to be treated and taxed for income tax purposes as part of an estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date described in § 645(b)(2).

Rev. Proc. 98–13, 1998–1 C.B. 370, sets forth procedures for making the § 645 election and filing the appropriate tax returns. A qualified revocable trust that will make the § 645 election generally is required to obtain a taxpayer identification number (TIN) and to file a Form 1041 for the trust's short taxable year beginning with the decedent's death and ending December 31 of that year. A trust does not have to file a short year return if: (1) the Form 1041 for the estate's first taxable year is filed before the due date for filing a Form 1041 for the trust for the taxable year ending after the date of the decedent's death; (2) the trust items attributable to the decedent are reported pursuant to § 1.671–4(b)(2)(i)(A) or (B); and (3) the entire trust is a qualified revocable trust.

Under Rev. Proc. 98–13, if the trust is required to file a Form 1041 for the short taxable year, a copy of the required election statement must be attached to that form. The original of the required statement must be attached to the Form 1041 filed for the estate's first taxable year. The § 645 election is considered made on the first to occur of the filing of the estate's Form 1041 with the original required statement attached or the filing of the trust's Form 1041 with the copy of the required statement attached. Once the election is made, the items of income, deductions, and credits attributable to the trust for the short year must be excluded from the trust's Form 1041 and reported on the estate's Form 1041.

Proposed income tax regulations under § 645 published in the Federal Register on December 18, 2000 (65 Fed. Reg. 79015), contain different procedures for making the election and filing the short year return for the trust. These procedures are proposed to replace the procedures in Rev. Proc. 98–13 when the regulations are finalized. Under the proposed regulations, the § 645 election is considered made upon the filing of the Form 1041, with the required election statement attached, for the first taxable year of the estate, or if there is no personal representative, for the first taxable year of the trust filing as an estate. Section 1.645–1(c) of the proposed Income Tax Regulations. The proposed regulations also provide that if the § 645 election will be made, the trust is not required to obtain a TIN for the trust or file a Form 1041 for the short year. In such a situation, the trust's items of income, deductions, and credits are included on the combined Form 1041 for the electing trust and related estate under the TIN for the related estate. Section 1.645–1(d)(1)(i) and (ii)(A).

The Internal Revenue Service has received numerous requests that taxpayers be permitted to use the procedures in the proposed regulations prior to the time that the final regulations are issued. Accordingly, estates and qualifying revocable trusts of decedents who die after December 31, 1999, and before the effective date of the final § 645 regulations, may choose to use either the election and reporting procedures set forth in Rev. Proc. 98–13, or the election and reporting procedures set forth in § 1.645–1(c) and § 1.645–1(d)(1)(i) and (ii)(A) of the proposed regulations.

The principal author of this notice is Pietro Canestrelli of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Pietro Canestrelli at (202) 622-3060 (not a toll-free call).

Dealers in Securities Futures Contracts; Request for Comments

Notice 2001–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of solicitation of comments.

SUMMARY: This notice was published in the Federal Register on March 7, 2001, as BPG-132413-00. The IRS and Treasury Department are soliciting comments on the criteria that should be used to determine whether a taxpayer is a dealer in securities futures contracts (or options on such contracts) for purposes of section 1256 of the Internal Revenue Code.

DATES: Written and electronic comments are requested on or before May 5, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (BPG–132413–00), 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:M&SP:RU (BPG–132413–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the notice, Patrick E. White (202) 622–3920; concerning submission and delivery of comments, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Commodities Futures Modernization Act of 2000, enacted as part of the Consolidated Appropriations Act, 2001 (Public Law 106–554, 114 Stat. 2763), authorizes the trading of securities futures contracts, a new type of derivative financial product. Another portion of the same enactment—the Community Renewal Tax Relief Act of 2000 (the Act)—prescribes the tax treatment of these financial products. In general, gain or loss is recognized on securities futures contracts upon disposition, and the character of such gain or loss is determined by newly enacted section 1234B.

The timing and character of gains and losses on *dealer* securities futures contracts, however, is determined by section 1256. Thus, dealer securities futures contracts are subject to mark-to-market treatment, and capital gains or losses are treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. Section 1256(g)(9) defines *dealer securities futures contracts* as securities futures contracts (and options on such contracts) that are traded on a qualified board or exchange and are entered into by a dealer in the normal course of the dealer's business of dealing in such contracts or options. For this purpose, a person is a *dealer* in securities futures contracts or options on such contracts if the Secretary of the Treasury determines that the person performs functions with respect to such contracts or options similar to the functions performed with respect to stock options by persons registered with a national securities exchange as a market maker or specialist in listed options. The Act requires the Secretary of the Treasury or his delegate to make this determination no later than July 1, 2001.

The legislative history of the Act states the following with respect to the determination process:

> The determination of who is a dealer in securities futures contracts is to be made in a manner that is appropriate to carry out the purposes of the provision, which generally is to provide comparable tax treatment between dealers in securities futures contracts, on the one hand, and dealers in equity options, on the other. Although traders in securities futures contracts (and options on such contracts) may not have the same market-making obligations as market makers or specialists in equity options, many traders are expected to perform analogous functions to such market makers or specialists by providing market liquidity for securities futures contracts (and options) even in the absence of a legal obligation to do so. Accordingly, the absence of market-making obligations is not inconsistent with a determination that a class of traders are dealers in securities futures contracts (and options), if the relevant factors, including providing market liquidity for such contracts (and options), indicate that the market functions of the traders is comparable to that of equity options dealers.

H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. 1036 (2000).

The IRS and Treasury Department, therefore, seek taxpayers' suggestions concerning both the substance of these determinations and the manner in which they should be made. As described in more detail below, of particular interest are comments that will aid in establishing objective criteria and processes for making the determinations. In addition, comments are solicited in certain specific areas.

First, comments are requested about the activities and obligations of equity options dealers, especially those activities and obligations that contribute to the establishment and maintenance of an orderly market. For purposes of this notice, the term *equity options dealer* means a market maker or specialist described in section 1256(g)(8) with respect to options that are described in section 1256(g)(6) without regard to the requirement that indices be narrow based. Any relevant way in which the activities and obligations of market makers differ from those of specialists should be described; and the significance of this difference for any comment or other response to this notice should be explained when relevant.

Among the questions on which information is sought are the following: What are the activities imposed on, or undertaken by, equity option dealers that are considered making a market? Do equity option dealers engage in activities that extend beyond making a market but that contribute to the establishment and maintenance of orderly markets? For example, equity options dealers trading for their own accounts (and not in response to orders placed by an off-exchange customer) may be a significant source of market volume. Is that the case? If so, to what extent does this added volume contribute to market liquidity? Are there other ways in which these dealers contribute to the markets in which they participate? What differences are there, in scale or kind, between the activities of equity options dealers and similar activities of other market participants?

Although some relevant activities of equity options dealers may be ongoing, other critical activities may commence, or change significantly in nature or scope, during periods of market disequilibrium. Information with respect to equity options dealers' activities at these times will be particularly welcome.

Second, information is requested regarding activities of traders[1] on futures markets. Although traders on futures markets may not have specific market-making obligations, their trading activities may contribute to the establishment and maintenance of orderly markets. Is that typically the case? Descriptions of trading activities on futures markets generally will be helpful, and insights and supporting data on the nature and extent of trading by specific groups of futures traders will be particularly useful. Relevant groups for this purpose may be based on the type of contract traded, the extent of trading for one's own account (as opposed to trading in response to orders from off-exchange customers), and the class of exchange membership.

This discussion should be accompanied, if possible, by an explanation of the extent to which the activities of traders in securities futures contracts are expected to resemble the activities of the specific groups described. In general, expectations of how trading in securities futures contracts may or may not differ from trading in current products will also be helpful.

Third, comments are solicited on administrable and economically meaningful criteria for identifying any traders that should be treated as dealers in securities futures contracts. Criteria for identifying these persons might include, among others, the nature and extent of trading activities (including the extent to which the person's trading is concentrated in certain products), class of exchange membership, capital, and share of net income derived from trading activities. Should it be possible for a person to be a dealer in securities futures contracts with respect to some such contracts but not with respect to others?

If a taxpayer's satisfaction of the suggested criteria may vary over time, comments are also requested respecting rules for determining when a taxpayer becomes, or ceases to be, a dealer in securities futures contracts. For example, should it be possible for the status as a

[1] The references here, and in the following paragraphs, to *traders* are not intended to exclude any taxpayers who are not treated as traders for tax purposes but who may perform functions similar to the functions performed by equity options dealers.

dealer in securities futures contracts to change within a single taxable year or only between taxable years? Does a taxpayer need to know before it enters a transaction whether it is treated as a dealer for purposes of that transaction? Will special rules be required for taxpayers who have not previously traded in the contracts? (Initially, all taxpayers fall into this category.) Comments regarding both substantive criteria and the method of application will be useful.

Comments

Written or electronic comments (a signed original and eight (8) copies, if written) should be timely submitted (in the manner described in the ADDRESSES portion of this notice) to the IRS. All comments will be available for public inspection and copying.

Drafting Information

The principal authors of this notice are Patrick E. White, Office of Associate Chief Counsel (Financial Institutions and Products), and Matthew J. Eichner, Office of Tax Analysis, United States Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in its development.

Lon B. Smith,
Acting Associate Chief Counsel
(Financial Institutions & Products)

Weighted Average Interest Rate Update

Notice 2001–28

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for February 2001 is 5.45 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
March	2001	5.87	5.29 to 6.17	5.29 to 6.46

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call Mr. Newman at (202) 283-9702 (not a toll-free number).

Part IV. Items of General Interest

Withdrawal of Notice of Proposed Regulations

Requirements Relating to Certain Exchanges Involving a Foreign Corporation

LR–230–76

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed regulations.

SUMMARY: This document withdraws proposed regulations under section 367(c). The proposed regulations correspond to temporary regulations that are also being removed by T.D. 8938 on page 929 of this Bulletin. The temporary regulations are being removed because they are no longer necessary and, as a result, may be misleading.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris at (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1977, the IRS and Treasury published in the **Federal Register** proposed regulations (42 FR 65204) and temporary regulations (42 FR 65152) under section 367(c) of the Internal Revenue Code. The principal purpose of these regulations, §§7.367(c)–1 and 7.367(c)–2, was to distinguish between the treatment of transfers described in section 367(c) before and after the enactment of the Tax Reform Act of 1976 (the Act) (90 Stat. 1634). Before enactment of the Act, transfers described in section 367(c) were subject to a ruling requirement. After enactment of the Act, transfers described in section 367(c) were within the scope of §§7.367(b)–1 through 7.367(b)–12. In light of the substantial time that has passed since enactment of the Act and, moreover, in light of the fact that §§1.367(b)–1 through 1.367(b)–6 have substantially superceded §§7.367(b)–1 through 7.367(b)–12, §§7.367(c)–1 and 7.367(c)–2 are no longer necessary and may be misleading.

Accordingly, the IRS and Treasury through T.D. 8938 are removing temporary regulations §§7.367(c)–1 and 7.367(c)–2 in T.D. 7530. Correspondingly, this document removes proposed regulations §§7.367(c)–1 and 7.367(c)–2.

* * * * *

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, proposed regulations under 26 CFR part 7 relating to §§7.367(c)–1 and 7.367(c)–2, as published December 30, 1977 (42 FR 65204), are withdrawn.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 11, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 12, 2001, 66 F.R. 2856)

Notice of Proposed Rulemaking and Notice of Public Hearing

Relief From Joint and Several Liability

REG–106446–98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the IRS Restructuring and Reform Act of 1998. The regulations provide guidance to married individuals filing joint returns who may seek relief from joint and several liability. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronically generated comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for May 30, 2001, must be received by April 27, 2001.

ADDRESSES: Send submissions to CC:M&SP:RU (REG–106446–98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–106446–98), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., 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 proposed regulations, Bridget E. Finkenaur, 202-622-4940; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 19, 2001. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collection of information in this proposed regulation is in §1.6015–5. Individuals may request relief from joint and several liability by timely filing Form 8857, "Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)," or a written statement that contains the information required on Form 8857, that is signed under penalties of perjury. This collection of information is required in order for an individual to request relief from joint and several liability. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The reporting burden contained in §1.6015–5 is reflected in the burden of Form 8857. The estimated burden is: learning about the law or the form, 17 min.; preparing the form, 17 min.; and copying, assembling, and sending the form to the IRS, 20 min. The reporting burden contained in §1.6015–5 for the statement signed under penalties of perjury is estimated as: learning about the law, 20 min.; preparing the statement signed under penalties of perjury, 30 min.; and copying, assembling, and sending the statement to the IRS, 20 min.

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

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

Background

Section 6013(d)(3) provides that spouses who file a joint Federal income tax return are jointly and severally liable for liabilities with respect to tax arising from that return. The term *tax* includes additions to tax, penalties, and interest. See sections 6665(a)(2) and 6601(e)(1). Joint and several liability allows the IRS to collect the entire liability from either spouse signing the joint return, without regard to whom the items of income, deduction, credit, or basis that gave rise to the liability are attributable. Before the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA), section 6013(e) provided the only relief from joint and several liability, and it only applied in very limited circumstances.

Section 3201 of the RRA repealed section 6013(e) and replaced it with section 6015. Section 6015 applies to liabilities that arise after July 22, 1998, and liabilities that arose prior to July 22, 1998, which remained unpaid as of that date. The provisions of section 6015 expand the relief available to spouses or former spouses who wish to be relieved from all or a portion of the joint and several liability arising from a joint individual Federal income tax return. Section 6015 makes the requirements for relief from joint and several liability, formerly in section 6013(e), less restrictive (section 6015(b)), and adds two other relief provisions. One provision, section 6015(c), permits the allocation of a deficiency between certain estranged spouses or former spouses in proportion to their respective erroneous items or in accordance with other allocation rules. The other provision, section 6015(f), gives the Secretary equitable discretion to grant relief from joint and several liability. The three relief provisions have different eligibility requirements and provide different types of relief.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 6015. The proposed regulations provide detailed guidance on the three types of relief from joint and several liability under section 6015.

Explanation of Provisions

In General

To qualify for relief from joint and several liability, a *requesting spouse* (as defined in the regulations) must elect the application of section 6015(b) or 6015(c), or request equitable relief under section 6015(f), within 2 years of the first collection activity after July 22, 1998, with respect to the requesting spouse. Relief under section 6015 is only available for income taxes required under Subtitle A (including self-employment taxes). Relief is not available for other taxes reported on a taxpayer's income tax return (e.g., domestic services employment taxes under section 3510).

The proposed regulations define several terms, some of which are unique to specific provisions, and others of which are generally applicable to section 6015. One generally applicable term is an item. An item is generally defined as that which is required to be separately reported on an individual income tax return. However, amounts received from investments that are required to be separately reported on an individual income tax return and that are from the same source are aggregated and treated as one item. For example, assume an individual receives $700 in dividends and $1,000 in interest from X Co. Although dividends and interest are required to be separately reported on the individual's income tax return, they are considered one item for purposes of section 6015 because the dividends and interest are both from X Co. Items include, but are not limited to, gross income, deductions, credits, and basis. An erroneous item is defined as any item resulting in an understatement or deficiency in tax to the extent such item is omitted from, or improperly reported (including improperly characterized) on, an individual income tax return.

Innocent Spouse Relief Under Section 6015(b)

In enacting section 6015, Congress focused, in part, on the limitations of section 6013(e). H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 249 (1998). Thus, certain limitations under section 6013(e) have been eliminated in section 6015. For example, section 6013(e) required that there be a *substantial understatement* attributable to a *grossly erroneous* item, whereas section 6015(b) only requires that there be an *understatement* of an *erroneous* item. Another difference is that, unlike section 6013(e), section 6015(b) expressly provides for partial relief if a requesting spouse did not know, and had no reason to know, of only a portion of the understatement. One procedural difference is that a requesting spouse must now elect the application of section 6015(b).

Otherwise, section 6015(b) provides the same type of relief as was available under section 6013(e). In addition, as with section 6013(e), if a requesting spouse qualifies for relief under section

6015(b), refunds are available for amounts that the requesting spouse paid toward the liability for which relief was granted. Much of the language in section 6015(b) is identical to that of section 6013(e). Accordingly, the case law interpreting this language under section 6013(e) will be applied in interpreting the same language under section 6015(b).

The proposed regulations define *understatement* by reference to section 6662(d)(2)(A). Consistent with the interpretation of section 6013(e), the proposed regulations also clarify that "knowledge or reason to know" of an understatement exists only when either the requesting spouse actually knew of the erroneous item giving rise to the understatement, or a reasonable person in similar circumstances would have known of the item.

Allocation of Deficiency Under Section 6015(c)

Section 6015(c) is one of the new relief provisions added by section 3201 of the RRA. Section 6015(c) basically provides relief for an estranged or former spouse by allowing the requesting spouse to elect to limit the requesting spouse's liability for a deficiency to the portion of the deficiency allocated to the requesting spouse. As with section 6015(b), the relief under section 6015(c) must be elected. Unlike section 6015(b), refunds are not available under section 6015(c).

Of the three relief provisions in section 6015, section 6015(c) comes closest to being a mechanical test. Unlike the other two relief provisions, section 6015(c) does not require a determination that it would be inequitable to hold the requesting spouse liable in order for the requesting spouse to obtain relief. Several objective tests apply to determine whether a requesting spouse qualifies for relief. Among the requirements for relief under section 6015(c) is the requirement that the requesting spouse be divorced, widowed, or legally separated, or not have been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. The proposed regulations provide rules for determining whether spouses are members of the same household in particular situations.

Relief under section 6015(c) is not available for the portion of a deficiency attributable to an erroneous item of the nonrequesting spouse if the Secretary demonstrates that the requesting spouse had actual knowledge of that item at the time the requesting spouse signed the joint return. If the requesting spouse had actual knowledge of only a portion of the erroneous item, partial relief may be available for the amount of the deficiency attributable to the portion of the item of which the requesting spouse did not have actual knowledge. Reason to know of an erroneous item or a portion thereof is not sufficient to disqualify a requesting spouse from relief under section 6015(c). Hence, it may be easier to qualify for relief under this provision than under section 6015(b).

Knowledge of an item means knowledge of the receipt or expenditure. It does not mean knowledge of the proper tax treatment of the item or how (or whether) it was actually reported on the return. This knowledge standard is consistent with the knowledge standard adopted by the United States Tax Court and other courts. See *Cheshire v. Commissioner*, 115 T.C. No. 15 (August 30, 2000) (knowledge requirement under section 6015(c) does not require requesting spouse to possess knowledge of the tax consequences arising from the erroneous item or that the item reported on the return is incorrect; rather the statute requires only a showing that the requesting spouse actually knew of the erroneous item); *Wiksell v. Commissioner*, 215 F.3d 1335 (9th Cir. 2000) (knowledge inquiry in section 6015(c) focuses on whether the taxpayer had knowledge of the erroneous item, not the tax consequences of that item). Also, under the proposed regulations, a requesting spouse could have actual knowledge of an erroneous item without necessarily knowing its source. Thus, if W knew that H received $1,000 of interest income, W would have actual knowledge of that item even if W thought that the interest was tax-exempt, or even if W did not know from whom the interest was received. Similarly, W would have actual knowledge of the item even if W had thought (incorrectly) that H had included the interest income on the return. A requesting spouse's failure to review a completed joint return will not negate a demonstration by the Secretary that the requesting spouse had actual knowledge of an item.

To demonstrate that a requesting spouse had actual knowledge of an erroneous item, the Secretary may rely upon all of the facts and circumstances. One relevant factor is whether the requesting spouse made an effort to be shielded from liability by deliberately avoiding learning about an item. Another relevant factor is whether the requesting spouse had an ownership interest in the property that gave rise to the item. The proposed regulations provide that joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item.

The proposed regulations also provide that the portion of the deficiency for which the requesting spouse remains liable is increased (up to the entire amount of the deficiency) by the value of any disqualified assets transferred to the requesting spouse by the nonrequesting spouse. Disqualified assets are defined as those assets transferred for the principal purpose of avoidance of tax or payment of tax. Any assets transferred during the period beginning 12 months before the mailing date of the first letter of proposed deficiency and continuing to the present are presumed to be disqualified assets. However, the requesting spouse can rebut the presumption by showing that the principal purpose of the transfer was not the avoidance of tax or payment of tax. In addition, the presumption does not apply to transfers of assets pursuant to a divorce or separate maintenance or child support agreement. The IRS and Treasury Department are particularly interested in receiving comments on whether there should be a *de minimis* exception to the presumption, and if so, the appropriate amount for such an exception.

If a requesting spouse qualifies to elect the application of section 6015(c), section 6015(d) generally provides that erroneous items are allocated between the spouses as if they had filed separate returns. In addition, section 6015(g) directs the Secretary to establish alternative methods of allocating erroneous items, other than the method in section 6015(d). Under the proposed regulations, erroneous income items are generally allocated to the spouse who earned the income or who owned the investment or business producing the income. If both spouses had an ownership interest in an investment or business, an erroneous income item from that investment or business is allocated between them in proportion to their respective ownership interests. Erroneous business or investment deductions are generally allocated to the spouse who owned the business or investment. If both spouses had an ownership interest in the business or investment, an erroneous deduction related to that business or investment is allocated between them in proportion to their respective ownership interests. Personal deductions are generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

Section 6015(d) also provides rules for allocating a deficiency. Under the proposed regulations, a portion of the deficiency is allocated under the "proportionate allocation method," that is, in proportion to each spouse's share of erroneous items. The proposed regulations provide additional rules regarding the allocation of other portions of the deficiency. First, any portion of the deficiency attributable to certain disallowed credits and taxes (other than income tax and alternative minimum tax) is allocated entirely to one spouse or the other. Second, any portion of the deficiency attributable to the liability of the child of the requesting or nonrequesting spouse is allocated under special rules. Third, any portion of the deficiency attributable to the alternative minimum tax under section 55 is allocated between the spouses in proportion to their individual shares of the total alternative minimum taxable income as defined under section 55(b)(2). Fourth, any portion of the deficiency attributable to accuracy-related penalties under section 6662 and fraud penalties under section 6663 is allocated to the spouse to whom the item giving rise to the penalty is allocable.

The proposed regulations provide one alternative allocation method, which must be used in place of the general allocation method when there are erroneous items taxed at different rates. This method ensures that the allocation of the liability is not skewed, for example, when the deficiency items consist of ordinary income items and capital gains.

Equitable Relief Under Section 6015(f)

Section 6015(f) is the other new relief provision that was added by section 3201 of the RRA. Section 6015(f) authorizes the Secretary to grant equitable relief from joint and several liability to requesting spouses who do not qualify for relief under section 6015(b) or 6015(c). The proposed regulations provide that the Secretary has the discretion to grant equitable relief and that the discretion may be exercised if it would be inequitable to hold the requesting spouse jointly and severally liable. Equitable relief is only available to requesting spouses who fail to qualify for relief under sections 6015(b) and 6015(c). However, section 6015(f) may not be used to circumvent the "no refund" rule of section 6015(c). Therefore, equitable relief under section 6015(f) is not available to refund liabilities already paid, for which the requesting spouse would otherwise qualify for relief under section 6015(c).

Section 6015(f) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. These proposed regulations provide general information on section 6015(f) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic. The detailed guidance on section 6015(f) is currently provided in Revenue Procedure 2000–15 (2000–5 I.R.B. 447).

Other Considerations

In addition to the three types of relief from joint and several liability, section 6015 has many provisions that are relevant when a requesting spouse elects relief under section 6015(b) or 6015(c), or requests relief under section 6015(f). The proposed regulations provide detailed guidance on these other provisions:

1. Types of Relief Considered.

There are certain statutory consequences to electing the application of section 6015(b) or section 6015(c) (e.g., suspension of the statute of limitations on collection). Therefore, the IRS will not automatically consider such relief unless the requesting spouse affirmatively elects the application of at least one of those sections. If a spouse requests relief under section 6015(f) alone, relief will only be considered under that section. However, if a requesting spouse elects the application of either section 6015(b) or 6015(c), the IRS will automatically consider whether the requesting spouse qualifies for relief under the other relief provisions of section 6015.

2. Time and Manner of Requesting Relief.

Relief under section 6015 must be elected or requested within two years from the first *collection activity* (as defined in the proposed regulations) after July 22, 1998, against the requesting spouse with respect to the joint and several liability. In addition, relief may be elected or requested before the commencement of collection activity. However, the election may not be made, nor may relief be requested, before the taxpayer receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to the joint return. The proposed regulations provide that the Secretary will not consider premature claims.

3. Determinations.

The proposed regulations provide that a requesting spouse generally only receives one final determination of relief under section 6015. However, a second election under section 6015(c) may be considered, and a final determination may be rendered on that election, if, at the time of the second election, but not at the time of the first election, the requesting spouse is divorced, legally separated, widowed, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date the election was filed.

4. Community Property.

Under section 6015 and the proposed regulations, the operation of community property law is not considered in determining to which spouse an erroneous item is allocable.

5. Duress.

The proposed regulations amend §1.6013–4 to clarify that if a spouse asserts and establishes that he or she signed a joint return under duress, then the return is not a joint return, and he or she is not jointly and severally liable for the liability arising from that return. Therefore, in such a case, relief from joint and several liability under section 6015 is not necessary and inapplicable.

Highlighted Issues

These proposed regulations contain detailed guidance on the three types of relief available under section 6015, as well as the other provisions contained in section 6015. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the issues highlighted below. These issues present the most challenge in administering section 6015(c).

1. *Knowledge*: The contrasting standards of the relief provisions are most evident in the respective knowledge limitations. Under section 6015(b), relief is not available unless the requesting spouse demonstrates that he or she had no knowledge or reason to know of the item giving rise to the understatement at the time the joint return was signed. In contrast, section 6015(c) provides that, assuming all of the qualifications are met, relief is available unless the Secretary demonstrates that the requesting spouse had actual knowledge of the item giving rise to the deficiency. Actual knowledge cannot be inferred from the requesting spouse's reason to know of the erroneous item. The Secretary bears the burden of proof with respect to the knowledge limitation of section 6015(c). In contrast, the requesting spouse bears the burden of proof with respect to the knowledge and reason to know limitations of section 6015(b). The IRS and Treasury Department are specifically seeking comments on the definition of *item*, because it is knowledge of an item that will disqualify a requesting spouse from receiving relief under sections 6015(b) and 6015(c).

2. *Alternative Allocation Methods*: Section 6015(g)(1) directs the Secretary to prescribe regulations providing alternative allocation methods, and the proposed regulations provide one that is discussed above. The proposed regulations also provide that additional alternative allocation methods may be provided in subsequent guidance. The IRS and Treasury Department are specifically interested in receiving comments about the alternative allocation method provided in the proposed regulations, and any other allocation methods that should be considered.

3. *Interests of the Nonrequesting Spouse*: It is anticipated that relief under section 6015 will be granted more frequently than it was under section 6013(e). Accordingly, section 6015 provides safeguards to protect nonrequesting spouses from erroneous determinations granting relief to their respective requesting spouses. The proposed regulations provide that the Secretary must give a nonrequesting spouse notice that the requesting spouse filed a claim for relief and an opportunity to participate in the determination of whether relief is appropriate.

In fashioning these safeguards, the IRS and Treasury Department are attempting to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. A spouse who signs a joint return is jointly and severally liable for the entire liability, and the Secretary may collect the entire liability from either spouse. Therefore, a determination that one spouse is relieved of joint and several liability may have no legal effect on the amount of the other spouse's liability. However, a nonrequesting spouse does have a practical interest in the outcome of an innocent spouse determination because if the requesting spouse is relieved of liability, the IRS's only recourse is to collect that liability from the nonrequesting spouse. The IRS and Treasury Department recognize that Congress intended that the IRS take into account the nonrequesting spouse's views when it makes a determination of relief. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). In addition, information provided by a nonrequesting spouse is helpful in many cases to determine the appropriate amount of relief, if any.

Under the proposed regulations, a nonrequesting spouse will have an opportunity to participate in any administrative or judicial determination of relief. At the administrative level, the nonrequesting spouse may submit information relevant to the determination to the IRS employee making the determination. In addition, if the requesting spouse files a petition with the Tax Court, the nonrequesting spouse will be notified, and have an opportunity to become a party to the proceeding. See Interim Tax Court Rule 325.

Nonetheless, the IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from joint and several liability, or submit information regarding the other spouse's request for relief, due to privacy concerns or for fear of the other spouse's reprisal. To address this concern, the proposed regulations provide that, at the request of one spouse, the Secretary will omit from shared documents any information (e.g., new name, address, employer) that would reasonably identify that spouse's location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the 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), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations, on how the proposed regulations can be made easier to understand, and on the highlighted issues. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 30, 2001, at 10 a.m., in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 27, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Bridget E. Finkenaur of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in the development of the regulations.

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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 is amended by adding the following entries in numerical order to read as follows:

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

§1.6015–1 also issued under 26 U.S.C. 6015(g).

§1.6015–2 also issued under 26 U.S.C. 6015(g).

§1.6015–3 also issued under 26 U.S.C. 6015(g).

§1.6015–4 also issued under 26 U.S.C. 6015(g).

§1.6015–5 also issued under 26 U.S.C. 6015(g).

§1.6015–6 also issued under 26 U.S.C. 6015(g).

§1.6015–7 also issued under 26 U.S.C. 6015(g).

§1.6015–8 also issued under 26 U.S.C. 6015(g).

§1.6015–9 also issued under 26 U.S.C. 6015(g). * * *

Par. 2. In §1.6013–4, paragraph (d) is added to read as follows:

§1.6013–4 Applicable rules.

* * * * *

(d) *Return signed under duress*. If an individual asserts and establishes that he or she signed a return under legal duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d). Section 6212 applies to the assessment of any deficiency in tax on such return.

Par. 3. Sections 1.6015–0 through 1.6015–9 are added to read as follows:

§1.6015–0 Table of contents.

This section lists captions contained in §§1.6015–1 through 1.6015–9.

§1.6015–7 Tax Court review.

§1.6015–8 Applicable liabilities.

§1.6015–9 Effective date.

§1.6015–1 Relief from joint and several liability on a joint return.

(a) *In general*. (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. However, a spouse or former spouse may be relieved of joint and several liability for any Federal income tax, self-employment tax, penalties, additions to tax, and interest for that year under the following three relief provisions:

(i) Innocent spouse relief under §1.6015–2.

(ii) Allocation of deficiency under §1.6015–3.

(iii) Equitable relief under §1.6015–4.

(2) A requesting spouse may submit a single claim electing relief under both or either §§1.6015–2 and 1.6015–3, and requesting relief under §1.6015–4. However, equitable relief under §1.6015–4 is available only to a requesting spouse who fails to qualify for relief under §§1.6015–2 and 1.6015–3. If a requesting spouse elects the application of either §1.6015–2 or 1.6015–3, the Secretary may consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under §1.6015–4. If a requesting spouse seeks relief only under §1.6015–4, the Secretary may not grant relief under §1.6015–2 or 1.6015–3. A requesting spouse must affirmatively elect the application of §1.6015–2 or 1.6015-3 in order for the Secretary to grant relief under one of those sections.

(3) Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) *Duress*. For rules relating to the treatment of returns signed under duress, see §1.6013–4(d).

(c) *Prior closing agreement or offer in compromise*. A requesting spouse is not entitled to relief from joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(d) *Fraudulent scheme*. If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return.

(e) *Res judicata and collateral estoppel*. A requesting spouse is not entitled to relief from joint and several liability under §1.6015–2 or 1.6015–3 for any tax year for which a court of competent jurisdiction has rendered a final determination on the requesting spouse's tax liability if the requesting spouse materially participated in the proceeding. A requesting spouse has not materially participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. However, any final determinations made by a court of competent jurisdiction regarding issues relevant to §1.6015–2, 1.6015–3, or 1.6015–4 are conclusive and may not be reconsidered, provided the requesting spouse materially participated in the prior court proceeding.

(f) *Community property laws*—(1) *In general*. In determining whether relief is available under §1.6015–2, 1.6015–3, or 1.6015–4, items of income, credits, and deductions are generally allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See §1.6015–3(d)(2).

(2) *Example*. The following example illustrates the rule of this paragraph (f):

Example. (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a $17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to $20,000 of H's unreported interest income from his individual bank account, the remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own 1/2 of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that 1/2 of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is allocable to H, and the $30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) *Definitions*—(1) *Requesting spouse*. A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under §1.6015–2 or 1.6015–3, or requests relief from Federal income tax liability arising from that return under §1.6015–4.

(2) *Nonrequesting spouse*. A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) *Item*. An item is that which is required to be separately listed on an individual income tax return or any required attachments, subject to one exception: Amounts received from investments that are required to be separately reported on an individual income tax return and that are from the same source are aggregated

and treated as a single item. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) *Erroneous item*. An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return).

(5) *Election or request*. A qualifying election under §1.6015–2 or 1.6015–3, or request under §1.6015–4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under §1.6015–3 when the additional qualifications of paragraph (g)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under §1.6015–3 when the Internal Revenue Service considered the first election because the qualifications of §1.6015–3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under §1.6015–3(a) are satisfied.

(h) *Transferee liability*—(1) *In general*. The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under §1.6015–2, 1.6015–3, or 1.6015–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) *Example*. The following example illustrates the rule of this paragraph (h):

Example. H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's estate transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under section 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property laws.

§1.6015–2 Relief from liability applicable to all qualifying joint filers.

(a) *In general*. A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§1.6015–1(g)(5) and 1.6015–5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the item giving rise to the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) *Understatement*. The term *understatement* has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) *Knowledge or reason to know*. A requesting spouse has knowledge or reason to know of an erroneous item if he or she either actually knew of the item giving rise to the understatement, or if a reasonable person in similar circumstances would have known of the item giving rise to the understatement. For rules relating to a requesting spouse's actual knowledge, see §1.6015–3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an erroneous item. The facts and circumstances that are considered include, but are not limited to, the nature of the item and the amount of the item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) *Inequity*. All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account include the fact that the nonrequesting spouse has not fulfilled support obligations to the requesting spouse or the fact that the spouses have been divorced, legally separated, or not been members of the same household for at least the 12 months directly preceding the election. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Rev. Proc. 2000–15 (2000–5 I.R.B. 447), or guidance subsequently published by the Secretary as described in §1.6015–4(c).

(e) *Partial relief*—(1) *In general*. If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example*. The following example illustrates the rules of this paragraph (e):

Example. H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling $2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. However, each month during 2004, H transferred $10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities. However, W did have knowledge and reason to know of $120,000 of the $2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from $1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from $120,000 of the unreported embezzlement income of which she knew and had reason to know.

§1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) *Election to allocate deficiency*. A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§1.6015–1(g)(5) and 1.6015–5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses filing the joint return if each spouse is eligible for and elects the application of this section.

(b) *Definitions*—(1) *Divorced*. A requesting spouse is divorced if the requesting spouse has a divorce decree that is recognized in the jurisdiction in which the requesting spouse resides.

(2) *Legally separated*. A requesting spouse is legally separated if the separation is recognized under the laws of the jurisdiction in which the requesting spouse resides.

(3) *Not members of the same household*—(i) *Temporary absences*. A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, hospitalization, business travel, vacation travel, military service, or education away from home.

(ii) *Separate dwellings*. A husband and wife who reside in the same dwelling are considered members of the same household. However, a husband and wife who reside in two separate dwellings, whether or not part of the same structure, are not considered members of the same household unless one is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds*. Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*. (i) If the Secretary demonstrates that the requesting spouse had actual knowledge at the time the return was signed of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. For example, assume W received $5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (i.e., $5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under this provision. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this provision.

(ii) Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know.

(iii) To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the Secretary may rely upon all of the facts and circumstances. One factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse had a direct interest in the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns 1/2 of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iii) because the account is not held in her name and there is no other indication that she has a direct interest in the item.

(3) *Disqualified asset transfers*-–(i) *In general*. The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined*. A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) *Presumption*. Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. However, the presumption does not apply if the requesting spouse establishes that the asset was transferred pursuant to a divorce decree or separate maintenance agreement. In addition, a requesting spouse may rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) *Examples*. The following examples illustrate the rules in this paragraph (c):

Example 1. *Actual knowledge of an erroneous item*. (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H, who otherwise qualifies under paragraph (a) of this section, files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

Example 2. *Actual knowledge not inferred from a requesting spouse's reason to know*. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a $100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the $100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item (i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the $100,000 deficiency to H is valid.

Example 3. *Actual knowledge of return reporting position*. (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to $100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the $100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

(iii) Assume the same facts as in paragraph (i) of this *Example 3* except that, instead of receiving $100,000 of unreported dividend income, H received $50,000 of interest income from ABC Co. during the year (properly reported on the return) and $25,000 of dividend income from ABC Co. (omitted from the return). W knew that H received both dividend and interest income from ABC Co. but did not know the total was greater than $50,000. W's election to allocate to H the deficiency attributable to the omitted dividend income is valid. Although interest and dividend income are required to be separately stated on a joint Federal income tax return, they are one item in this case because the dividend and interest income are investment income received from the same source (ABC Co.). The erroneous item is the total dividend and interest income from ABC Co. W did not have actual knowledge of the erroneous item (combined dividend and interest income from ABC Co. greater than $50,000). Therefore, her election to allocate to H the deficiency attributable to the erroneous item is valid.

Example 4. *Actual knowledge of an erroneous item of income*. (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H's and W's 2002 joint Federal income tax return that is attributable to $30,000 of unreported income from H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 4* except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this *Example 4* except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least $8,000 of plumbing income. W's election to allocate to H the deficiency attributable to $8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining $22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this *Example 4* except that H reported $26,000 of plumbing income on the return and omitted $4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than $26,000 that year. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of $26,000.

(v) Assume the same facts as in paragraph (i) of this *Example 4* except that H reported only $20,000 of plumbing income on the return and omitted $10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least $26,000 that year as a plumber. However, W did not know that, in reality, H earned $30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the $6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

Example 5. Actual knowledge of a deduction that is an erroneous item. (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint Federal income tax return. The deficiency is attributable to a disallowed $1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W did not know whether H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 5* except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than $600.

(iv) Assume the same facts as in paragraph (i) of this *Example 5* except that H claims a medical expense deduction of $10,000 and the Internal Revenue Service disallows $9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than $1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge ($9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge ($600) is valid.

Example 6. Disqualified asset presumption. (i) H and W are divorced. In May 1999, W transfers $20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a $40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

Example 7. Disqualified asset presumption inapplicable. On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to the divorce decree, H must transfer 1/2 of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of 1/2 of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a divorce decree.

(d) *Allocation*—(1) *In general*. (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section. Unless relieved of liability under §1.6015–2 or 1.6015–4, the requesting spouse remains liable for that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this section remains liable for the entire amount of the deficiency, unless the nonrequesting spouse is relieved of liability under §1.6015–2 or 1.6015–4. If both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) *Allocation of erroneous items*. For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) *Benefit on the return*. An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) *Fraud*. The Secretary may allocate any item appropriately between the spouses if the Secretary establishes that the allocation is appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income*. Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the job producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. For information regarding the effect of community property laws, see §1.6015–1(f) and paragraph (c)(2)(iii) of this section.

(iv) *Erroneous deduction items*. Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Personal deduction items are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof*. Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) *General allocation method*—(i) *Proportionate allocation.*

(A) The portion of a deficiency allocable to a spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$\frac{X}{\text{deficiency}} = \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse.

Thus,

$$X = (\text{deficiency}) * \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

(B) The proportionate allocation applies to any portion of the deficiency other than—

(1) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(2) Any portion of the deficiency attributable to separate treatment items (as defined in paragraph (d)(4)(ii) of this section);

(3) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(4) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(5) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(6) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph 6 of this section.

(ii) *Separate treatment items*. Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. Once the proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) *Child's liability*. Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is generally allocated jointly to both spouses. However, if one of the spouses had sole custody of the child for the entire tax year for which the election relates, such portion of the deficiency is allocated solely to that spouse. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

(iv) *Allocation of certain items*—(A) *Alternative minimum tax*. Any portion of the deficiency attributable to alternative minimum tax under section 55 is allocated between the spouses in the same proportion as each spouse's share of the total alternative minimum taxable income, as defined in section 55(b)(2).

(B) *Accuracy-related and fraud penalties*. Any portion of the deficiency attributable to accuracy-related or fraud penalties under section 6662 or 6663 is allocated to the spouse whose item generated the penalty.

(5) *Examples*. The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as follows:

Example 1. *Allocation of erroneous items*. (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency—

(A) Unreported interest income, of which W had actual knowledge, from H's and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C; and

(C) A disallowed Lifetime Learning Credit for W's post-secondary education.

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated 1/2 to H and 1/2 to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

Example 2. Proportionate allocation. (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

W's items	H's items
$40,000 charitable deduction	$15,000 business deduction
$40,000 interest deduction	$20,000 unreported income
	$ 5,000 education deduction
$80,000	$40,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 2/3 ($80,000/$120,000). W's liability is limited to $36,000 of the deficiency (2/3 of $54,000). The Internal Revenue Service may collect up to $36,000 from W and up to $54,000 from H (the total amount collected, however, may not exceed $54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would collect $36,000 from W and $18,000 from H.

Example 3. Proportionate allocation with joint erroneous item. (i) On September 4, 2001, W elects to allocate a $3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency—

(A) Unreported interest in the amount of $4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of $2,000 attributable to H's business; and

(C) Unreported wage income in the amount of $6,000 attributable to W's second job.

(ii) The erroneous items total $12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is $1,000. W may allocate the remaining $2,000 of the deficiency.

H's items	W's items
$2,000 business deduction	$6,000 wage income

Total allocable items: $8,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 3/4 ($6,000/$8,000). W's liability is limited to $1,500 of the deficiency (3/4 of $2,000) allocated to her. The Internal Revenue Service may collect up to $2,500 from W (3/4 of the total allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest) and up to $3,000 from H (the total amount collected, however, cannot exceed $3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for 3/4 of the deficiency, which is allocated to W. H's relief totals $1,500 (3/4 of $2,000). H remains liable for $1,500 of the deficiency (1/4 of the allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest).

Example 4. Separate treatment items (STIs). (i) On September 1, 2006, a $28,000 deficiency is assessed with respect to H's and W's 2003 joint return. The deficiency is the result of 4 erroneous items—

(A) A disallowed Lifetime Learning Credit of $2,000 attributable to H;

(B) A disallowed business expense deduction of $8,000 attributable to H;

(C) Unreported income of $24,000 attributable to W; and

(D) Unreported self-employment tax of $14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The $2,000 Lifetime Learning Credit and the $14,000 self-employment tax are STIs totaling $16,000. The amount of erroneous items included in computing the proportionate allocation ratio is $32,000 ($24,000 unreported income and $8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs ($28,000-$16,000 = $12,000).

(iv) Of the $32,000 of proportionate allocation items, $24,000 is allocable to W, and $8,000 is allocable to H.

W's share of allocable items	H's share of allocable items
3/4 ($24,000/$32,000)	1/4 ($8,000/$32,000)

(v) W's liability for the portion of the deficiency subject to proportionate allocation is limited to $9,000 (3/4 of $12,000) and H's liability for such portion is limited to $3,000 (1/4 of $12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each spouse's allocated share of the deficiency.

W's share of total deficiency	H's share of total deficiency
$ 9,000 allocated deficiency	$3,000 allocated deficiency
$14,000 self-employment tax	$2,000 Lifetime Learning Credit
$23,000	$5,000

(vii) Therefore, W's liability is limited to $23,000 and H's liability is limited to $5,000.

Example 5. Allocation of the alternative minimum tax.

(i) H and W file their 2004 joint Federal income tax return on April 15, 2005. During 2004, W's total alternative minimum taxable income was $120,000, and H's total alternative minimum taxable income was $30,000. All of H's income was from his business and was reported on Schedule C. Everything on the 2004 return was properly reported, and there was no alternative minimum tax liability. In 2005, H experienced a net operating loss of $25,000 for regular tax purposes. H did not have a net operating loss for alternative minimum tax purposes. In February 2006, H and W file an amended return for 2004 claiming the net operating loss that was carried back from 2005. The loss is a proper deduction, but it results in an alternative minimum tax liability, which H and W do not report on the amended return. In December 2007, a $5,500 deficiency is assessed on their 2004 joint Federal income tax return resulting from the unreported alternative minimum tax liability.

(ii) W and H divorce in January 2008, and W elects to allocate the deficiency.

W's AMT income for 2004: $120,000
H's AMT income for 2004: $ 30,000
Total AMT income for 2004: $150,000

W's share of AMT income for 2004: 4/5 ($120,000/$150,000)

H's share of AMT income for 2004: 1/5 ($30,000/$150,000)

(iii) W's liability is limited to $4,400 (4/5 x $5,500). H remains liable for the entire deficiency because he did not make an election to allocate the deficiency.

Example 6. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item. (i) In 2001, H earns gross income of $4,000 from his business, and W earns $50,000 of wage income. On their 2001 joint Federal income tax return, H deducts $20,000 of business expenses resulting in a net loss from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, $4,000 of the disallowed deductions are allocable to H and $16,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,160 (4/5 of $5,200). If H also elected to allocate the deficiency, H's election to allocate the $4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

Example 7. Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed. Assume the same facts as in Example 6, except that H deducts $18,000 for business expenses on the joint return, of which $16,000 are disallowed. Since H used only $2,000 of the $16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other $14,000 of the disallowed deductions used to offset her wage income. Therefore, $2,000 of the disallowed deductions are allocable to H and $14,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,550 (7/8 of $5,200).

(6) *Alternative allocation methods*—(i) *Allocation based on applicable tax rates*. If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency is allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance*. The Secretary may prescribe alternative methods for allocating erroneous items under section 6015(c) in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example*. The following example illustrates the rules of this paragraph (d)(6):

Example. Allocation based on applicable tax rates. H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a $5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, $2,000 results from unreported capital gain of $6,000 that is attributable to W and $4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items ($10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the $2,000 deficiency attributable to these items (or $1,200) is allocated to W. The remaining 40% of this portion of the deficiency ($800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for $3,900 of the deficiency ($800 + $3,100), and W is liable for the remaining $1,200.

§1.6015–4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under §1.6015–2 or 1.6015–3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of §1.6015–3(c)(1) (i.e., no refunds under §1.6015–3). Therefore, relief is not available under this section to refund liabilities already paid, for which the requesting spouse would otherwise qualify for relief under §1.6015–3.

(c) The Secretary will provide the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section in revenue rulings, revenue procedures, or other published guidance.

§1.6015–5 Time and manner for requesting relief.

(a) *Requesting relief*. To elect the application of §1.6015–2 or 1.6015–3, or to request equitable relief under §1.6015–4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)"; submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner as may be prescribed by the Secretary in relevant revenue rulings, revenue procedures, or other published guidance.

(b) *Time period for filing a request for relief*—(1) *In general*. To elect the application of §1.6015–2 or 1.6015–3, or to request equitable relief under §1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions*—(i) *Collection activity*. For purposes of this paragraph (b), collection activity means an administrative levy or seizure described by section 6331 to obtain property of the requesting spouse; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Collection activity does not include a notice of intent to levy under sections 6330 and 6331(d); the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term *property of the requesting spouse*, for purposes of this paragraph, means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) *Date of levy or seizure*. For purposes of this paragraph (b), if tangible personal property or real property is seized and is to be sold, a notice of seizure is required under section 6335(a). The date of levy or seizure is the date the notice of seizure is given. For more information on the rules regarding notice of seizure, see section 6502(b) and the regulations thereunder. For purposes of this paragraph (b), if a levy is made on cash or intangible personal property that will not be sold, the date of levy or seizure is the date the notice of levy is made. For more information on the rules regarding levy, see section 6331 and the regulations thereunder. For purposes of this paragraph (b), if a notice of levy is served by mail, the date of levy or seizure is the date of delivery of the notice of levy to the person on whom the levy is made. For more information on notices of levy served by mail, see §301.6331–1(c) of this chapter.

(3) *Requests for relief made before commencement of collection activity*. An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return, or pursuant to the pre-levy collection due process (CDP) hearing procedures pursuant to sections 6320 and 6330. For more information on the rules regarding pre-levy collection due process, see §§301.6320–1T(e)(1) and (2), and 301.6330–1T(e)(1) and (2) of this chapter. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) *Examples*. The following examples illustrate the rules of this paragraph (b):

Example 1. On January 11, 2000, a notice of intent to levy is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's employer on June 5, 2000. The Internal Revenue Service levies on H's employer on July 10, 2000. W must elect or request relief by June 5, 2002, which is two years after the Internal Revenue Service levied on her wages. H must elect or request relief by July 10, 2002, which is two years after the Internal Revenue Service levied on his wages.

Example 2. The Internal Revenue Service levies on W's bank, in which W maintains a savings account, to collect a joint liability for 1995 on January 12, 1998. The bank complies with the levy, which only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2000, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

Example 3. Assume the same facts as in *Example 2*, except that the Internal Revenue Service delivers a second levy on the bank on July 23, 1998. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

Example 4. H and W do not remit full payment with their timely filed joint Federal income tax return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly held residence on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

Example 5. W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the claim in W's bankruptcy case.

(5) *Premature requests for relief*. The Secretary will not consider premature claims for relief under §1.6015–2, 1.6015–3, or 1.6015–4. A premature claim is a claim for relief that is filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under §1.6015–1(g)(5).

(c) *Effect of a final administrative determination*—(1) *In general*. A requesting spouse is entitled to only one final administrative determination of relief under §1.6015–1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in §1.6015–1(g)(5).

(2) *Example*. The following example illustrates the rule of this paragraph (c):

Example. In January 2001, W invests in tax shelter P, and in February 2001, she starts her own business selling crafts, from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service opens an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service sends him a notice of computational adjustment or assesses the liability from the TEFRA partnership proceeding on H's and W's joint return before he files a claim for relief with respect to any such liability. The assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

§1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.

(a) *In general*. (1) When the Secretary receives an election under §1.6015–2 or 1.6015–3, or a request for relief under §1.6015–4, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. The Secretary has the discretion to share with one spouse any of the information submitted by the other spouse. At the request of one spouse, the Secretary will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably indicate the other spouse's location.

(2) The Secretary must notify the nonrequesting spouse of the Secretary's final determination with respect to the requesting spouse's claim for relief under section 6015. However, the nonrequesting spouse is not permitted to appeal such determination.

(b) *Information submitted*. The Secretary will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§1.6015–2(d) and 1.6015–4(b), to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) *Effect of opportunity to participate*. The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

§1.6015–7 Tax Court review.

(a) *In general*. Requesting spouses may petition the Tax Court to review the denial of relief under §1.6015–1.

(b) *Time period for petitioning the Tax Court*. Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under §1.6015–1 within the 90-day period beginning on the date the final determination letter is mailed. If the Secretary does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under §1.6015–2 or 1.6015–3, the requesting spouse may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period beginning on the mailing date of the final determination letter. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under section 6213(a) or 6330(d). For rules regarding petitioning the Tax Court under section 6213(a) or 6330(d), see §§301.6213–1, 301.6330–1T(f), and 301.6330–1T(g) of this chapter.

(c) *Restrictions on collection and suspension of the running of the period of limitations*—(1) *Restrictions on collection under §1.6015–2 or 1.6015–3*. Unless the Secretary determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse electing the application of §1.6015–2 or 1.6015–3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. Notwithstanding the preceding sentence, if the requesting spouse appeals the Tax Court's determination, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date of the Tax Court's determination unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Suspension of the running of the period of limitations*—(i) *Relief under §1.6015–2 or 1.6015–3*. The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under §1.6015–2 or 1.6015–3 relates is suspended for the period during which the Commissioner is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter.

(ii) *Relief under §1.6015–4*. If a requesting spouse seeks only equitable relief under §1.6015–4, the restrictions on collection of paragraph (c)(1) of this section do not apply. The request for relief does not suspend the running of the period of limitations on collection.

(3) *Definitions*—(i) *Levy*. For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) *Proceedings in court*. For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Commissioner or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) *Assessment to which the election relates*. For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with respect to only part of that deficiency.

§1.6015–8 Applicable liabilities.

(a) *In general*. Sections 6015(b), 6015(c), and 6015(f) apply to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) *Liabilities paid on or before July 22, 1998*. A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) *Examples*. The following examples illustrate the rules of this section:

Example 1. H and W file a joint income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

Example 2. H and W file their 1995 joint income tax return on April 15, 1996. On October 14, 1997, a deficiency is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on W's bank account in full satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998, and it was paid as of July 22, 1998. Therefore, section 6015 is not applicable and section 6013(e) is applicable.

§1.6015–9 Effective date.

Sections 1.6015–0 through 1.6015–9 are applicable for all elections under §1.6015–2 or 1.6015–3 or any requests for relief under §1.6015–4 filed on or after the date final regulations are published in the **Federal Register**.

Charles O. Rossotti,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 16, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2001, 66 F.R. 3888)

Notice of Proposed Rulemaking

Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates

REG–109481–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the special rule added by the Small Business Job Protection Act of 1996 which permits the required written explanations of certain annuity benefits to be provided by qualified retirement plans to plan participants after the annuity starting date. These regulations affect administrators of, participants in, and beneficiaries of qualified retirement plans.

DATES: Written and electronic comments and requests for a public hearing must be received by April 17, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–109481–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–109481–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington D.C. 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, Robert M. Walsh, (202) 622-6090; concerning submissions and delivery of comments, Sonya Cruse (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 19, 2001. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collection of information in this proposed regulation is in §1.417(e)–1(b)(3)(iv)(B) and §1.417(e)–1(b)(3)(v)(A). This collection of information is required by the IRS to ensure that the participant and the participant's spouse consent to a form of distribution from a qualified retirement plan that may result in reduced periodic payments. This information will be used by the plan administrator to verify that the required consent has been given. The collection of information is required to obtain a benefit. The respondents are individuals who are entitled to receive certain types of distributions from a qualified retirement plan or who are married to individuals entitled to receive certain types of distributions from a qualified retirement plan.

Taxpayers provide the information to administrators of qualified retirement plans when a distribution with a retroactive annuity starting date is elected.

Estimated total annual reporting burden: 12,500 hours.

Estimated average annual burden hours per respondent: 0.25 hours.

Estimated number of respondents: 50,000.

The estimated annual frequency of responses is on occasion.

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

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

Background

This document contains proposed amendments to 26 CFR Part 1 under section 417(a)(7) of the Internal Revenue Code (Code). Section 401(a)(11) provides that, subject to certain exceptions, all distributions from a qualified plan must be made in the form of a qualified joint and survivor annuity (QJSA). One such exception is provided in section 417, which allows a participant to elect to waive the QJSA in favor of another form of distribution. Section 417(a)(2) provides that, for the waiver to be valid, the participant's spouse must consent to the waiver. Section 417(a)(3)(A) requires a qualified plan to provide to each participant, within a reasonable period of time before the annuity starting date, a written explanation (QJSA explanation) that describes the QJSA, the right to waive the QJSA and the rights of the participant's spouse. Under section 417(d), a participant's spouse who has not been married to the participant throughout the 1-year period preceding the annuity starting date is not required to be treated as the spouse for purposes of entitlement to the QJSA. Section 417(a)(2)(B) provides that spousal consent is not required to waive the QJSA if it is established to the satisfaction of a plan representative that such consent may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Section 417(a)(7), which was added to the Code by section 1451(a) of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755) (SBJPA), creates an exception to the rules of section 417(a)(3)(A), effective for plan years beginning after December 31, 1996. Section 417(a)(7)(A) provides that, notwithstanding any other provision of section 417(a), a plan may furnish the QJSA explanation after the annuity stating date, as long as the applicable election period is extended for at least 30 days after the date on which the explanation is furnished. Thus, section 417(a)(7)(A) allows the annuity starting date to be a date that is earlier than the date the QJSA explanation is provided, thereby allowing the retroactive payment of benefits that are attributable to the period before the QJSA explanation is provided. Section 417(a)(7)(A)(ii) provides that the Secretary may limit the application of the provision permitting the selection of a retroactive annuity starting date by regulations, except that the regulations may not limit the period of time by which the annuity starting date precedes the furnishing of the written explanation other than by providing that the retroactive annuity starting date may not be earlier than termination of employment.

Section 205(c)(8) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829) (ERISA), provides a parallel rule to section 417(a)(7) of the Code that applies under Title I of ERISA, and authorizes the Secretary of the Treasury to issue regulations limiting the application of the general rule. Thus, Treasury regulations issued under section 417(a)(7) of the Code apply as well for purposes of section 205(c)(8) of ERISA.

On December 18, 1998, final regulations were published in the **Federal Register** (63 FR 70009) which amended §1.417(e)–1(b)(3)(ii) of the Income Tax Regulations, relating to the timing for the QJSA explanation and the participant waiver of a QJSA form of distribution. The regulations finalized an earlier set of proposed regulations that were issued in 1995. The regulations specified that the QJSA explanation must be provided before the annuity starting date, except as otherwise provided by section 417(a)(7) for plan years beginning after December 31, 1996, but the regulations did not further address section 417(a)(7).

Explanation of Provisions

In accordance with section 417(a)(7)(A), these proposed regulations would provide that the QJSA explanation may be furnished on or after the annuity starting date under certain circumstances. The proposed regulations refer to the annuity starting date in such cases as the "retroactive annuity starting date", define how payments are made in the case of a retroactive annuity starting date, and set conditions for the use of retroactive annuity starting dates.

Under the proposed regulations, a retroactive annuity starting date could be used only if the plan provides for it and the participant elects to use the retroactive annuity starting date. The election under the proposed regulations would place the participant in approximately the same situation he or she would have been in had benefit payments actually commenced on the retroactive annuity starting date. Accordingly, the proposed regulations would provide that future periodic payments for a participant who elects a retroactive annuity starting date must be the same as the periodic payments that would have been paid to the participant had payments actually commenced on the retroactive annuity starting date and that the participant must also receive a make-up amount to reflect the missed payments (with an appropriate adjustment for interest from the date the payments would have been made to the date of actual payment).

In addition, because the purpose of a retroactive annuity starting date is to place the participant in approximately the same situation that he or she would have been in had benefits commenced on the retroactive date, the retroactive benefit payments would be required to be based upon the terms of the plan in effect as of the retroactive annuity starting date (taking into account plan amendments executed after the retroactive annuity starting date, but made effective on or before that date). Accordingly, the retroactive annuity starting date could not be earlier than the date the participant could have started receiving benefits if the payments had commenced at the earliest date permitted under the terms of the plan (e.g., the retroactive annuity starting date could not be before the earlier of the date of the participant's termination of employment or attainment of normal retirement age), and the amount of the benefit must satisfy sections 415 and 417 as of the retroactive annuity starting date.

These proposed regulations would not require plans to provide for a retroactive annuity starting date. Instead, plans could continue to provide that the QJSA explanation is to be provided before the annuity starting date under the rules of section 417(a) without regard to section 417(a)(7)(A). Moreover, if a plan is amended to provide for a retroactive annuity starting date, the plan could impose additional restrictions on availability not imposed under these proposed regulations, provided that the additional restrictions did not violate any of the rules applicable to qualified plans. For example, plans that generally provide benefit options that include annuities and lump sum payments could provide that retroactive annuity starting dates are available only for participants who elect annuities.

These proposed regulations make it clear that the notice, consent, and election rules of section 417(a)(1), (2), and (3), and the regulations thereunder, would apply to the retroactive payment of benefits but with several modifications. These modifications generally reflect the fact that the existing timing rules relating to notice and consent are generally tied to an annuity starting date that is after the furnishing of the QJSA explanation.[1]

Section 417(a)(7)(A) specifically permits the QJSA explanation to be made after the annuity starting date and modi-

[1] For example, section 417(a)(1) provides that a participant may elect to waive the QJSA within the "applicable election period" which is defined by section 417(a)(6) as the 90-day period ending on the annuity starting date. Similarly, §1.417(e)–1(b)(3)(i) provides that the written consent of the plan participant and the participant's spouse must be made no more than 90 days before the annuity starting date. Also, §1.417(e)–1(b)(3)(ii) provides that the QJSA explanation must generally be provided no less than 30 days and no more than 90 days before the annuity starting date.

fies the participant election period in these situations. These regulations would make a comparable adjustment for the timing rules applicable to spousal consent by providing generally that, for retroactive payments under section 417(a)(7), the first date of actual payment is substituted for the annuity starting date in applying the timing rules for notice and consent. These modifications are intended to ensure that the notice and election are generally contemporaneous with the commencement of benefits, but the modifications recognize the need for flexibility in the timing to take into account administrative delays. In furtherance of that goal, these proposed regulations would modify the general timing rule applicable to the furnishing of notices, and to participant elections and spousal consent. The proposed regulations would provide that the participant's election to waive the QJSA under section 417(a)(1)(A)(i) and the spouse's consent under section 417(a)(2) must generally be made before the annuity starting date, but permits a later election if the distribution commences no more than 90 days after the QJSA explanation required by section 417(a)(3)(A) is furnished to the participant. This modification would apply without regard to the retroactivity of annuity starting dates, but would include an exception for reasonable administrative delay in the distribution of benefits.

Pursuant to the regulatory authority provided in section 417(a)(7)(A)(ii), these proposed regulations include a special spousal consent rule in addition to those rules applicable under section 417(a). Under this special rule, if the spouse's survivor annuity under a QJSA with an annuity starting date after the date the QJSA explanation was provided would be greater than the spouse's survivor annuity pursuant to the participant's election of a retroactive annuity starting date, the participant could not elect a retroactive annuity starting date unless the participant's spouse (determined at the time distributions actually commence) consents to the distribution. This special rule applies even if the form of benefit that the participant elects as of the retroactive annuity starting date is a QJSA. Thus, for example, where a QJSA that begins after the QJSA explanation is furnished would provide $1,000 monthly to the participant with a survivor annuity of $500 monthly to the spouse, and a QJSA with a retroactive annuity starting date would provide $900 monthly to the participant with a survivor annuity of $450 monthly to the spouse, together with a $20,000 make-up payment to the participant, the spouse would be required to consent in order for the participant to elect the retroactive annuity starting date. Spousal consent under this special rule would not be required in this example if the spouse's survivor annuity under the retroactive annuity starting date election is at least $500 per month.

These proposed regulations would also provide that, pursuant to section 417(a)(2)(B), the consent of the participant's spouse as of the retroactive annuity starting date would not be required if that spouse is not the participant's spouse as of the date distributions commence, unless otherwise provided in a qualified domestic relations order (as defined in section 414(p)).

The proposed regulations would impose an additional condition on the availability of a retroactive annuity starting date, regarding the permissible amount of the distribution under sections 417(e)(3) (if applicable) and 415. To satisfy this condition, the distribution would be required to be adjusted, if necessary, to satisfy the requirements of sections 417(e)(3) (if applicable) and 415 if the date the distribution commences is substituted for the annuity starting date.

Proposed Effective Date

These regulations are proposed to be applicable for plan years beginning on or after January 1, 2002.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations require the collection of plan participants' written elections requesting qualified retirement plan distributions, and written spousal consent to these distributions, under limited circumstances. It is anticipated that most small businesses affected by these regulations will be sponsors of qualified retirement plans. Since these written participant elections and written spousal consents are required to be collected only for certain distributions, and since, in the case of a small plan, there will be relatively few distributions per year (and even fewer that are subject to these requirements), small plans that provide distributions for which this collection of information is required will only have to collect a small number of participant elections and spousal consents as a result of these regulations. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may 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 public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Robert M. Walsh and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

* * * * *

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. Section 1.417(e)–1 is amended by:

1. Revising paragraph (b)(3)(i).
2. Revising paragraph (b)(3)(ii) introductory text.
3. Revising paragraph (b)(3)(ii)(C).
4. Redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as paragraphs (b)(3)(viii) and (b)(3)(ix), respectively.
5. Adding new paragraphs (b)(3)(iii) through (b)(3)(vii).

The additions and revisions read as follows:

§1.417(e)–1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b)* * *

(3)* * *

(i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date, and, except as otherwise provided in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section, no later than the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date, except as provided in paragraph (b)(3)(iv) of this section regarding retroactive annuity starting dates. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the written explanation was provided to the participant less than 30 days before the annuity starting date, provided that the following conditions are met:

* * * * *

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant.

* * * * *

(iii) The plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant (and before the date that distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section), provided that, except as otherwise provided in paragraph (b)(3)(vii) of this section regarding administrative delay, distributions commence not more than 90 days after the explanation of the QJSA is provided.

(iv) *Retroactive annuity starting dates*. (A) Notwithstanding the requirements of paragraphs (b)(3)(i) and (ii) of this section, pursuant to section 417(a)(7), a defined benefit plan is permitted to provide benefits based on a retroactive annuity starting date if the requirements described in paragraph (b)(3)(v) of this section are satisfied. A defined benefit plan is not required to provide for retroactive annuity starting dates. If a plan does provide for a retroactive annuity starting date, it may impose conditions on the availability of a retroactive annuity starting date in addition to those imposed by paragraph (b)(3)(v) of this section, provided that imposition of those additional conditions does not violate any of the rules applicable to qualified plans. For example, a plan that includes a single sum payment as a benefit option may limit the election of a retroactive annuity starting date to those participants who do not elect the single sum payment. A defined contribution plan is not permitted to have a retroactive annuity starting date.

(B) For purposes of this section, a "retroactive annuity starting date" is an annuity starting date affirmatively elected by a participant that occurs on or before the date the written explanation required by section 417(a)(3) is provided to the participant. In order for a plan to treat a participant as having elected a retroactive annuity starting date, future periodic payments with respect to a participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the participant had payments actually commenced on the retroactive annuity starting date. The participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). Thus, the benefit determined as of the retroactive annuity starting date must satisfy the requirements of sections 417(e)(3), if applicable, and section 415 with the applicable interest rate and applicable mortality table determined as of that date. Similarly, a participant is not permitted to elect a retroactive annuity starting date that precedes the date upon which the participant could have otherwise started receiving benefits (e.g., the earlier of the participant's termination of employment or the participant's normal retirement age) under the terms of the plan in effect as of the retroactive annuity starting date. A plan does not fail to treat a participant as having elected a retroactive annuity starting date as described in this paragraph (b)(3)(iv)(B) merely because the distributions are adjusted to the extent necessary to satisfy the requirements of paragraph (b)(3)(v)(B) of this section relating to sections 415 and 417(e)(3).

(C) If the participant's spouse as of the retroactive annuity starting date would not be the participant's spouse determined as if the date distributions commence were the participant's annuity starting date, consent of that former spouse is not needed to waive the QJSA with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order (as defined in section 414(p)).

(D) A distribution payable pursuant to a retroactive annuity starting date election is treated as excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution form would have been described in paragraph (d)(6) of this section had the distribution actually commenced on the retroactive annuity starting date.

(v) *Requirements applicable to retroactive annuity starting dates*. A distribution is permitted to have a retroactive annuity starting date with respect to a participant's benefit only if the following requirements are met:

(A) The participant's spouse (including an alternate payee who is treated as the spouse under a qualified domestic relations order (QDRO), as defined in section 414(p)), determined as if the date distributions commence were the participant's annuity starting date, consents to the distribution in a manner that would satisfy the requirements of section 417(a)(2). The spousal consent requirement of this paragraph (b)(3)(v)(A) is satisfied if such spouse consents to the distribution under paragraph (b)(2)(i) of this section. The spousal consent requirement of this paragraph (b)(3)(v)(A) does not apply if the amount of such spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the payments to such spouse would have been under a QJSA with an annuity starting date after the date that the explanation was provided.

(B) The distribution (including appropriate interest adjustments) provided based on the retroactive annuity starting date would satisfy the requirements of section 417(e)(3), if applicable, and section 415 if the date the distribution commences is substituted for the annuity starting date for all purposes, including for purposes of determining the applicable interest rate and the applicable mortality table.

(vi) *Timing of notice and consent requirements in the case of retroactive annuity starting dates*. In the case of a retroactive annuity starting date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in paragraphs (b)(3)(i) and (ii) of this section, except that the substitution does not apply for purposes of paragraph (b)(3)(iii) of this section. Thus, the written explanation required by section 417(a)(3)(A) must generally be provided no less than 30 days and no more than 90 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of paragraph (b)(3)(ii) of this section would be satisfied if the date of the first payment is substituted for the annuity starting date.

(vii) *Administrative delay*. A plan will not fail to satisfy the 90-day timing requirements of paragraphs (b)(3)(iii) and (vi) of this section merely because, due solely to administrative delay, a distribution commences more than 90 days after the written explanation of the QJSA is provided to the participant.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 16, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2001, 66 F.R. 3916)

Notice of Proposed Rulemaking and Notice of Public Hearing

Capitalization of Interest and Carrying Charges Properly Allocable to Straddles

REG–105801–00

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that clarify the application of the straddle rules to a variety of financial instruments. The proposed regulations clarify what constitutes interest and carrying charges and when interest and carrying charges are properly allocable to personal property that is part of a straddle. The proposed regulations also clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The proposed regulations provide guidance to taxpayers that enter into straddle transactions. This document provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to appear and outlines of topics to be discussed at the public hearing scheduled for May 22, 2001, at 10 a.m., must be submitted by May 1, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–105801–00), 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:M&SP:RU (REG–105801–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kenneth Christman (202) 622-3950; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Sections 501 and 502 of the Economic Recovery Tax Act of 1981 (Public Law 97-34, 95 Stat. 172) added sections 1092 and 263(g), respectively, to the Internal Revenue Code to address certain deferral and conversion strategies involving economically offsetting positions in actively traded personal property. These economically offsetting positions are called straddles. Section 1092(c)(1).

In general, under section 1092, a taxpayer that realizes a loss on a position in actively traded personal property must defer the recognition of the loss to the extent the taxpayer has unrecognized gain on an economically offsetting position in the property. This deferral rule matches the recognition of loss with the recognition of the economically offsetting income. Section 263(g) addresses interest and carrying charges properly allocable to personal property that is part of a straddle. Under this section, these otherwise deductible expenses are not currently deductible. Instead, they must be capitalized into the basis of the property. By requiring capitalization, section 263(g) prevents: (1) a taxpayer from gaining a timing advantage by accruing deductions associated with carrying the straddle transaction before recognizing income from a position in personal property that is part of the straddle; and (2) the deductions from having a character different from that of the income.

These proposed regulations provide certain rules with respect to the application of section 263(g) and section 1092.

Explanation of Provisions

The proposed regulations consist of §1.263(g)–1, which provides a general introduction, and §§1.263(g)–2, 1.263 (g)–3, 1.263(g)–4, and 1.263(g)–5, described below. The proposed regulations also include a new paragraph 1.1092(d)–1(d).

The proposed regulations generally address four issues: (1) the definition of *personal property* as such term is used in section 263(g) (in §1.263(g)–2); (2) the type of payments that are subject to the capitalization rules of section 263(g) (in §1.263(g)–3); (3) the operation of the capitalization rules of section 263(g) (in §1.263(g)–4); and (4) the circumstances under which an issuer's obligation under a debt instrument can be a position in actively traded personal property and, therefore, part of a straddle (in §1.1092 (d)–1(d)). These issues are discussed in more detail below.

Definition of the Term Personal Property for Purposes of Section 263(g)

Section 263(g)(1) requires capitalization of interest and carrying charges properly allocable to personal property that is part of a straddle (as defined in section 1092(c)). Section 1092(d)(1) defines personal property for purposes of section 1092, as personal property of a type that is actively traded. Commentators have suggested that because sections 263(g) and 1092 were enacted at the same time, the term *personal property* as used in section 263(g) should be given the same definition as under section 1092(d)(1). This would limit the definition of personal property in section 263(g) to personal property of a type that is actively traded.

Despite this suggestion, the proposed regulations provide that personal property has its common law meaning in section 263(g) for two reasons. First, the definition in section 1092(d)(1) by its terms applies only for purposes of section 1092. Second, the broader, common law interpretation of personal property more closely accords with the purposes of section 263(g). Application of the limited definition in section 1092(d)(1) for purposes of section 263(g) could result in dissimilar tax treatment of economically similar transactions. For example, adoption of the narrower definition would cause section 263(g) to apply to a transaction in which a taxpayer borrows to purchase actively traded personal property that is a part of a straddle but not to a similar transaction in which the taxpayer borrows to purchase a derivative instrument that is not itself actively traded but is a position in actively traded property.

Consequently, proposed §1.263(g)–2 defines personal property as a property right, whether or not actively traded, other than a right in real property. This definition includes both financial positions that provide substantial rights but do not impose substantial obligations on the holder (e.g., common stock or a purchased option) and executory contracts that impose both rights and obligations on the holder (e.g., notional principal contracts (NPCs) and forward transactions). However, the definition excludes straddles comprised only of financial positions that impose only obligations on the holder (e.g., the obligor's position in a debt instrument or a writer's position in an option).

Payments That Are Subject to the Capitalization Rules of Section 263(g)

Section 263(g)(1) provides for the capitalization of interest and carrying charges. For this purpose, *interest and carrying charges* are collectively defined in section 263(g)(2) as "interest incurred or continued to purchase or carry the personal property" and "all other amounts (including charges to insure, store, or transport) paid or incurred to carry the personal property," less certain types of income from the personal property.

The phrase "incurred or continued to purchase or carry" also appears in section 265(a)(2), which disallows interest expense on indebtedness incurred or continued to purchase or carry tax-exempt debt. Rev. Proc. 72–18 (1972–1 C.B. 740) sets out rules for determining when this standard is met for purposes of section 265(a)(2). Under that revenue procedure, indebtedness issued by a taxpayer that is not a dealer in tax-exempt obligations meets this standard if (1) the proceeds of the indebtedness are directly traceable to the purchase of the tax-exempt obligations, (2) the tax-exempt obligations are used as collateral for the borrowing, or (3) the totality of the facts and circumstances supports a reasonable inference that the purpose of the borrowing was to purchase or carry tax-exempt obligations. In general, the facts-and-circumstances test is met if there is a "sufficiently direct relationship" between the borrowing and the investment in the tax-exempt obligations. Similarly, the proposed regulations provide that a sufficiently direct relationship between indebtedness or other financing and personal property that is part of a straddle exists if payments on the indebtedness or other financing are determined by reference to the value or change in value of the personal property. See §1.263(g)–3(c).

Section 263(g) also applies to "all other amounts (including charges to insure, store or transport the personal property)" paid or incurred to carry personal property that is part of a straddle. As noted by one commentator, "taxpayers should not be permitted to deduct items incurred in connection with protecting or preserving the value of assets" that are part of a straddle. Therefore, the term, *to carry* in the context of section 263(g) includes the reduction of the risk of holding an asset. Because straddles necessarily involve positions that offset each other, the positions "carry" each other.

Accordingly, under §1.263(g)–3(b) of the proposed regulations, interest and carrying charges subject to capitalization under section 263(g) include: (1) otherwise deductible payments or accruals (including interest and original issue discount) on indebtedness or other financing issued or continued to purchase or carry personal property that is part of a straddle; (2) otherwise deductible fees or expenses paid or incurred in connection with the taxpayer's acquiring or holding personal property that is part of a straddle, including, but not limited to, fees or expenses incurred to purchase, insure, store, maintain, or transport the personal property; and (3) other otherwise deductible payments or accruals on financial instruments that are part of a straddle or that carry part of a straddle.

Section 263(g) requires capitalization of interest and carrying charges that exceed certain specified income inclusions (allowable offsets) listed in section 263(g)(2)(B). Section 1.263(g)–3(e) sets forth the allowable offsets, including amounts that are receipts or accruals on financial instruments that are part of a straddle or carry part of a straddle. The Treasury Department and the IRS solicit comments regarding whether other amounts should be treated as allowable offsets for purposes of section 263(g).

Operation of the Capitalization Rules of Section 263(g)

Generally, section 263(g) coordinates the character and timing of items of income and loss attributable to a taxpayer's position in a straddle by allocating interest and carrying charges to the capital account of a position in personal property that is part of the straddle. Proposed regulation §1.263(g)–4 provides a set of allocation rules governing the "capitalization" of interest and carrying charges.

In many cases, certain allocation rules readily suggest themselves.

Congress was aware of "cash and carry" transactions in adopting section 263(g). See H.R. Rep. No. 201, 97th Cong. 1st Sess. 203–04 (1981). In a typical transaction, a taxpayer borrows to purchase personal property and sells the property forward. The debt instrument generates ordinary deductions (interest expense) that precede predictable (and approximately equal) capital gains on the sale of the personal property. Coordination of the amount and timing of income and loss in a cash and carry transaction is achieved under the proposed regulation by allocating the interest expense to the capital account of the personal property. This rule applies to all transactions in which a taxpayer has borrowed to purchase personal property that is part of a straddle.

If the proceeds of a borrowing are not used to purchase personal property, a second allocation rule allocates interest expense to personal property when the personal property collateralizes the borrowing. See Rev. Proc. 72–18, §3.03 (disallowing interest deduction for debt secured by tax-exempt obligations); Rev. Rul. 78–348 (1978–2 C.B. 95) (applying yield restrictions to investments pledged by person benefitting from tax-exempt bond financing).

A third allocation rule of the proposed regulations allocates interest on indebtedness to personal property when payments on the indebtedness are determined by reference to the value, or change in value, of the personal property that is part of a straddle.

Fees and charges related to the maintenance of the personal property, such as charges to insure, store, or transport the personal property, are allocated to the capital account of that personal property. See S. Rep. No. 144, 97th Cong. 1st Sess. 154 (1981).

In other cases, the appropriate method for allocating capitalized interest and carrying charges is less obvious. This may be true of payments or accruals on a financial instrument, such as a NPC, described in proposed §1.263(g)–3(d). For example, the proposed rules would apply to a taxpayer that holds stock and enters into an equity swap that is a short position with respect to the stock. In such a case, both the stock and the equity swap may be personal property that is part of a straddle, and payments on the equity swap could be capitalized with respect to the capital account of either the stock or the equity swap. However, it may not be clear how a capitalization rule would apply in conjunction with the rules under §1.446–3 with respect to payments on NPCs. Accordingly, the proposed rules provide that, in cases to which a specific allocation rule is not applicable, interest and carrying charges will be allocated to personal property that is part of a straddle in the manner that is most appropriate under all the facts and circumstances. Proposed regulations §1.263(g)–4(c) *Example 7* (relating to a straddle consisting of stock and an equity swap) illustrate one application of this facts and circumstances rule. The Treasury Department and the IRS invite comments and suggestions regarding both the proposed specific allocation rules and the general facts and circumstances allocation rule.

The regulations under section 263(g) are proposed to be effective for expenses paid, incurred, or accrued after the date the regulations are adopted as final for straddles established on or after January 17, 2001. See §1.263(g)–5.

Obligation Under a Debt Instrument as a Position in Personal Property

If a taxpayer is the obligor under a debt instrument that provides for one or more payments linked to the value of actively traded personal property, the value of the taxpayer's obligation under the debt instrument changes as the value of the referenced property changes. For this reason, the taxpayer's position as obligor under the debt instrument functions as a position in the referenced property.

Some commentators have suggested that a debt instrument (other than one denominated in an actively traded foreign currency) cannot be a position of the obligor in personal property that is part of a straddle. Section 1092(d)(7) provides that an obligor's interest in a nonfunctional-currency-denominated debt instrument is treated under section 1092(d)(2) as a position in the nonfunctional currency. From this, the commentators infer that an obligor's interest in a debt instrument may never be treated as an interest in personal property other than a nonfunctional currency.

However, neither the legislative history nor the express language of section 1092(d)(7) indicates that Congress intended to exclude interests in personal property from the definition of *position* in section 1092(d)(2). A rule that a debt instrument can be a position in currency does not establish that a debt instrument is a position only in currency. This interpretation of section 1092(d)(7) has already been rejected by the IRS and Treasury in §1.1275–4(b)(9)(vi), which provides that increased interest expense on a contingent payment debt instrument issued by a taxpayer may be a straddle loss subject to section 1092 deferral.

To clarify the definition of *position* under section 1092(d)(2), §1.1092(d)–1(d) of the proposed regulations explicitly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle. This provision is proposed to be effective for straddles established on or after January 17, 2001. However, no inference is intended with respect to straddles established prior to January 17, 2001. Thus, in appropriate cases, the IRS may take the position under section 1092(d)(2) that, even in the absence of a regulation, an obligation under a debt instrument was part of a straddle prior to the effective date of §1.1092(d)–1(d) if the debt instrument functioned economically as an interest in actively traded personal property.

In 1995, the IRS published proposed regulation §1.1092(d)–2. See 60 F.R.

21482; FI–21–95, 1995–1 C.B. 935. The proposed regulations clarify the circumstances in which common stock may be personal property for the purposes of section 1092. Because proposed regulation §§1.1092(d)–2 and 1.1092(d)–1(d) address similar issues, the IRS proposes to finalize both regulations simultaneously. The Treasury Department and the IRS, therefore, invite additional comment on proposed §1.1092(d)–2.

In addition, in 1985, the Treasury Department and the IRS adopted Temporary Regulation §1.1092(d)–5T(d), which defines the term *loss* for purposes of §§1.1092(b)–1T through 1.1092(b)–4T as a loss otherwise allowable under section 165(a). The Treasury Department and the IRS request comments on whether that definition should be expanded to include expenses such as interest and carrying charges or payments on notional principal contracts. If so, how should such a change be coordinated with the proposed regulations in this document?

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) 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the ADDRESSES portion of this preamble) to the IRS. The IRS and Treasury 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 has been scheduled for May 22, 2001, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Due to building security procedures, visitors must enter at the 10th Street entrance located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identifications to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 1, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Kenneth Christman, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.263(g)–1 also issued under 26 U.S.C. 1092(b)(1).

Section 1.263(g)–2 also issued under 26 U.S.C. 1092(b)(1).

Section 1.263(g)–3 also issued under 26 U.S.C. 1092(b)(1).

Section 1.263(g)–4 also issued under 26 U.S.C. 1092(b)(1).

Section 1.263(g)–5 also issued under 26 U.S.C. 1092(b)(1). * * *

Section 1.1092(d)–1 also issued under 26 U.S.C. 1092(b)(1).

Par. 2. Sections 1.263(g)–1, 1.263(g)–2, 1.263(g)–3, 1.263(g)–4, and 1.263(g)–5 are added to read as follows:

§1.263(g)–1 Treatment of interest and carrying charges in the case of straddles; in general.

(a) Under section 263(g), no deduction is allowed for interest and carrying charges allocable to personal property that is part of a straddle (as defined in section 1092(c)). The purpose of section 263(g) is to coordinate the character and the timing of items of income and loss attributable to a taxpayer's positions that are part of a straddle. In order to prevent payments or accruals related to a straddle transaction from giving rise to recognition of deductions or losses before related income is recognized and to prevent the items of loss and income from having different character, no deduction is allowed for interest and carrying charges properly allocable to personal property that is part of a straddle. Rather, such amounts are chargeable to the capital account of the personal property to which the interest and carrying charges are properly allocable.

(b) Section 263(g) does not apply if none of the taxpayer's positions that are part of the straddle are personal property. Section 263(g) also does not apply to hedging transactions as defined in section 1256(e) (see section 263(g)(3)) or to securities to which the mark-to-market accounting method provided by section 475 applies (see section 475(d)(1)).

(C) Section 1.263(g)–2 provides a definition of personal property for purposes of section 263(g) and §§1.263(g)–1 through 1.263(g)–5. Section 1.263(g)–3 provides a definition of interest and carrying charges for purposes of section 263(g), section 1092, §§1.263(g)–1 through 1.263(g)–5, and §1.1092(b)–4T. Section 1.263(g)–4 provides a set of allocation rules governing the capitalization of amounts to which section 263(g) applies.

§1.263(g)–2 Personal property to which interest and carrying charges may properly be allocable.

(a) *Definition of personal property. For purposes of section 263(g) and of §§1.263(g)–1 through 1.263(g)–5, personal property* means property, whether or not actively traded, that is not real property. For purposes of the preceding sentence, a position in personal property may itself be property. In general, however, a position in personal property is not property of a taxpayer unless the position confers or may confer substantial rights on the taxpayer.

(1) *Application to certain financial instruments*. Personal property includes a stockholder's ownership of common stock, a holder's ownership of a debt instrument, and either party's position in a forward contract or in a conventional swap agreement. Personal property does not include a position that imposes obligations but does not confer substantial rights on the taxpayer. Therefore, the obligor's position in a debt instrument generally is not personal property, even though the obligor may have typical rights of a debtor, such as the right to prepay the debt. However, the obligor on a debt instrument has a position in any personal property underlying the debt instrument. See §1.1092(d)–1(d).

(2) *Options*. For the purposes of applying this section, a put option or call option imposes obligations but does not confer substantial rights on the grantor, whether or not the option is cash-settled.

(b) *Example*. The following example illustrates the rules stated in paragraph (a) of this section:

Example. (i) *Facts*. *A* purchases 100 ounces of gold at a cost of $*x*. *A* transfers the 100 ounces of gold to a trust that issues multiple classes of trust certificates and is treated as a partnership for tax purposes. In return, *A* receives two trust certificates that are not personal property of a type that is actively traded within the meaning of section 1092(d)(1). One certificate entitles *A* to a payment on termination of the trust at the end of four years equal to the value of the 100 ounces of gold up to a maximum value of $($x + y$). The other certificate entitles *A* to a payment equal to the amount by which the value of 100 ounces of gold exceeds $($x + y$) on termination of the trust. *A* sells the second certificate and keeps the first certificate.

(ii) *Analysis*. The trust certificate retained by *A* is property that is not real property. In addition, ownership of the trust certificate confers certain substantial rights on *A*. Therefore, although the trust certificate is not personal property of a type that is actively traded, *A*'s interest in the trust certificate is personal property for purposes of section 263(g).

§1.263(g)–3 Interest and carrying charges properly allocable to personal property that is part of a straddle.

(a) *In general*. For purposes of section 263(g), section 1092, §§1.263(g)–1 through 1.263(g)–5, and §1.1092(b)–4T, *interest and carrying charges properly allocable to personal property that is part of a straddle* means the excess of interest and carrying charges (as defined in paragraph (b) of this section) over the allowable income offsets (as defined in paragraph (e) of this section).

(b) *Interest and carrying charges. Inter*est and carrying charges are otherwise deductible amounts paid or accrued with respect to indebtedness or other financing incurred or continued to purchase or carry personal property that is part of a straddle and otherwise deductible amounts paid or incurred to carry personal property that is part of a straddle. As provided in section 263(g)(2), interest includes any amount paid or incurred in connection with personal property used in a short sale. Interest and carrying charges include—

(1) Otherwise deductible payments or accruals (including interest and original issue discount) on indebtedness or other financing issued or continued to purchase or carry personal property that is part of a straddle;

(2) Otherwise deductible fees or expenses paid or incurred in connection with acquiring or holding personal property that is part of a straddle including, but not limited to, fees or expenses incurred to purchase, insure, store, maintain, or transport the personal property; and

(3) Other otherwise deductible payments or accruals on financial instruments that are part of a straddle or that carry part of a straddle.

(c) *Indebtedness or other financing incurred or continued to purchase or carry personal property that is part of a straddle.* For purposes of paragraph (b)(1) of this section, indebtedness or other financing that is incurred or continued to purchase or carry personal property that is part of a straddle includes —

(1) Indebtedness or other financing the proceeds of which are used directly or indirectly to purchase or carry personal property that is part of the straddle;

(2) Indebtedness or other financing that is secured directly or indirectly by personal property that is part of the straddle; and

(3) Indebtedness or other financing the payments on which are determined by reference to payments with respect to the personal property or the value of, or change in value of, the personal property.

(d) *Financial instruments that are part of a straddle or that carry part of a straddle*. For purposes of paragraph (b)(3), financial instruments that are part of a straddle or that carry part of a straddle include —

(1) A financial instrument that is part of the straddle;

(2) A financial instrument that is issued in connection with the creation or acquisition of a position in personal property if that position is part of the straddle;

(3) A financial instrument that is sold or marketed as part of an arrangement that involves a taxpayer's position in personal property that is part of the straddle and that is purported to result in either economic realization of all or part of the appreciation in an asset without simultaneous recognition of taxable income or a current tax deduction (for interest, carrying charges, payments on a notional principal contract, or otherwise) reflecting a payment or expense that is economically offset by an increase in value that is not concurrently recognized for tax purposes or has a different tax character (for example, an interest payment that is economically offset by an increase in value that may result in a capital gain in a later tax period); and

(4) Any other financial instrument if the totality of the facts and circumstances support a reasonable inference that the issuance, purchase, or continuation of the financial instrument by the taxpayer was intended to purchase or carry personal property that is part of the straddle.

(e) *Allowable income offsets*. The allowable income offsets are:

(1) The amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such personal property;

(2) Any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such personal property for the taxable year;

(3) The excess of any dividends includible in gross income with respect to

such property for the taxable year over the amount of any deductions allowable with respect to such dividends under section 243, 244, or 245;

(4) Any amount that is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in income with respect to the personal property for the taxable year; and

(5) Any amount that is a receipt or accrual includible in income for the taxable year with respect to a financial instrument described in §1.263(g)–3(d) to the extent the financial instrument is entered into to purchase or carry the personal property.

§1.263(g)–4 Rules for allocating amounts to personal property that is part of a straddle.

(a) *Allocation rules*. (1) Interest and carrying charges paid or accrued on indebtedness or other financing issued or continued to purchase or carry personal property that is part of a straddle are allocated, in the order listed —

(i) To personal property that is part of the straddle purchased, directly or indirectly, with the proceeds of the indebtedness or other financing;

(ii) To personal property that is part of the straddle and directly or indirectly secures the indebtedness or other financing; or

(iii) If all or a portion of such interest and carrying charges are determined by reference to the value or change in value of personal property, to such personal property.

(2) Fees and expenses described in §1.263(g)–3(b)(2) are allocated to the personal property, the acquisition or holding of which resulted in the fees and expenses being paid or incurred.

(3) In all other cases, interest and carrying charges are allocated to personal property that is part of a straddle in the manner that under all the facts and circumstances is most appropriate.

(b) *Coordination with other provisions*. In the case of a short sale, section 263(g) applies after section 263(h). See sections 263(g)(4)(A) and (h)(6). In case of an obligation to which section 1277 (dealing with deferral of interest deduction allocable to accrued market discount) or 1282 (dealing with deferral of interest deduction allocable to certain accruals on short-term indebtedness) applies, section 263(g) applies after section 1277 and section 1282. See section 263(g)(4)(B). Capitalization under section 263(g) applies before loss deferral under section 1092.

(c) *Examples*. The following examples illustrate the rules stated in §§1.263(g)–2, 1.263(g)–3, and 1.263(g)–4.

Example 1. Cash and Carry Silver.

(i) *Facts*. On January 1, 2002, *A* borrows $*x* at 6% interest and uses the proceeds to purchase *y* ounces of silver from *B*. At approximately the same time, *A* enters into a forward contract with *C* to deliver *y* ounces of silver to *C* in one year.

(ii) *Analysis*. The *y* ounces of silver and the forward contract to deliver *y* ounces of silver in one year are offsetting positions with respect to the same personal property and therefore constitute a straddle. See sections 1092(c)(1), (c)(3)(A)(i). The proceeds of the debt instrument were used to purchase personal property that is part of the straddle. Consequently, *A*'s interest payments are interest and carrying charges properly allocable to personal property that is part of a straddle. See §1.263(g)–3(b)(1) & (c)(1). Under §1.263(g)–4(a)(1)(i), the interest payments must be charged to the capital account for the *y* ounces of silver purchased by *A* with the proceeds of the borrowing.

Example 2. Additional indebtedness issued to carry personal property.

(i) *Facts*. The facts are the same as for Example 1 except that during the year 2002, the market price of silver increases and *A* is required to post variation margin as security for its obligation to deliver *y* ounces of silver to *C*. *A* incurs additional indebtedness to obtain funds necessary to meet *A*'s variation margin requirement.

(ii) *Analysis*. The additional indebtedness is incurred to continue to carry *A*'s holding of *y* ounces of silver. Consequently, *A*'s interest payments on the additional indebtedness are interest and carrying charges properly allocable to personal property that is part of a straddle and must be charged to the capital account for the *y* ounces of silver.

Example 3. Contingent payment debt instrument.

(i) *Facts*. On January 1, 2002, *D* enters into a contract to deliver *x* barrels of fuel oil to *E* on July 1, 2004, at an aggregate price equal to $*y*. Soon afterward, *D* issues a contingent payment debt instrument to *F* with a principal amount of $*z* and a 2-year term that pays interest quarterly at a rate determined at the beginning of each quarter equal to the greater of zero and the London Interbank Offered Rate (LIBOR) adjusted by an index that varies inversely with changes in the price of fuel oil (so that the interest rate increases as the price of fuel oil decreases and vice versa). The change in the aggregate amount of interest paid on the $*z* of debt due to the functioning of the index approximates the concurrent aggregate change in value of *x* barrels of fuel oil and, thus, the value of *D*'s interest in the forward contract.

(ii) *Analysis*. The debt instrument and the forward contract are offsetting positions with respect to the same personal property and constitute a straddle. See section 1092(c)(1), (c)(3)(A)(i). When issued, the debt instrument is a position in personal property that is part of a straddle. See §1.1092(d)–1(d). Consequently, *D*'s interest payments are interest and carrying charges properly allocable to personal property that is part of a straddle and must be allocated to the capital account for the forward contract for the delivery of *x* barrels of fuel oil to *E*. See §§1.263(g)–3(b)(1), (b)(3), (c)(3), and (d)(1) and –4(a)(1)(iii).

Example 4. Financial instrument issued to carry personal property that is part of a straddle.

(i) *Facts*. The facts are the same as for Example 3 except that *D* also enters into a two-year interest rate swap under which *D* receives LIBOR times a notional principal amount equal to $*z* and pays 7% times $*z*.

(ii) *Analysis*. Because of the relationship between the two-year debt instrument issued by *D* and the interest rate swap, the interest rate swap is a financial instrument that carries personal property that is part of a straddle. See §1.263(g)–3(d)(4). Net payments made by *D* under the interest rate swap are chargeable to the capital account for the forward contract for the delivery of *x* barrels of fuel oil to *E*. Similarly, net payments received by *D* under the interest rate swap are allowable offsets. See §1.263(g)–3(e)(5).

Example 5. Contingent payment debt instrument with embedded short position.

(i) *Facts*. On January 1, 1998, *G* purchases 100,000 shares of the common stock of *XYZ* corporation (which is publicly traded). On January 1, 2002, the 100,000 shares of *XYZ* corporation common stock were worth $*x* per share. On that date, *G* issued a contingent payment debt instrument for $100,000*x*. The terms of the debt instrument provided that the holders would receive an annual payment of $2,000*x* on December 31 of each year up to and including the maturity date of December 31, 2007. On the maturity date, the holders would also receive a payment of $100,000*x* plus an additional amount, if the price of an *XYZ* share exceeded $1.2*x* on such date, equal to 100,000 times three-quarters of the amount of such excess per share. Thus, *G*'s aggregate payments on the debt instrument varied directly with the increase in value in the *XYZ* shares.

(ii) *Analysis*. The debt instrument is a position in *XYZ* stock. See §1.1092(d)–1(d). The *XYZ* stock is personal property within the meaning of section 1092(d)(3)(B) because the debt instrument is a position with respect to substantially similar or related property (other than stock) within the meaning of section 1092(d)(3)(B)(i)(II). See §1.1092(d)–2(c). The debt instrument and the *XYZ* shares are offsetting positions with respect to the same personal property and constitute a straddle. See sections 1092(c)(1), (c)(3)(A)(i). Consequently, *G*'s interest payments are interest and carrying charges properly allocable to personal property that is part of a straddle, see §§1.263(g)–3(b)(1), (b)(3), (c)(3), and (d)(1), and must be allocated to the capital account for the *XYZ* common stock, see §1.263(g)–4(a)(1)(iii) and (a)(3).

Example 6. Straddle including partnership interest.

(i) *Facts*. *H* borrows money from *I* to purchase 100 ounces of gold at a cost of $*u*. *H* transfers the 100 ounces of gold and $*v* to a newly created trust that issues multiple classes of trust certificates and is treated as a partnership for tax purposes. In return, H receives two trust certificates. One certificate entitles the holder to a payment on termination of the trust at the end of four years equal to the value of the 100 ounces of gold up to a maximum value of $($u + w$). The other certificate entitles the holder to a payment equal to the amount by which the value of 100 ounces of gold exceeds $$(u + w)$ on termination of the trust. *H* sells the second certificate and keeps the first certificate. *H* also enters into a forward contract to sell 100 ounces of gold for $1.12*u* per ounce on a date two years after creation of the trust. The trust uses part of the $*v* and similar cash contributions from other investors to pay costs of storing the gold held by the trust and allocates *H*'s share of the expenses to *H*.

(ii) *Analysis*. The trust certificate retained by *H* and the forward contract entered into by *H* are personal property for the purposes of section 263(g). See §1.263(g)–2(a). They are also offsetting positions and constitute a straddle. Section 1092(c)(1). The borrowing from *I* is an indebtedness incurred to purchase personal property that is part of a straddle. See §§1.263(g)–3(b)(1) and (c)(1). Similarly, the gold storage expenses are expenses incurred due to the taxpayer's holding personal property that is part of a straddle. See §1.263(g)–3(b)(2). Therefore both the interest on the borrowing and the gold storage expenses must be allocated to the capital account for the partnership interest represented by the retained trust certificate. See §1.263(g)–4(a)(1)(i) and (a)(2).

Example 7. *Equity Swap*.

(i) *Facts*. On January 1, 1998, *J* purchases 100,000 shares of the common stock of *XYZ* corporation (which is publicly traded). On December 31, 2001, the 100,000 shares of *XYZ* corporation common stock were worth $*x* per share. On that date, *J* entered into a NPC with *K* . The terms of the NPC provided that *K* would receive an annual payment on December 31 of each year equal to 100,000 times any appreciation in the value of a share of *XYZ* corporation stock above its price at the end of trading on December 31 of the preceding year and 100,000 times the dividends paid during the year on each share of *XYZ* corporation stock. In return, on December 31 of each year, *J* would receive an amount equal to LIBOR times the value of 100,000 *XYZ* shares at the end of trading on December 31 of the preceding year plus 100,000 times the amount of any decrease in the value of a share of *XYZ* corporation stock below its price at the end of trading on December 31 of the preceding year. Payments between *J* and *K* would be netted and continue up to and including the maturity date of the NPC on December 31, 2008. Thus, *J*'s aggregate payments on the NPC varied directly with the increase in value in the *XYZ* shares.

(ii) *Analysis*. The NPC is a position in *XYZ* stock. See §1.1092(d)–2(c). The *XYZ* stock is personal property within the meaning of section 1092(d)(3)(B) because the NPC is a position with respect to substantially similar or related property (other than stock) within the meaning of section 1092(b)(3)(B)(i)(II). See §1.1092(d)–2(a)(1)(ii). The NPC and the *XYZ* shares are offsetting positions with respect to the same personal property and constitute a straddle. See sections 1092(c)(1), (c)(3)(A)(i). Consequently, *J*'s payments are interest and carrying charges properly allocable to personal property that is part of a straddle. See §§1.263(g)–3(b)(3) and (d)(1). Therefore, they should be allocated to the personal property that is part of the straddle in the manner that is most appropriate under all the facts and circumstances. In this case, because these payments are incurred to carry the *XYZ* shares, they should be allocated to the capital account for the *XYZ* common stock. See §1.263(g)–4(a)(3).

§1.263(g)–5 Effective dates.

Sections 1.263(g)–1, 1.263(g)–2, 1.263(g)–3, and 1.263(g)–4 apply to interest and carrying charges properly allocable to personal property that are paid, incurred, or accrued after the date these regulations are adopted as final regulations by publication in the **Federal Register** for a straddle established on or after January 17, 2001.

Par. 3. Section 1.1092(d)–1 is amended by revising paragraph (d) and adding paragraph (e), to read as follows:

§1.1092(d)–1 Definitions and special rules.

* * * * *

(d) *Debt instrument linked to the value of personal property*. If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) *Effective dates*. Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991. Paragraph (d) of this section is effective for straddles established on or after January 17, 2001.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 17, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2001, 66 F.R. 4746)

Notice of Proposed Rulemaking and Notice of Public Hearing

Definition of Disqualified Person

REG–107175–00

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations to narrow the definition of the term disqualified person for section 1031 like-kind exchanges. The regulations are in response to recent changes in the federal banking law, especially the repeal of section 20 of the Glass-Steagall Act of 1933. The regulations will affect the eligibility of certain persons to serve as escrow holders of qualified escrow accounts, trustees of qualified trusts, or as qualified intermediaries. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 17, 2001. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for June 5, 2001, at 10 a.m. must be received by May 15, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–107175–00), room 5226, Internal Revenue Service, Post Office Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–107175–00), 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. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, J. Peter Baumgarten, at (202) 622-4950; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) for the definition of disqualified person under section 1.1031(k)–1(k).

An exchange of property, like a sale, usually results in the current recognition of gain or loss. Section 1031(a) provides an exception to the general rule. Under section 1031(a), no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of a like kind that is to be held either for productive use in a trade or business or for investment.

Taxpayers may use a qualified escrow account, qualified trust, or qualified intermediary (or any combination of the three) to facilitate a like-kind exchange. A requirement common to qualified escrow accounts, qualified trusts, and qualified intermediaries is that the escrow holder, trustee, or intermediary may not be the taxpayer or a disqualified person.

Section 1.1031(k)–1(k) defines a disqualified person to include a person that is an agent of the taxpayer at the time of the transaction. An agent includes a person that has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within two years of the taxpayer's transfer of relinquished property. However, in determining whether a person is a disqualified person, services provided by such person for the taxpayer with respect to section 1031 exchanges of property and routine financial, title insurance, escrow, or trust services provided to the taxpayer by a financial institution, title insurance company, or escrow company are not taken into account. A person that is related to a disqualified person, determined by using the attribution rules of sections 267(b) and 707(b) but substituting 10 percent for 50 percent, is also considered a disqualified person.

Under section 20 of the Banking Act of 1933 (12 U.S.C. 377) (the Glass-Steagall Act), banks generally were proscribed from affiliation with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation of stocks, bonds, debentures, notes, or other securities. However, last year Congress enacted the Gramm-Leach-Bliley Act, Public Law 106-102 (November 12, 1999), 113 Stat.1341 (the GLB Act). Section 101 of the GLB Act repeals section 20 of the Glass-Steagall Act. In addition, section 103 of the GLB Act amends section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) by adding new subsection (k). Subsection (k) specifically authorizes qualifying financial institutions to engage in activities that are financial in nature, such as (1) providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)); (2) issuing and selling instruments representing interests in pools of assets permissible for a bank to hold directly; and (3) underwriting, dealing in, and making a market in securities.

As a consequence of the GLB Act (and other changes in policy by the Federal Reserve System in recent years), many banks and bank holding companies are, or are in the process of becoming, members of controlled groups that include investment banking and brokerage firms. This, in turn, may cause the banks, bank holding companies, and their subsidiaries to be disqualified persons for purposes of section 1031 by virtue of the related party rule of §1.1031(k)–1(k)(4).

Treasury and the Service believe that, in general, banks should be permitted to serve as qualified intermediaries, escrow holders, or trustees. Banks, as regulated institutions, have historically acted in this role as neutral or independent holders of funds. These regulations permit banks to continue in this role despite recent legislative and regulatory changes.

In order to account for changes in the banking industry, the proposed regulations generally provide that a bank that is a member of a controlled group that includes an investment banking or brokerage firm as a member will not be a disqualified person merely because the investment banking or brokerage firm has provided services to an exchange customer within a two-year period ending on the date of the transfer of the relinquished property by that customer.

Proposed Effective Date

The regulations are applicable for transfers of property made by a taxpayer on or after January 17, 2001.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the merits of the proposed regulations and how the proposed regulations can be made clearer and easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 5, 2001, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the main Constitution Avenue entrance between 10th and 12th Streets, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic by May 15, 2001. A period of ten (10) minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving the outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is J. Peter Baumgarten of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendment 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. Section 1.1031(k)–1 is amended by adding a sentence to the end of paragraph (k)(4) to read as follows:

§1.1031(k)–1 Treatment of deferred exchanges.

* * * * *

(k) * * *

(4) * * * However, with respect to transfers of relinquished property made by a taxpayer on or after the date on which these regulations are published as final regulations, this paragraph (k)(4) does not apply to a bank (as defined in section 581) that is a member of a controlled group (as determined under section 267(f)(1), substituting "10 percent" for "50 percent" where it appears), where a person described in paragraph (k)(2) of this section is an investment banker or broker that has provided investment banking or brokerage services to the taxpayer within the 2-year period and also is a member of the controlled group.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on January 16, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 17, 2001, 66 F.R. 3924)

Notice of Proposed Rulemaking By Cross Reference to Temporary Regulations and Notice of Public Hearing

Electronic Payee Statements

REG–107186–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: The IRS is issuing proposed regulations under sections 6041 and 6051 relating to the voluntary electronic furnishing of payee statements on Forms W-2. The proposed regulations also provide rules under section 6050S relating to the voluntary electronic furnishing of statements to individuals for whom Forms 1098-T, "Tuition Payments Statement," and Forms 1098-E, "Student Loan Interest Statement," are filed. The proposed regulations will affect persons required by the foregoing Internal Revenue Code sections to furnish these statements (furnishers) who wish to furnish these statements electronically. The proposed regulations will also affect individuals, principally employees, students, and borrowers (recipients), who consent to receive these statements electronically. The text of the temporary regulations also serves as the text of these proposed regulations. These proposed regulations do not affect the requirement to file copy A of Forms W-2 with the Social Security Administration or the requirement to file Forms 1098-T or Forms 1098-E with the IRS.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for June 4, 2001, at 10 a.m. must be submitted by May 14, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–107186–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–107186–00), 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 Regulations" 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. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Laura C. Nash (202) 622-4910; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by April 16, 2001. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

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

The collections of information in these proposed regulations are in §§1.6041–2(a)(5), 1.6050S–1(a), 1.6050S–2(a), and 31.6051–1(i). These temporary regulations state that furnishers may provide the written statements required by sections 6041(d), 6050S(d), and 6051 in an electronic format in lieu of a paper format. In addition, the proposed regulations provide furnishers with a method to furnish a statement in connection with a Form 1098-T or Form 1098-E under section 6050S(d), or a Form W-2 under section 6041(d) or 6051, electronically using website technology. In general, a furnisher may furnish the statement electronically using the method described in the proposed regulations if the recipient consents to receive the statement electronically, and if the furnisher makes certain disclosures to the recipient, annually notifies the recipient that the statement is available on a website, and provides access to the statement on that website for a prescribed period of time. This collection of information is required only for persons who wish to furnish the statements electronically using the method described in the proposed regulations. The likely respondents are businesses, other for-profit institutions, and eligible educational institutions.

Estimated total annual reporting/recordkeeping burden: 2,844,950 hours.

Estimated average annual burden hours per response: 6 minutes.

Estimated number of responses: 28,449,495.

Estimated annual frequency of responses: Once.

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

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

Background

Temporary regulations (T.D. 8942) on page 929 of this Bulletin amend the Regulations on Income Taxes (26 CFR part 1) relating to sections 6041 and 6050S(d), the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) relating to section 6051, and the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6724. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. 603 and is set forth under the heading "Initial Regulatory Flexibility Act Analysis" in this preamble. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Initial Regulatory Flexibility Act Analysis

This initial analysis is required under the Regulatory Flexibility Act. (5 U.S.C. chapter 6). The collection of information contained in §§1.6041–2(a)(5), 1.6050S–1(a), 1.6050S–2(a), and 31.6051–1(i) is required if a furnisher implements the method described in the proposed regulations to furnish statements electronically.

The types of small entities to which the proposed regulations may apply are small eligible educational institutions (such as colleges and universities), certain payees of interest on qualified education loans, and small employers. It is estimated that furnishers will seek consents from approximately 28,449,495 individuals to receive these statements electronically. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least economic effect on small entities of all alternatives considered.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 4, 2001, beginning at 10 a.m., in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 14, 2001. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Eric Lucas, formerly of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.6041–2 also issued under 26 U.S.C. 6041(d). * * *
Section 1.6050S–1 also issued under 26 U.S.C. 6050S(g).
Section 1.6050S–2 also issued under 26 U.S.C. 6050S(g). * * *

Par. 2. Section 1.6041–2 is amended by adding a new paragraph (a)(5) to read as follows:

§1.6041–2 Return of information as to payments to employees.

(a) * * *

(5) [The text of proposed paragraph (a)(5) is the same as the text of §1.6041–2T(a)(5) published in T.D. 8942].

* * * * *

Par. 3. Sections 1.6050S–1 and 1.6050S–2 are added to read as follows:

§1.6050S–1 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.

[The text of these proposed regulations is the same as the text of §1.6050S–1T published in T.D. 8942].

§1.6050S–2 Information reporting for payments of interest on qualified education loans.

[The text of these proposed regulations is the same as the text of §1.6050S–2T published in T.D. 8942].

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

Par. 4. The authority citation continues to read in part as follows:

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

Par. 5. Section 31.6051–1 is amended by:

1. Redesignating paragraph (i) as paragraph (j).

2. Adding a new paragraph (i).

The addition reads as follows:

§31.6051–1 Statements for employees.

* * * * *

(i) [The text of proposed paragraph (i) is the same as the text of §31.6051–1T(j) published in T.D. 8942].

* * * * *

PART 301 - - PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6724–1 is amended by adding a new paragraph (d)(3) to read as follows:

§301.6724–1 Reasonable cause.

* * * * *

(d) * * *

(3) [The text of proposed paragraph (d)(3) is the same as the text of §301.6724–1T(d)(3) published in T.D. 8942].

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on February 13, 2001, 8:45 a.m., and published in the issue of the Federal Register for February 14, 2001, 66 F.R. 10247)

Determination of Basis of Partner's Interest; Special Rules; Correction

Announcement 2001–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to REG–106702–00 (2001–4 I.R.B. 424) which was published in the **Federal Register** on Wednesday, January 3, 2001 (66 FR 315). These regulations relate to special rules on determination of basis of partner's interest under section 705 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Barbara MacMillan, (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections is under section 705 of the Internal Revenue Code.

Need for Correction

As published, REG–106702–00 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–106702–00), which is the subject of FR Doc. 01–32189, is corrected as follows:

1. On page 315, column 2, in the preamble, under the caption "DATES:", last line, the language "must be received by April 3, 2001" is corrected to read "must be received by April 12, 2001".
2. On page 316, column 3, in the preamble under the paragraph heading "Comments and Public Hearing", first full paragraph in the column, last line, the language "April 3, 2001." is corrected to read April 12, 2001.".

§1.705–2 [Corrected]

3. On page 317, column 2, §1.705–2 (b)(2), paragraph (ii) of the *Example*, line 1 the language "Normally, X would be entitled to a $40" is corrected to read "Normally, X would be entitled to a $40,000".
4. On page 318, column 3, §1.705–2 (c)(2), paragraph (vi) of *Example 2*, line 19 the language "The amount of UTP's gain" is corrected to read "The amount of LTP's gain".

Cynthia Grigsby,
Chief, Regulations Unit,
Office of Special Counsel (Modernization & Strategic Planning).

(Filed by the Office of the Federal Register on February 26, 2001, 8:45 a.m., and published in the issue of the Federal Register for February 27, 2001, 66 F.R. 12448)

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

This announcement serves notice to potential donors that the organizations listed below have recently filed timely declaratory judgment suits under section 7428 of the Code, challenging revocation of their status as eligible donees under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1). In the case of individual contributors, the maximum amount of contributions protected during this period is limited to $1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

St David's Health Care System, Inc.
Austin, TX

Watts 13 Foundation
Los Angeles, CA

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 Contributions Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

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