Internal Revenue
bulletin

Bulletin No. 2010-46
November 15, 2010

# 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

### T.D. 9501, page 651.

Final regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

### T.D. 9502, page 641.

Final regulations under section 883 of the Code include a new rule permitting foreign corporations to include certain bearer shares maintained in a dematerialized or immobilized book-entry system to determine whether the corporation can satisfy one of the ownership tests of section 883(c).

### Notice 2010–72, page 661.

**2010 Section 43 inflation adjustment factor.** This notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2010 calendar year. The notice also contains the previously published figures for taxable years beginning in the 1991 through 2009 calendar years.

### Notice 2010–73, page 662.

**2010 marginal production rates.** This notice announces the applicable percentage under section 613A of the Code to be used in determining percentage depletion for marginal properties for the 2010 calendar year.

### Rev. Proc. 2010–40, page 663.

**Cost-of-living adjustments for 2011.** This procedure sets forth the cost-of-living adjustments to certain items for 2011 due to inflation as required under various provisions of the Code and Service guidance. This procedure does not include the following items: the tax rate tables under section 1, the child tax credit under section 24, the Hope Scholarship and Lifetime Learning Credits under section 25A, the earned income credit under section 32, the standard deduction under section 63, the overall limitation on itemized deductions under section 68, the qualified transportation fringe under section 132, the personal exemption under section 151, and the interest on education loans under section 221. Those items will be addressed in future guidance.

## EXEMPT ORGANIZATIONS

### Announcement 2010–89, page 669.

The IRS has revoked its determination that Consumer Debt Management, Northeast, of Methuen, MA; Partners in Charity, Inc., of West Dundee, IL; and Hope and Dreams Foundation of Palo Alto, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code

## ESTATE TAX

### T.D. 9501, page 651.

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**Finding Lists begin on page ii.**

Department of the Treasury
Internal Revenue Service

**Rev. Proc. 2010–40, page 663.**
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## GIFT TAX

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## EMPLOYMENT TAX

**T.D. 9500, page 649.**
**REG–137486–09, page 668.**
Final, temporary, and proposed regulations under section 6103(j)(1) of the Code authorizes the disclosure of additional items of return information to the Bureau of the Census.

**T.D. 9501, page 651.**
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## SELF-EMPLOYMENT TAX

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## EXCISE TAX

**T.D. 9501, page 651.**
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## ADMINISTRATIVE

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**T.D. 9501, page 651.**
Final regulations under section 6109 of the Code provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax.

**Notice 2010–74, page 663.**
This notice informs taxpayers that there are no unused housing credit carryovers to be allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2010.

**(Continued on the next page)**

**Rev. Proc. 2010–40, page 663.**

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# The IRS Mission

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

# Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.



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

## Section 36C.—Adoption Expenses

The Service provides inflation adjustments to the adoption credit allowed for the adoption of a child for taxable years beginning in 2011. The Service also provides inflation adjustments to the value used in calculating the modified adjusted gross income limitations used to determine the amount of adoption credit that is allowed in taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 42.—Low-Income Housing Credit

*26 CFR 1.42–14: Allocation rules for post-1989 State housing credit ceiling amounts.*

Guidance is provided to taxpayers regarding unused housing credit carryovers under section 42(h)(3)(D) of the Internal Revenue Code. See Notice 2010-74, page 663.

The Service provides inflation adjustments to the amounts used to calculate the State housing credit ceiling used in determining the low-income housing credit, and the per low-income unit qualified basis amount, for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 59.—Other Definitions and Special Rules for the Alternative Minimum Tax

The Service provides an inflation adjustment to the exemption amount used in computing the alternative minimum tax for a minor child subject to the "kiddie tax" for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 62.—Adjusted Gross Income Defined

The Service provides inflation adjustments to the amounts an eligible employer may pay in calendar year 2011 to certain welders and heavy equipment mechanics for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. See Rev. Proc. 2010-40, page 663.

## Section 135.—Income from United States Savings Bonds Used to Pay Higher Education Tuition and Fees

The Service provides inflation adjustments to the limitation on the exclusion of income from United States savings bonds for taxpayers who pay qualified higher education expenses for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 137.—Adoption Assistance Programs

The Service provides inflation adjustments to the maximum amount that can be excluded from an employee's gross income in connection with a qualified adoption assistance program for taxable years beginning in 2011. The Service also provides inflation adjustments to the amount used to calculate the modified adjusted gross income limitations used to determine the amount that can be excluded from an employee's gross income for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 146.—Volume Cap

The Service provides inflation adjustments to the amounts used to determine the State ceiling for the volume cap of private activity bonds for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 147.—Other Requirements Applicable to Certain Private Activity Bonds

The Service provides an inflation adjustment to the loan limit amount on agricultural bonds for first-time farmers for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 148.—Arbitrage

*26 CFR 1.148–5: Yield and valuation of investments.*

The Service provides inflation adjustments for determining in the calendar year 2011 whether a broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable. The Service provides an inflation adjustment to the computation credit determined under section 1.148–3(d)(4) of the proposed Income Tax Regulations for bond years ending in 2011. See Rev. Proc. 2010-40, page 663.

## Section 170.—Charitable, etc., Contributions and Gifts

The Service provides inflation adjustments to the "insubstantial benefit" guidelines for calendar year 2011. Under the guidelines, a charitable contribution is fully deductible even though the contributor receives "insubstantial benefits" from the charity. See Rev. Proc. 2010-40, page 663.

## Section 213.—Medical, Dental, etc., Expenses

The Service provides inflation adjustments to the limitation on the amount of eligible long-term care premiums includible in the term "medical care" for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 220.—Archer MSAs

The Service provides inflation adjustments to the amounts used to determine whether a health plan is a "high deductible health plan" for purposes of determining whether an individual is eligible for a deduction for cash paid to a medical savings account for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 512.—Unrelated Business Taxable Income

The Service provides an inflation adjustment to the maximum amount of annual dues that can be paid to certain agricultural or horticultural organizations without any portion being treated as unrelated trade or business income by reason of any benefits or privileges available to members for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 513.—Unrelated Trade or Business

The Service provides an inflation adjustment to the maximum cost of a "low cost article" for taxable years beginning in 2011. Funds raised through a charity's distribution of "low cost articles" will not be treated as unrelated business income to the charity. See Rev. Proc. 2010-40, page 663.

## Section 877.—Expatriation to Avoid Tax

The Service provides an inflation adjustment to the amount used for calendar year 2011 to determine whether an individual's loss of United States citizenship had the avoidance of United States tax as one of

its principal purposes. See Rev. Proc. 2010-40, page 663.

## Section 877A.—Tax Responsibilities of Expatriation

The Service provides an inflation adjustment to the amount that reduces the amount that would be includible in the gross income of a covered expatriate for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 883.—Exclusions From Gross Income

*26 CFR 1.883–1: Exclusion of income from the international operation of ships or aircraft.*

## T.D. 9502

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Parts 1 and 602

## Exclusions from Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 883(a) and (c) of the Internal Revenue Code (Code), concerning the exclusion from gross income of income derived by certain foreign corporations from the international operation of ships or aircraft. The final regulations adopt the proposed regulations issued on June 25, 2007, (REG–138707–06) with certain modifications in response to comments received, and remove the temporary regulations published on the same date (T.D. 9332).

DATES: *Effective Date:* These regulations are effective September 17, 2010.

*Applicability Date:* For dates of applicability, see §1.883–5(d).

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray, at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)), under control number 1545–1677.

The collections of information in these final regulations are in §§1.883–2(f), 1.883–3(c) and (d), and 1.883–4(e). This information is required to enable a foreign corporation to determine if it is eligible to exclude its income from the international operation of ships or aircraft from gross income on its U.S. Federal income tax return. This information will also enable the IRS to monitor compliance with the regulations with respect to the stock ownership requirements of §1.883–1(c)(2), and to make a preliminary determination of whether the foreign corporation is eligible to claim such an exemption and is accurately reporting income.

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.

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**

On June 25, 2007, temporary regulations (T.D. 9332, 2007–2 C.B. 300) (2007 temporary regulations) under section 883(a) and (c) were published in the **Federal Register** (72 FR 34600) revising final regulations issued on August 26, 2003 in T.D. 9087, 2003–2 C.B. 781 (68 FR 51394) (2003 final regulations) as amended by T.D. 9218, 2005–2 C.B. 503 (70 FR 45529). A notice of proposed rulemaking (REG–138707–06, 2007–2 C.B. 342) cross-referencing the temporary regulations was published in the **Federal Register** on the same date (72 FR 34650) (proposed regulations).

The 2007 temporary regulations revised the 2003 final regulations in several respects. First, the 2007 temporary regulations provide guidance concerning the eligibility of certain controlled foreign corporations to exclude from gross income certain income from the international operation of ships or aircraft (section 883 income) under section 883 (section 883 exclusion). Second, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the eligibility for the section 883 exclusion of certain foreign corporations organized in countries that provide an exemption from taxation for income from the international operation of ships or aircraft through an income tax convention. Third, the 2007 temporary regulations identified certain ground services as incidental to the international operation of ships or aircraft for purposes of the section 883 exclusion. Finally, the 2007 temporary regulations revised the provisions of the 2003 final regulations concerning the reporting requirements related to the qualified shareholder stock ownership test. No public hearing on the proposed regulations was requested or held, however comments were received on certain provisions of the proposed regulations. After consideration of all the comments, the proposed regulations under section 883 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

**Summary of Comments and Explanation of Final Regulations**

The comments received with respect to the 2007 temporary regulations focused on three areas: (1) the scope of activities considered incidental to the international operation of a ship or aircraft (incidental activities); (2) the treatment of bearer shares for purposes of the stock ownership tests; and (3) the reporting requirements of foreign corporations claiming the section 883 exclusion.

A. *Incidental Activities*

1. *Treatment of "other services"*

The 2003 final regulations provide that certain activities of a foreign corporation engaged in the international operation of

ships or aircraft are so closely related to such operation that those activities are incidental to such operation, and therefore the income derived by the foreign corporation from such incidental activities is deemed to be derived from the international operation of ships or aircraft. The 2003 final regulations include a non-exclusive list of incidental activities eligible for the section 883 exclusion. See §1.883–1(g)(1). The 2003 final regulations, however, reserved on whether certain ground, maintenance or catering services (collectively, ground services) constitute incidental activities, and on whether other services might also constitute incidental activities. See §1.883–1(g)(3). After considering comments received, the 2007 temporary regulations removed the reservation with respect to ground services and identified three additional categories of incidental activities. See §1.883–1T(g)(ix) through (xi). The 2007 temporary regulations continue to reserve on whether "other services" may constitute incidental activities for this purpose.

Two commentators have recommended that final regulations adopt a standard for determining whether "other services" are incidental activities based on the principles articulated in paragraph 4.2 of the Commentary to paragraph 1 of Article 8 of the Organization for Economic Co-operation and Development Model Tax Convention on Income and Capital (OECD Model Convention). Article 8 of the OECD Model Convention covers profits directly connected with the operation of an enterprise's ships or aircraft in international traffic and profits from activities "ancillary" to such operation. Paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention defines ancillary activities as those activities that an enterprise "does not need to carry on for the purposes of its own operation of ships or aircraft in international traffic, but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise."

The Treasury Department and the IRS considered but declined to adopt in the 2007 temporary regulations the standard articulated in paragraph 4.2 of the commentary to Article 8 of the OECD Model Convention out of concern that the standard could be interpreted in an inappropriately expansive manner. The Treasury Department and the IRS remain concerned and therefore the final regulations included in this document do not modify the scope of incidental activities. As noted, however, the list of incidental activities included in the regulations is non-exclusive, and therefore other activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances.

2. *Relevance of definitions included in the regulations to treaty interpretation*

Several commentators have suggested that the scope of incidental activities under the regulations should be consistent with the scope of "ancillary" services for tax treaty purposes because the regulations could be used to determine the meaning of the treaty provisions. The Treasury Department and the IRS believe this concern is sufficiently addressed by §1.883–1(h)(3)(iv), which provides that any definitions provided in §§1.883–1 through 1.883–5 shall not give meaning to similar terms used in any income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

3. *Provision of equipment used in connection with lighter vessels*

Another commentator questioned whether the use of equipment to transfer crude oil from a host vessel to a lighter vessel beyond the territorial waters of the United States would constitute an incidental activity for purposes of the section 883 exclusion. As described above, the list of incidental activities in the regulations is not exclusive, and therefore activities not specifically identified may be incidental to the international operation of ships or aircraft, depending on the relevant facts and circumstances. Thus, for example, the use of equipment to transfer crude oil from a large oil tanker to a lighter vessel beyond the territorial waters of the United States would generally be considered incidental to the international operation of the lighter vessel for purposes of the section 883 exclusion.

B. *Reliance on Bearer Shares to Satisfy Ownership Tests*

To qualify for the section 883, exclusion a foreign corporation must satisfy one of three stock ownership tests. Under existing regulations, the foreign corporation cannot rely on bearer shares issued at any level in the ownership chain to satisfy any of the three stock ownership tests. See, for example, §1.883–4(b)(1)(ii). Several commentators have suggested that a foreign corporation should be permitted to consider bearer shares in determining whether an ownership test is satisfied to the extent the foreign corporation can substantiate the ownership of the bearer shares by qualified shareholders.

It has generally been difficult to reliably prove ownership of bearer shares, particularly in prior periods. However, the Treasury Department and the IRS understand that it has become increasingly common for corporations (both publicly traded and privately held) to use a dematerialized or immobilized book-entry system for maintaining their registered and bearer shares. The Treasury Department and the IRS understand that under a dematerialized book-entry system shares are represented only by book entries, and no physical certificates are issued or transferred, and that in an immobilized book-entry system the shareholder does not receive a physical certificate upon the purchase of shares but instead evidence of ownership is maintained on the books and records of a broker/financial institution or corporate issuer. Because these systems provide the ability to reliably identify the beneficial owner of bearer shares, the Treasury Department and the IRS have determined that a foreign corporation that uses a dematerialized or immobilized book-entry system to maintain its bearer shares should be permitted to take into account the ownership of bearer shares by qualified shareholders for determining whether a stock ownership test is satisfied. Accordingly, the final regulations permit a foreign corporation to take into account ownership of bearer shares for purposes of satisfying a stock ownership test, when the bearer shares are maintained in a dematerialized or immobilized book-entry system. All other bearer

shares issued by the foreign corporation or any intermediary corporation in the chain of ownership may not be relied on for purposes of satisfying a stock ownership test.

Current §1.883–4(d)(2)(ii) provides that a qualified shareholder ownership statement remains valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change in circumstances occurs that makes any information on the ownership statement incorrect. For this purpose, a change in circumstances that makes information on an ownership statement incorrect includes bearer shares ceasing to be maintained in a dematerialized or immobilized book-entry system.

C. *Other Comments Received*

One commentator requested that the Treasury Department and the IRS clarify the filing requirements under section 6038A for a foreign corporation that has a permanent establishment in the United States but that claims a U.S. tax exemption under the shipping and air transport article of an income tax treaty. Another commentator requested that Form W–8BEN, *"Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding,"* and Form W–8ECI, *"Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States,"* be modified to apply to income that qualifies for the section 883 exclusion. Finally, another commentator recommended that the final regulations under section 1446 be modified to clarify that a foreign corporation's allocable share of the effectively connected taxable income of a partnership does not include income that is eligible for the section 883 exclusion by reason of an equivalent exemption referred to in §1.883–1(h)(1). Each of these comments is beyond the scope of the final regulations included in this document, but is being considered as part of separate guidance projects.

**Special Analysis**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of United States small business entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on certain shareholders of such corporations. United States small business entities may be shareholders of foreign corporations to which the regulations applies, however, the Treasury Department and the IRS do not anticipate the number of affected small business entities to be substantial. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It also has been determined that section 553(b),(c) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was 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 regulations is Patricia A. Bray of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

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**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are 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 1.883–0 is amended by:

1. Adding the entries for §1.883–1(c)(3)(ii)(A) and (B).
2. Revising the entries for §1.883–1(g)(3) and (h)(3).
3. Revising the entry for §1.883–2(e)(2).
4. Revising the entries for §1.883–3.
5. Revising the entry for §1.883–5(d).
6. Removing the entry for §1.883–5(e).

The revisions and additions read as follows:

*§1.883–0 Outline of major topics.*

* * * * *

*§1.883–1 Exclusion of income from the international operation of ships or aircraft.*

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) General rule.

(B) Names and permanent addresses of certain shareholders.

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(g) * * *

(3) Other Services. [Reserved].

* * * * *

(h) * * *

(3) Special rules with respect to income tax conventions.

(i) Countries with only an income tax convention.

(ii) Countries with both an income tax convention and an equivalent exemption.

(A) General rule.

(B) Special rule for claiming simultaneous benefits under section 883 and an income tax convention.

(iii) Participation in certain joint ventures.

(iv) Independent interpretation of income tax conventions.

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*§1.883–2 Treatment of publicly-traded corporations.*

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(e) * * *

(2) Availability and retention of documents for inspection.

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*§1.883–3 Treatment of controlled foreign corporations.*

(a) General rule.

(b) Qualified U.S. person ownership test.

(1) General rule.

(2) Qualified U.S. person.

(3) Treatment of bearer shares.

(4) Ownership attribution through certain domestic entities.

(5) Examples.

(c) Substantiation of CFC stock ownership.

(1) In general.

(2) Ownership statements from qualified U.S. persons.

(3) Ownership statements from intermediaries.

(4) Three-year period of validity.

(5) Availability and retention of documents for inspection.

(d) Reporting requirements.

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*§1.883–5 Effective/applicability dates.*

* * * * *

(d) Effective/applicability dates.

**§1.883–0T [Removed]**

Par. 3. Section 1.883–0T is removed.

Par. 4. Section 1.883–1 is amended by revising paragraphs (c)(3)(i)(D), (c)(3)(i)(G), (c)(3)(i)(H), (c)(3)(i)(I), (c)(3)(ii), (g)(1)(ix), (g)(1)(x), (g)(1)(xi), (g)(3), (h)(1)(ii), and (h)(3) to read as follows:

*§1.883–1 Exclusion of income from the international operation of ships or aircraft.*

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) The applicable authority for an equivalent exemption, for example, the citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, or an income tax convention between the United States and such country in the case of a corporation described in paragraphs (h)(3)(i), (ii) and (iii) of this section;

* * * * *

(G) A statement as to whether any shares of the foreign corporation or of any intermediary corporation that are relied on to satisfy any stock ownership test described in paragraph (c)(2) of this section are issued in bearer form and whether the bearer shares are maintained in a dematerialized book-entry system in which the bearer shares are represented only by book entries and no physical certificates are issued or transferred, or in an immobilized book-entry system in which evidence of ownership is maintained on the books and records of the corporate issuer or by a broker or financial institution;

(H) Any other information required under §1.883–2(f), §1.883–3(d), or §1.883–4(e), as applicable; and

(I) Any other relevant information specified in Form 1120-F, "*U.S. Income Tax Return of a Foreign Corporation*," and its accompanying instructions.

(ii) *Further documentation*—(A) *General rule*. Except as provided in paragraph (c)(3)(ii)(B) of this section, if the Commissioner requests in writing that the foreign corporation provide documentation or substantiate any representations made under paragraph (c)(3)(i) of this section, or under §1.883–2(f), §1.883–3(d), or §1.883–4(e), as applicable, the foreign corporation must provide the requested documentation or substantiation within 60 days of receiving the written request. If the foreign corporation does not provide the requested documentation or substantiation within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested documentation or substantiation. Whether a failure to provide the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

(B) *Names and permanent addresses of certain shareholders*. If the Commissioner requests the names and permanent addresses of individual qualified shareholders of a foreign corporation, as represented on each individual's ownership statement, to substantiate the requirements of the exception to the closely-held test in the publicly-traded test in §1.883–2(e), the qualified shareholder stock ownership test in §1.883–4(a), or the qualified U.S. person ownership test in §1.883–3(b), the foreign corporation must provide the requested information within 30 days of receiving the written request. If the foreign corporation does not provide the requested information within the 30-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the requested information. Whether a failure to provide the requested information was due to reasonable cause and not willful neglect shall be determined by the Commissioner based on all the facts and circumstances.

* * * * *

(g) * * *

(1) * * *

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft;

(x) The provision of containers and related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (for this purpose, a period of five days or less shall be presumed to be short-term); and

(xi) The provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, and customer services personnel, and the provision of facilities such as passenger lounges, counter space, ground handling equipment, and hangars.

* * * * *

(3) *Other services*. [Reserved].

* * * * *

(h) * * *

(1) * * *

(ii) Provides an exemption from tax for income derived from the international operation of ships or aircraft, either by statute, decree, income tax convention, or otherwise; or

* * * * *

(3) *Special rules with respect to income tax conventions*—(i) *Countries with only an income tax convention*. If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft only under an income tax convention with the United States, that exemption shall constitute an equivalent exemption with respect to a foreign corporation organized in that country only if—

(A) The foreign corporation satisfies the conditions for claiming benefits with respect to such profits under the income tax convention; and

(B) The profits that are exempt from tax pursuant to the shipping and air transport or gains article of the income tax convention and are described within a category of income included in paragraphs (h)(2)(i) through (viii) of this section.

(ii) *Countries with both an income tax convention and an equivalent exemption*—(A) *General rule*. If a foreign country grants an exemption from tax for profits from the international operation of ships or aircraft under the shipping and air transport or gains article of an income tax convention with the United States and also by some other means (for example, by diplomatic note or domestic law of the foreign country), a foreign corporation may elect annually whether to claim an exemption from tax under section 883 or the income tax convention. Except as provided in paragraph (h)(3)(ii)(B) of this section, the foreign corporation must apply the elected exemption (section 883 or the income tax convention) to all categories of income described in paragraph (h)(2) of this section. If the foreign corporation elects to claim the exemption under section 883, it must satisfy all of the requirements for claiming the exemption under section 883. If the foreign corporation elects to claim the exemption under the income tax convention, it must satisfy all of the requirements and conditions for claiming benefits under the income tax convention. See §1.883–4(b)(3) for rules concerning relying on shareholders resident in a foreign country that grants an equivalent exemption under an income tax convention to satisfy the stock ownership test of paragraph (c)(2) of this section.

(B) *Special rule for claiming simultaneous benefits under section 883 and an income tax convention*. If a foreign corporation that is organized in a country that grants an exemption from tax under an income tax convention and also by some other means (such as by diplomatic note or domestic law of the foreign country) with respect to a specific category of income described in paragraph (h)(2) of this section, and the foreign corporation elects to claim the exemption under the income tax convention, the foreign corporation may nonetheless simultaneously claim an exemption under section 883 with respect to a category of income exempt from tax by such other means if the foreign corporation—

(*1*) Satisfies the requirements of paragraphs (h)(3)(i)(A) and (B) of this section for each category of income;

(*2*) Satisfies one of the stock ownership tests of paragraph (c)(2) of this section; and

(*3*) Complies with the substantiation and reporting requirements in paragraph (c)(3) of this section.

(iii) *Participation in certain joint ventures*. If a foreign country grants an exemption for a category of income only through an income tax convention, a foreign corporation that is organized in that country and that derives income, directly or indirectly, through a participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture described in paragraph (e)(2) of this section, may treat that exemption as an equivalent exemption even if the foreign corporation would not be eligible to claim benefits under the income tax convention for that category of income solely because the joint venture was not fiscally transparent, within the meaning of §1.894–1(d)(3)(iii)(A), with respect to that category of income under the income tax laws of the foreign corporation's country of residence.

(iv) *Independent interpretation of income tax conventions*. Nothing in this section nor §§1.883–2 through 1.883–5 affects the rights or obligations under any income tax convention between the United States and a foreign country. The definitions provided in this section and §§1.883–2 through 1.883–5 shall not give meaning to similar or identical terms used in an income tax convention, or provide guidance regarding the scope of any exemption provided by such convention, unless the income tax convention entered into force after August 26, 2003, and it, or its legislative history, explicitly refers to section 883 and guidance promulgated under that section for its meaning.

* * * * *

**§1.883–1T [Removed]**

Par. 5. Section 1.883–1T is removed.

Par. 6. Section 1.883–2 is amended by revising paragraphs (d)(3)(ii), (e)(2), (f)(3), and (f)(4)(ii) to read as follows:

*§1.883–2 Treatment of publicly-traded corporations*.

* * * * *

(d) * * *

(3) * * *

(ii) *Exception*. Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in §1.883–4(b), applying the attribution rules of §1.883–4(c), own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in §1.883–4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in §1.883–4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person otherwise treated as a qualified shareholder under §1.883–4(b) may be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person's interest in the foreign corporation, or in any intermediary corporation, is held through bearer shares that are not maintained during the relevant period in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G).

(e) * * *

(2) *Availability and retention of documents for inspection*. A foreign corporation seeking qualified foreign corporation status must retain the documentation described in paragraph (e)(1) of this section until the expiration of the statute of limitations for its taxable year to which the documentation relates. The foreign corporation must make such documentation available for inspection at such time and such place as the Commissioner requests in writing under §1.883–1(c)(3)(ii)(A) or (B).

(f) * * *

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including whether the class is issued in registered or bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), the number of shares issued and outstanding in that class as of the close of the taxable year, and the relative value of each class in relation to the total value of all shares of stock of the corporation that are outstanding as of the close of the taxable year;

(4) * * *

(ii) With respect to all qualified shareholders that own directly, or by application of the attribution rules in §1.883–4(c), shares of the closely-held block of stock and that the foreign corporation relies on to satisfy the exception provided by paragraph (d)(3)(ii) of this section—

(A) The number of such qualified shareholders;

(B) The total percentage of the value of the shares owned, directly or indirectly, by such qualified shareholders by country of residence, determined under §1.883–4(b)(2) (residence of individual shareholders) or §1.883–4(d)(3) (special rules for residence of certain shareholders); and

(C) The number days during the taxable year of the foreign corporation that such qualified shareholders owned, directly or indirectly, their shares in the closely held block of stock.

* * * * *

**§1.883–2T [Removed]**

Par. 7. Section 1.883–2T is removed.

Par. 8. Section 1.883–3 is revised to read as follows:

*§1.883–3 Treatment of controlled foreign corporations.*

(a) *General rule.* A foreign corporation satisfies the stock ownership test of §1.883–1(c)(2) if it satisfies the qualified U.S. person ownership test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A foreign corporation that fails the qualified U.S. person ownership test of paragraph (b) of this section can satisfy the stock ownership test of §1.883–1(c)(2) if it meets either the publicly-traded test of §1.883–2(a) or the qualified shareholder stock ownership test of §1.883–4(a).

(b) *Qualified U.S. person ownership test*—(1) *General rule.* A foreign corporation satisfies the qualified U.S. person ownership test only if the following two conditions are satisfied concurrently during more than half the days in its taxable year:

(i) The foreign corporation is a controlled foreign corporation (within the meaning of section 957(a)).

(ii) One or more qualified U.S. persons own more than 50 percent of the total value of all the outstanding stock of the foreign corporation (within the meaning of section 958(a) and paragraph (b)(4) of this section).

(2) *Qualified U.S. person.* For purposes of this section, a *qualified U.S. person* is a United States citizen or resident alien, a domestic corporation, or a domestic trust described in section 501(a), but only if the person provides the controlled foreign corporation an ownership statement described in paragraph (c)(2) of this section, and the controlled foreign corporation meets the reporting requirements of paragraph (d) of this section with respect to that person.

(3) *Treatment of bearer shares.* For purposes of paragraph (b)(1)(ii) of this section, any shares of the foreign corporation or of any intermediary corporation that are issued in bearer form, shall be treated as not owned by qualified U.S. persons if the bearer shares are not maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G).

(4) *Ownership attribution through certain domestic entities.* For purposes of paragraph (b)(1)(ii) of this section, stock owned, directly or indirectly, by or for a domestic partnership, a domestic trust not described in section 501(a), or a domestic estate, shall be treated as owned proportionately by the partners, beneficiaries, grantors, or other interest holders, respectively, under the rules of section 958(a), which shall be applied by treating each domestic entity as a foreign entity. Stock that is considered owned by a person under this paragraph (b)(4) shall, for purposes of applying this paragraph (b)(4) to such person, be treated as actually owned by such person.

(5) *Examples.* The following examples illustrate the qualified U.S. person ownership test of paragraph (b)(1) of this section:

*Example 1.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. A domestic partnership owns all of the outstanding stock of Ship Co for the entire taxable year. All of the partners in the domestic partnership are residents of foreign countries and not citizens of the United States. Ship Co does not satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because qualified U.S. persons do not own shares of Ship Co stock with a value that is greater than 50 percent of the total value of the outstanding stock of the corporation for at least half the days of Ship Co's taxable year. Therefore, to satisfy the stock ownership test of §1.883–1(c)(2) and constitute a qualified foreign corporation, Ship Co must meet the qualified shareholder stock ownership test of §1.883–4(a).

*Example 2.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) for more than half the days of its taxable year and is organized in a qualified foreign country. Ship Co has a single class of stock outstanding. For Ship Co's entire taxable year, a foreign corporation (Corp A), that is wholly owned by a resident of a foreign country who is not a U.S. citizen, owns 40 percent of the outstanding Ship Co stock. During that same period, a domestic partnership owns the remaining 60 percent of the outstanding Ship Co stock. The domestic partnership is wholly owned by 20 United States citizens, each of whom owns a 5-percent partnership interest for Ship Co's entire taxable year. Ship Co meets the qualified U.S. person ownership test of paragraph (b)(1) of this section because during more than half the days in its taxable year it was a controlled foreign corporation within the meaning of section 957(a), and, applying the ownership attribution rules of paragraph (b)(4) of this section, qualified U.S. persons (the partners in the domestic partnership) owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares. Therefore, Ship Co will meet the stock ownership test of §1.883–1(c)(2) if it satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section with respect to the partners in the domestic partnership. Alternatively, if four or more partners in the domestic partnership were not qualified U.S. persons, Ship Co would not meet the qualified U.S. person ownership test of paragraph (b)(1) of this section because, even though during more than half the days in its taxable year it would have been a controlled foreign corporation within the meaning of section 957(a), qualified U.S. persons would not have owned Ship Co stock with a value that is greater than 50 percent of the total value of all the outstanding Ship Co shares during that period.

*Example 3.* Ship Co is a controlled foreign corporation (within the meaning of section 957(a)) and is organized in a qualified foreign country. Ship Co has two classes of stock outstanding, Class A representing 60 percent of the vote and value and Class B representing the remaining 40 percent of the vote and value of all the shares outstanding of Ship Co. The Class A stock is issued in bearer form and is maintained in a dematerialized book-entry system, as described in §1.883–1(c)(3)(i)(G). The Class B stock is

also issued in bearer form, but is not maintained in a dematerialized or immobilized book-entry system. For Ship Co's entire taxable year, a United States citizen A holds all the Class A stock and nonresident alien individual B owns all the Class B stock. Although the Class A stock is issued in bearer form, Ship Co will satisfy the qualified U.S. person ownership test of paragraph (b)(1) of this section because the Class A stock is maintained in a dematerialized book-entry system on behalf of A. The Class B stock is not owned by a qualified U.S. person but is taken into account in determining the total value of Ship Co's outstanding stock. Alternatively, if the Class B stock were owned by a qualified U.S. person, the results would be similar. Class B stock would not be taken into account in determining if the qualified U.S. person ownership test were satisfied, but would be taken into account in determining the total value of Ship Co's outstanding stock.

(c) *Substantiation of CFC stock ownership*—(1) *In general*. A controlled foreign corporation must establish all of the facts necessary to demonstrate to the Commissioner that it satisfies the qualified U.S. person ownership test of paragraph (b)(1) of this section by obtaining a written ownership statement (described in paragraph (c)(2) or (3) of this section, as applicable), signed under penalties of perjury by an individual authorized to sign that person's Federal tax or information return, from—

(i) Each qualified U.S. person whose ownership of stock of the controlled foreign corporation is taken into account for purposes of meeting the qualified U.S. person ownership test; and

(ii) Each domestic intermediary described in paragraph (b)(4) of this section, each foreign intermediary (including a foreign corporation, partnership, trust, or estate), and mere legal owners or record holders acting as nominees in the chain of ownership between each such qualified U.S. person and the controlled foreign corporation, if any.

(2) *Ownership statements from qualified U.S. persons*. An ownership statement from a qualified U.S. person must include—

(i) The qualified U.S. person's name, permanent address, and taxpayer identification number;

(ii) If the qualified U.S. person directly owns shares in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the qualified U.S. person, whether any shares are issued in bearer form, whether any bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person owned the shares;

(iii) If the qualified U.S. person indirectly owns shares in the controlled foreign corporation through a foreign or domestic intermediary described in paragraph (c)(1)(ii) of this section, the name of each intermediary, the amount and nature of the qualified U.S. person's interest in each intermediary, the period (or periods) in the taxable year of the controlled foreign corporation during which the qualified U.S. person held such interest, and, with respect to any intermediary foreign corporation, whether any shares are issued in bearer form and whether any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G); and

(iv) Any other information specified in published guidance by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(3) *Ownership statements from intermediaries*. An ownership statement from a domestic or foreign intermediary must include:

(i) The intermediary's name, permanent address, and taxpayer identification number, if any.

(ii) If the intermediary directly owns stock in the controlled foreign corporation, the number of shares of each class of stock of the controlled foreign corporation owned by the intermediary, whether such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares.

(iii) If the intermediary indirectly owns the stock of the controlled foreign corporation, the name and address of each intermediary in the chain of ownership between it and the controlled foreign corporation, the period (or periods) in the taxable year of the controlled foreign corporation during which the intermediary owned the shares, the percentage of its indirect ownership interest in the controlled foreign corporation, and, if any intermediary in the chain of ownership is a foreign corporation, whether any shares of such intermediary are issued in bearer form and if any such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G).

(iv) Any other information specified in published guidance by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

(4) *Three-year period of validity*. The rules of §1.883–4(d)(2)(ii) shall apply for determining the validity of the ownership statements required under paragraph (c)(2) of this section.

(5) *Availability and retention of documents for inspection*. The foreign corporation seeking qualified foreign corporation status must retain the ownership statements described in this paragraph (c) until the expiration of the statute of limitations for its taxable year to which the ownership statements relate. The ownership statements must be made available for inspection at such time and place as the Commissioner may request in writing in accordance with §1.883–1(c)(3)(ii).

(d) *Reporting requirements*. A controlled foreign corporation that relies on this section to satisfy the stock ownership test of §1.883–1(c)(2) must include the following information (in addition to the information required by §1.883–1(c)(3)) with its Form 1120-F, *"U.S. Income Tax Return of a Foreign Corporation"*, filed for its taxable year. This information must be consistent with the ownership statements obtained by the controlled foreign corporation pursuant to paragraph (c) of this section and must be current as of the end of the corporation's taxable year—

(1) The relative value of the shares of the controlled foreign corporation that are owned (directly, and indirectly applying the rules of paragraph (b)(4) of this section) by all qualified U.S. persons identified in paragraph (c)(2) of this section as compared to the value of all outstanding shares of the corporation;

(2) The period (or periods) in the taxable year during which such qualified U.S. persons held such shares;

(3) The period (or periods) in the taxable year during which the foreign corporation was a controlled foreign corporation;

(4) A statement as to whether the controlled foreign corporation or any intermediary corporation had bearer shares

outstanding during the taxable year, and whether any such bearer shares taken into account for purposes of satisfying the qualified U.S. person ownership test are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G); and

(5) Any other information specified by Form 1120-F, and its accompanying instructions, or in published guidance by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

**§1.883–3T [Removed]**

Par. 9. Section 1.883–3T is removed.

Par. 10. Section 1.883–4 is amended by revising paragraphs (b)(1)(ii), (c)(1), (d)(1), (d)(4)(i)(C), (d)(4)(i)(D), (e)(2), and (e)(3) to read as follows:

*§1.883–4 Qualified shareholder stock ownership test.*

* * * * *

(b) * * *

(1) * * *

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section, unless such bearer shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G); and

* * * * *

(c) * * *

(1) *General rules for attribution*. For purposes of applying paragraph (a) of this section and the exception to the closely-held test in §1.883–1(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through the chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). Stock issued in bearer form will not be treated as owned proportionately by its shareholders unless the shares are maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G).

* * * * *

(d) * * *

(1) *General rule*. A foreign corporation that relies on this section to satisfy the stock ownership test of §1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders for the relevant period. If a foreign corporation relies upon bearer shares in the chain of ownership to satisfy one of the stock ownership tests, the foreign corporation must also establish all of the facts necessary to satisfy the Commissioner that such shares are maintained in a dematerialized book-entry system, as described in §1.883–1(c)(3)(i)(G), for the benefit of the relevant shareholder.

* * * * *

(4) * * *

(i) * * *

(C) If the individual directly owns shares of stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation owned by the individual, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation during which the individual owned the shares;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate, or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or the amount and nature of the interest that the individual holds in such intermediary, and, if the intermediary is a corporation, whether any such shares are issued in bearer form and maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), and the period (or periods) in the taxable year of the foreign corporation seeking qualified foreign corporation status during which the individual held such interest;

* * * * *

(e) * * *

(2) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total number of such qualified shareholders as defined in paragraph (b)(1) of this section; the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by such qualified shareholders by country of residence or organization, whichever is applicable; and the period during the taxable year of the foreign corporation that such stock was held by qualified shareholders; and

(3) Any other relevant information specified by the Form 1120-F, *"U.S. Income Tax Return of a Foreign Corporation,"* and its accompanying instructions, or in published guidance by the Internal Revenue Service (see §601.601(d)(2) of this chapter).

**§1.883–4T [Removed]**

Par. 11. Section 1.883–4T is removed.

Par. 12. Section 1.883–5 is amended by revising paragraph (d) and removing paragraph (e) to read as follows:

*§1.883–5 Effective/applicability dates.*

* * * * *

(d) *Effective/applicability date*. Except as otherwise provided in this paragraph (d), §§1.883–1, 1.883–2, 1.883–3, and 1.883–4 apply to taxable years of the foreign corporation beginning after June 25, 2007, and may be applied to any open taxable years of the foreign corporation beginning on or after December 31, 2004. The portion of any provision concerning bearer shares maintained in a dematerialized or immobilized book-entry system, as described in §1.883–1(c)(3)(i)(G), applies to taxable years of a foreign corporation beginning on or after September 17, 2010.

**§1.883–5T [Removed]**

Par. 13. Section 1.883–5T is removed.

PART 602 — OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In §602.101, paragraph (b) is amended by removing the entries for §§1.883–1T, 1.883–2T, 1.883–3T, 1.883–4T, and 1.883–5T from the table and adding an entry for §1.883–0 to the table in numerical order to read as follows:

*§602.101 OMB Control Numbers.*

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| §1.883–0 | 1545–1677 |
| * * * * * | |

Steven T. Miller,
*Deputy Commissioner for Services and Enforcement.*

Approved September 3, 2010.

Michael Mundaca,
*Assistant Secretary of the Treasury (Tax Policy).*

Filed by the Office of the Federal Register on September 16, 2010, 8:45 a.m., and published in the issue of the Federal Register for September 17, 2010, 75 F.R. 56858)

## Section 911.—Citizens or Residents of the United States Living Abroad

The Service provides an inflation adjustment to the amount of foreign earned income that may be excluded from gross income for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 2032A.—Valuation of Certain Farm, etc., Real Property

The Service provides an inflation adjustment to the maximum amount by which the value of certain farm and other qualified real property included in a decedent's gross estate may be decreased for purposes of valuing the estate of a decedent dying in calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 2503.—Taxable Gifts

The Service provides an inflation adjustment to the amount of gifts that may be made to a person in a calendar year without including the amount in taxable gifts for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 2523.—Gift to Spouse

The Service provides an inflation adjustment to the amount of gifts that may be made in a calendar year to a spouse who is not a citizen of the United States without including the amount in taxable gifts for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 4161.—Imposition of Tax

The Service provides an inflation adjustment to the amount of excise tax imposed for calendar year 2011 on the first sale by a manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows. See Rev. Proc. 2010-40, page 663.

## Section 6033.—Returns by Exempt Organizations

The Service provides an inflation adjustment to the amount of dues certain exempt organizations with nondeductible lobbying expenditures can charge and still be excepted from reporting requirements for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 6039F.—Notice of Large Gifts Received From Foreign Persons

The Service provides an inflation adjustment to the amount of gifts received, in a taxable year from foreign persons, that triggers a reporting requirement for a United States person for taxable years beginning in 2011. See Rev. Proc. 2010-40, page 663.

## Section 6103.—Confidentiality and Disclosure of Returns and Return Information

*26 CFR 301.6103(j)(1)–1: Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

## T.D. 9500

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Part 301

## Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that authorize the disclosure of certain items of return information to the Bureau of the Census (Bureau) in conformance with section 6103(j)(1) of the Internal Revenue Code (Code). The final and temporary regulations are made pursuant to a request from the Secretary of Commerce. These

regulations facilitate the assistance of the IRS to the Bureau in its statistics programs and require no action by taxpayers and have no effect on their tax liabilities. The text of the temporary regulations also serves as the text of the proposed regulations [REG–137486–09] set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on August 26, 2010.

*Applicability Date:* For dates of applicability for this regulation, see §§301.6103(j)(1)–1(e) and 301.6103(j)(1)–T(e).

FOR FURTHER INFORMATION CONTACT: Melissa Segal at (202) 622–7950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

**Background**

Section 6103(j)(1)(A) authorizes the Secretary of Treasury to furnish, upon written request by the Secretary of Commerce, such return or return information as the Secretary of Treasury may prescribe by regulation to officers and employees of the Bureau of the Census (Bureau) for the purpose of, but only to the extent necessary in, the structuring of censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts final regulations that authorize the IRS to disclose an additional item of return information requested by the Secretary of Commerce to assist the Bureau in identifying companies that are actively engaged in research and development activities for the Bureau's annual Survey of Industrial Research and Development. In response to this request, on December 31, 2007, the IRS and the Treasury Department published temporary regulations under §6103(j)(1). See T.D .9373, 2008–1 C.B. 463 (72 **Federal Register** 74192). Also on December 31, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG–147832–07, 2008–1 C.B. 472 (72 **Federal Register** 74246). No comments were received and no public hearing was requested or held. This Treasury decision adopts the proposed rules with no change.

This Treasury decision also contains temporary regulations that authorize the disclosure of additional items of return information requested by the Secretary of Commerce on the ground that the information is necessary to allow the Bureau to study a developing trend of increased use of contract workers. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

**Explanation of Provisions**

By letter dated February 6, 2006, the Secretary of Commerce requested that an additional item of return information be disclosed to the Bureau's annual Survey of Industrial Research and Development. As duly requested by the Secretary of Commerce and set forth in the proposed regulations, the final regulation authorizes the disclosure of categorical information on total qualified research expenses in three ranges: greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; and, greater than or equal to $3 million.

Separately, by letter dated July 24, 2009, the Secretary of Commerce requested that additional items of return information be disclosed to the Bureau for purposes of allowing the Bureau to study a developing trend of increased use of contract workers. Specifically, the Secretary of Commerce requested disclosure of the following additional items: (1) total number of documents reported on Form 1096 transmitting Forms 1099-MISC and (2) Total amount reported on Form 1096 transmitting Forms 1099-MISC.

Section 301.6103(j)(1)–1 of the regulations formerly permitted disclosure of the total number of documents reported on Form 1096 transmitting Forms 1099-MISC and the total amount reported on Form 1096 transmitting Forms 1099-MISC. At the request of the Secretary of Commerce, the Treasury Department removed these items from the list of items of return information authorized to be disclosed (See TD 9372, 2008–1 C.B. 462 [72 F R 73262] [Dec. 27, 2007]). This removal was consistent with the Secretary of Commerce's practice to seek revocation of authorizations for disclosure of return information no longer considered necessary for the structuring of censuses or related statistical activity.

The Secretary of Commerce has since determined that these items of return information are necessary for the structuring of census and conducting related statistical activities authorized by law because these items provide critical data about contract labor that is needed to estimate total employment and payroll in the United States. The employment and compensation data compiled by the Census Bureau are important to analysts and policy makers in both the public and private sectors. The Secretary of Commerce asserts that, because of the strong need for this data in order to accurately reflect total employment and payroll in the United States, good cause exists to amend Section 301.6103(j)(1)–1 of the regulations to restore the items listed in this section to the list of items of return information that may be disclosed. The Treasury Department and the IRS agree that amending existing regulations to permit disclosure of these items to the Bureau is appropriate to meet the analytical needs of the Bureau.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this Bulletin. Pursuant to section 7805(f) of the Code, this regulation has been 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 regulations is Melissa Segal, Office of the Associate Chief Counsel (Procedure & Administration).

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**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISITRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(j)(1)–1 is amended by adding paragraph (b)(3)(xxv) and revising paragraph (e) to read as follows:

*§301.6103(j)(1)–1 Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

* * * * *

(b) * * *

(3) * * *

(xxv) From Form 6765 (when filed with corporation income tax returns) — total qualified research expenses.

* * * * *

(e) *Effective/applicability date*. Paragraph (b)(3)(xxv) of this section is applicable to disclosures to the Bureau of the Census on or after August 26, 2010.

Par. 3. Section 301.6103(j)(1)–1T is amended by:

1. Reserve paragraphs (b)(3)(xxvi) through (b)(3)(xxviii).

2. Adding paragraphs (b)(3)(xxix) and (b)(3)(xxx).

3. Revising paragraph (e).

4. Adding a sentence at the end of paragraph (f).

*§301.6103(j)(1)–1T Disclosures of return information reflected on returns to officers and employees of the Department of Commerce, for certain statistical purposes and related activities (temporary).*

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(b)(3)(xxvi) through (b)(3)(xxviii) *[Reserved]. For further guidance, see §301.6103(j)(1)–1(b)(3)(xxvi) through (b)(3)(xxviii)*

(xxix) Total number of documents reported on Form 1096 transmitting Forms 1099-MISC.

(xxx) Total amount reported on Form 1096 transmitting Forms 1099-MISC.

* * * * *

(e) *Effective/applicability date*. Paragraph (b)(3)(xxix) through (b)(3)(xxx) of this section is applicable to disclosures to the Bureau of the Census on or after August 26, 2010.

(f) * * * The applicability of paragraphs (b)(3)(xxix) through (b)(3)(xxx) of this section expires on or before August 25, 2013.

Steven T. Miller,
*Deputy Commissioner for Services and Enforcement.*

Approved August 11, 2010.

Michael Mundaca,
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 25, 2010, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2010, 75 F.R. 52458)

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# Section 6109.—Identifying Numbers

*26 CFR 1.6109–2: Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.*

## T.D. 9501

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Parts 1 and 602

## Furnishing Identifying Number of Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations under section 6109 of the Internal Revenue Code (Code) that provide guidance on how the IRS will define the identifying number of tax return preparers and set forth requirements on tax return preparers to furnish an identifying number on tax returns and claims for refund of tax they prepare. Additional provisions of the regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance.

DATES: *Effective Date:* These regulations are effective on September 30, 2010.

*Applicability Date:* For dates of applicability, see §1.6109–2(i).

FOR FURTHER INFORMATION CONTACT: Stuart Murray at (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2176. The collection of information in these final regulations is in §1.6109–2(d) and (e). This information is required in order for the IRS to issue identifying numbers to tax return preparers who are eligible to receive them.

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.

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 final amendments to regulations under section 6109 of the Code relating to furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. Section 6109(a)(4) requires tax return preparers to furnish on tax returns and claims for refund of tax an identifying number, as prescribed, to ensure proper identification of the preparer, the preparer's employer, or both. In addition, section 6109(c) authorizes the Secretary "to require such information as may be necessary to assign an

identifying number to any person." The requirement to furnish an identifying number on tax returns and claims for refund of tax applies to information returns described in §301.7701–15(b)(4) and to electronically filed tax returns.

In 2009 the IRS conducted a comprehensive review of tax return preparers, culminating in Publication 4832, *Return Preparer Review* (Rev. 12–2009) (the Report). The Report recommended that tax return preparers be required to obtain and use a preparer tax identification number (PTIN) as the exclusive preparer identifying number. The Report also recommended that the IRS establish new eligibility standards to prepare tax returns — including testing, continuing education, and Federal tax compliance checks. The proposed regulations adopted several of the recommendations made in the Report. The Treasury Department and the IRS conclude that adopting these provisions in the final regulations will increase tax compliance and help to ensure that tax return preparers are knowledgeable, skilled, and ethical.

To implement recommendations made in the Report, on March 26, 2010, the Treasury Department and the IRS published in the **Federal Register** (75 FR 14539) a notice of proposed rulemaking (REG–134235–08, 2010–16 I.R.B. 596) proposing amendments to §1.6109–2 regarding the identifying number that a tax return preparer must furnish on tax returns and claims for refund of tax. A public hearing was held on the proposed regulations on May 6, 2010. The IRS received written public comments responding to the proposed regulations.

**Summary of Comments and Explanation of Revisions**

Over 200 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection. Most of the comments are summarized in this preamble.

1. *Requiring the Use of PTINs*

The final regulations adopt the proposed amendments to §1.6109–2, which provide that for tax returns or refund claims filed after December 31, 2010, tax return preparers must obtain and exclusively use the identifying number prescribed by the IRS in forms, instructions, or other guidance, rather than a social security number (SSN), as the identifying number to be included with the tax return preparer's signature on a tax return or claim for refund. Prior to these final regulations, the identifying number of a tax return preparer was the tax return preparer's SSN or an alternative number as prescribed by the IRS. The alternative number that the IRS has prescribed is a PTIN. After December 31, 2010, tax return preparers can only use a PTIN (or other number that the IRS prescribes in the future as a replacement to the PTIN) and may not use an SSN as a preparer identifying number unless the IRS directs otherwise. For tax returns or claims for refund filed before January 1, 2011, the identifying number of a tax return preparer will remain the preparer's SSN or PTIN.

The requirement to use a PTIN will allow the IRS to better identify tax return preparers, centralize information, and effectively administer the rules relating to tax return preparers. The final regulations will also benefit taxpayers and tax return preparers and help maintain the confidentiality of SSNs. Most of the comments received on the notice of proposed rulemaking support the requirement to use a PTIN as the exclusive identifying number for tax return preparers beginning next year.

Under the final regulations, a tax return preparer must sign and furnish a PTIN on a tax return or claim for refund if the tax return preparer has primary responsibility for the overall substantive accuracy of the preparation of the tax return or claim for refund. If a signing tax return preparer has an employment arrangement or association with another person, then that other person's employer identification number (EIN) must also be included on the tax return or refund claim.

Tax return preparers who are required but fail to include a PTIN on a tax return or refund claim, or fail to include the EIN of any person with whom they have an employment arrangement or association, are subject to a penalty under section 6695(c), unless the failure to include an identifying number is due to reasonable cause and not due to willful neglect.

a. *Supervised tax return preparers who do not sign tax returns*

The proposed regulations provided that for purposes of the provisions of §1.6109–2 that would be applicable after December 31, 2010, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. The proposed regulations further provided that a tax return preparer for purposes of these provisions excludes an individual who is not defined as a nonsigning tax return preparer in §301.7701–15(b)(2). A nonsigning tax return preparer is defined in §301.7701–15(b)(2) as any tax return preparer who, while not a signing tax return preparer (the individual who has the primary responsibility for the overall substantive accuracy of the preparation of a tax return or claim for refund of tax), prepares all or a substantial portion of a tax return or claim for refund.

Some commentators recommended that individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund should not be required to obtain a PTIN if they do not sign the tax return or claim for refund and if they act under the supervision of another tax return preparer who substantively reviews the tax return or claim for refund and signs it. Commentators explained, for example, that in some accounting firms, employees who have passed the Uniform Certified Public Accountant Examination and are working toward their license as a certified public accountant are often involved in, or assist with, the preparation of tax returns. Although these employees do not sign tax returns or claims for refund as a tax return preparer, under the regulations as proposed, they are tax return preparers who must have a PTIN after December 31, 2010, if they prepare all or substantially all of a tax return or claim for refund. The commentators proposed an exemption for these individuals.

The Chief Counsel for Advocacy of the Small Business Administration (SBA) submitted similar comments, on behalf of small businesses, on the proposed amendments to §1.6109–2 as applied to tax return preparers who do not sign tax returns or claims for refund, in particular the provisions requiring tax return pre-

parers to obtain and renew a PTIN as the IRS may prescribe. The SBA heard from small accounting firms that those firms would incur a substantial financial burden if the regulations include certified public accountant candidates and other paraprofessional employees who are involved in tax return preparation under the supervision of a certified public accountant who is a signing tax return preparer. The SBA also observed that requiring these individuals to register with the IRS as tax return preparers would not improve the accuracy of tax returns prepared in small accounting firms because the firms and certified public accountants within these firms are already subject to ethical and competency rules administered by state boards of accountancy, as well as Treasury Department Circular No. 230, 31 CFR Part 10. The SBA recommended that the regulations either exclude outright employees of firms engaged in certified public accountancy who are nonsigning tax return preparers or exclude these employees if they are supervised by a certified public accountant, attorney, or enrolled agent.

These final regulations are intended to address two overarching objectives. The first overarching objective is to provide some assurance to taxpayers that a tax return was prepared by an individual who has passed a minimum competency examination to practice before the IRS as a tax return preparer, has undergone certain suitability checks, and is subject to enforceable rules of practice. The second overarching objective is to further the interests of tax administration by improving the accuracy of tax returns and claims for refund and by increasing overall tax compliance.

The final regulations define a *tax return preparer* in §1.6109–2(g) as an individual who prepares for compensation, or assists in preparing, all or substantially all of a tax return or claim for refund of tax. The final regulations retain this definition from the proposed regulations without including the requested exemption. It is critical to the IRS's tax administration efforts that, in the first instance, the IRS is readily able to identify all individuals who are involved in preparing all or substantially all of a tax return or claim for refund. Additionally, by requiring regular renewal of a PTIN, tax return preparers will confirm their continuing competence and suitability to be tax return preparers. Accordingly, were the Treasury Department and the IRS to provide an exemption in these regulations for a sizeable segment of tax return preparers, it would undercut effective oversight by the IRS of the tax return preparer community. An exemption for some tax return preparers, as requested in the comments, would allow the exempt individuals to prepare tax returns and claims for refund without identifying themselves to the IRS as tax return preparers and without undergoing competency examinations and suitability checks and being subject to enforceable rules of practice.

b. *Licensed tax return preparers, tax return preparers of longstanding, and those who prepare a small number of tax returns*

In the proposed regulations, no distinction was made between tax return preparers licensed by a state authority as tax return preparers and unlicensed tax return preparers. A number of comments were received from state-licensed tax return preparers, particularly from those who are Licensed Tax Preparers or Licensed Tax Consultants in Oregon. These comments almost uniformly requested that state-licensed tax return preparers be "grandfathered" into the regulations and not be required to apply for a PTIN, renew an existing PTIN, or comply with requirements that the IRS may prescribe to obtain or renew a PTIN after December 31, 2010. Other commentators asked that the IRS consider an exemption from the regulations for tax return preparers who have been preparers for a certain period of years or who prepare annually a volume of tax returns below a certain (relatively small) number. Some commentators, however, were opposed to exemptions or grandfather provisions.

The Report discussed at some length state licensing and regulation of tax return preparers, including state-by-state descriptions, but in the Report's recommendations, exemptions were not made for tax return preparers licensed or otherwise regulated under a state program. The Report also concluded that the IRS would not provide "grandfather" exemptions based on experience in preparing tax returns. The proposed regulations, consistent with the Report's recommendations, did not include any exemption for state-based licensure, length of experience, or number of tax returns prepared.

After careful consideration of the comments received on this issue, the final regulations do not include any exemption for state-based licensure, length of experience, or number of tax returns prepared. The Treasury Department and the IRS conclude that tax return preparers who prepare tax returns and claims for refund for compensation should be subject to uniform standards of qualification and practice. When obtaining the services of a tax return preparation business, taxpayers should be assisted by tax return preparers subject to the same Federal regulations, regardless of a taxpayer's state of residence or variable circumstances such as the size of the business or the number of years a tax return preparer has been in the industry.

c. *Volunteers and other unpaid tax return preparers*

The proposed regulations did not include volunteers and other unpaid tax return preparers as tax return preparers required to obtain a PTIN. Consistent with the definition of a tax return preparer under section 7701(a)(36), which requires a compensation element for an individual to be a tax return preparer, the definition of *tax return preparer* in the proposed regulations excluded an individual described in §301.7701–15(f), which lists, among others, any individual who provides assistance in the preparation of tax returns as part of a Volunteer Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE), or Low-Income Taxpayer Clinic (LITC) program. Section 301.7701–15(f)(1)(xii) also excludes from the definition of a tax return preparer anyone who prepares a tax return or claim for refund without an explicit or implicit agreement for compensation. An insubstantial gift, favor, or service received for the preparation of a tax return or refund claim is not considered compensation.

Several commentators recommended that the final regulations require volunteer tax return preparers to obtain a PTIN. According to the commentators, putting volunteers under the regulations would provide several benefits, including increased tax compliance and improvement of the volunteer programs. Although com-

mentators suggested that the PTIN and other requirements applicable to paid tax return preparers also apply to volunteers, it was noted that associated fees could be waived for volunteers. The comments also noted that extending the regulations to all tax return preparers who hold themselves out to the public as tax return preparers would unambiguously include individuals who prepare tax returns for customers purportedly for "free" but incident to a customer's purchase of a product or other service.

The final regulations adopt the same definition of tax return preparer as in the proposed regulations. The Treasury Department and the IRS conclude that the final regulations are properly limited to paid tax return preparers. The focus on paid tax return preparation in the Report and in these regulations is consistent with both the current reality of tax return preparation and applicable legal provisions, including §301.7701–15(f). As noted by the figures in the Report, volunteer tax return preparers are a small fraction of all tax return preparers and the tax returns prepared by volunteers are a small fraction of all prepared tax returns.

Only volunteers or other truly unpaid tax return preparers, however, are not tax return preparers for purposes of these regulations. As an example, individuals who prepare tax returns without compensation for relatives or friends as a personal favor are not within the definition of the term *tax return preparer*.

The Treasury Department and the IRS conclude that arrangements for tax return preparation as part of a sales transaction are inherently agreements to prepare tax returns for compensation under these regulations, notwithstanding any claim by tax return preparers that the tax return or refund claim preparation is not separately compensated. No change in these regulations is necessary to reflect this result. As a result, an individual who, in connection with a sale of goods or services, prepares all or substantially all of a tax return or claim for refund filed after December 31, 2010, and who does not furnish a valid PTIN on the tax return or claim for refund may be liable for the section 6695(c) penalty, unless the failure to furnish a valid PTIN was due to reasonable cause and not due to willful neglect.

d. *Tax return preparation software*

The proposed regulations did not specifically include any provisions on commercially available tax return preparation software or software developers. Several commentators expressed the concern that some tax return preparers use tax return preparation software to prepare multiple "self-prepared" tax returns for clients in order to hide the tax return preparers' involvement and avoid identifying themselves on the tax returns. The commentators proposed that the final regulations include limits on the purchase or use of software, such as a requirement built into the software to enter a PTIN to use the software to prepare more than one tax return.

The final regulations do not include any provisions with respect to software. Software developers are not tax return preparers for purposes of these final regulations, and the regulation of software is beyond the scope of these amendments to §1.6109–2.

e. *Requiring the use of a PTIN after December 31, 2010*

Under the proposed regulations, the amendments to §1.6109–2 would apply to tax returns and claims for refund filed after December 31, 2010. For tax returns and claims for refund filed before then, the existing provisions of §1.6109–2 apply. Some commentators questioned whether, as a matter of implementation, January 1, 2011, is a realistic date for the requirements of these regulations. The final regulations maintain the distinction between tax returns and claims for refund filed on or before December 31, 2010, and those filed after that date. To the extent a transitional period may be necessary, the Treasury Department and the IRS may, under §1.6109–2(h) of the final regulations, prescribe in other guidance interim procedures for tax return preparers to apply for a PTIN or register with the IRS.

2. *Eligibility to Receive a PTIN*

a. *Foreign tax return preparers*

The proposed regulations did not specifically address foreign tax return preparers who prepare tax returns or refund claims. A frequent question in the public comments was whether the regulations as proposed would apply to foreign tax return preparers. These commentators also asked whether foreign tax return preparers who do not have an SSN will be eligible for a PTIN. Currently, both Form W–7P, "*Application for Preparer Tax Identification Number*," and the existing online process at *www.irs.gov* that can be used to apply for a PTIN require an applicant to provide the applicant's SSN. Many foreign tax return preparers are uncertain as to how they will obtain a PTIN, if they are required to have a PTIN.

The final regulations apply to tax return preparers regardless of United States or foreign citizenship or residency. The IRS will establish a process to obtain a PTIN for tax return preparers who do not have SSNs. The Treasury Department and the IRS intend to issue transitional guidance before December 31, 2010, which describes the process to obtain a PTIN for foreign and other tax return preparers who do not have SSNs.

b. *User fees*

The proposed regulations provided that, in applying for a PTIN, tax return preparers must pay a user fee that the IRS prescribes in forms, instructions, or other guidance. The proposed regulations also provided for the IRS to prescribe the manner for renewing a PTIN, including the payment of a user fee. Some commentators objected to the proposed requirement of a user fee to obtain or renew a PTIN. Sole proprietors and small preparation firms commented that a user fee, combined with the potential costs of minimum competency testing and for continuing education, would materially increase their business expenses.

The final regulations adopt the proposed provisions under which the IRS may prescribe requirements to apply for or renew a PTIN, including the payment of a user fee. By statute (31 U.S.C. 9701), Congress authorized Federal agencies to establish user fees. The Treasury Department and the IRS will prescribe in regulations the requirement to pay a user fee, the amount of any fee, and the time and manner of payment. A user fee to obtain or renew a PTIN will be necessary to recover the costs that the IRS will incur to implement and administer the processes to apply for and renew a PTIN. The amount

of a user fee will be reasonable and based on accepted methods of calculation that reflect the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant factors.

3. *Terminology*

a. *Preparation of all or substantially all of a tax return or claim for refund*

The requirement to obtain a PTIN applies to individuals who for compensation prepare, or assist in preparing, all or substantially all of a tax return or claim for refund. Section 1.6109–2(g) of the proposed regulations identified the following non-exclusive list of factors to determine whether an individual prepared or assisted in preparing all or substantially all of a tax return or claim for refund:

The complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax;

The amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and

The amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax.

Examples are included in the proposed regulations to illustrate the provisions of paragraph (g). The final regulations retain these provisions, including the examples, consistent with the definition of a tax return preparer adopted in paragraph (g) of the final regulations. As explained, this definition of tax return preparer for purposes of these regulations is necessary for meaningful oversight of tax return preparation. The factors in paragraph (g) provide guidance for applying the test of whether an individual has prepared or assisted with preparing all or substantially all of a tax return or claim for refund. Paragraph (g) of the final regulations, however, also adds a sentence not in the proposed regulations to clarify that the preparation of a form, statement, or schedule, such as Schedule EIC (Form 1040), "*Earned Income Credit*," may constitute the preparation of all or substantially all of a tax return or claim for refund based on the application of the factors in paragraph (g).

Paragraph (h) of the final regulations clarifies that the IRS may specify in other appropriate guidance the returns, schedules, and other forms to which these regulations will apply.

b. *Registered tax return preparers*

As provided in the proposed regulations, to obtain a PTIN or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under 31 U.S.C. 330 and Circular 230. This requirement will apply after December 31, 2010, unless the IRS prescribes exceptions, such as for a transitional period, as necessary for effective tax administration. A number of the comments noted a concern that the term *registered tax return preparer* is likely to cause confusion in the marketplace for tax return preparation. The commentators are concerned that this designation for a certain group of tax return preparers, when listed with attorneys, certified public accountants, and enrolled agents, may lead the public to mistakenly infer that registered tax return preparers have credentials and qualifications similar to those of attorneys, certified public accountants, and enrolled agents. Several commentators observed that some registered tax return preparers might even attempt to exploit this confusion to their commercial advantage. To avoid the potential for misperception, the commentators advocate that the IRS explain the distinctions between registered tax return preparers and other practitioners authorized to practice before the IRS under Circular 230. At least one commentator also recommended changing the term to "authorized tax return preparers."

The final regulations adopt the term *registered tax return preparer*. The Treasury Department and the IRS conclude that the term does not reasonably imply that registered tax return preparers are authorized to practice law or certified public accountancy or act as enrolled agents or that the term will cause material confusion or misunderstanding by the public.

The role of registered tax return preparers and their authority to practice before the IRS will be addressed in amendments to Circular 230. The requirements and process to become a registered tax return preparer will be set forth in forms, instructions, and other appropriate guidance. In that regard, some commentators that employ tax return preparers requested that the IRS allow the employers to mass register their employees (with a means for employers to subsequently validate through the IRS an employee's standing as a registered tax return preparer with a current PTIN). The purpose of these final regulations, however, is not to provide guidance on the specific process for registration.

**Special Analyses**

It has been determined that these final 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 these regulations.

It has been determined that a final regulatory flexibility analysis under 5 U.S.C. 604 is required for this final rule. The analysis is set forth under the heading, "Final Regulatory Flexibility Analysis."

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Chief Counsel for Advocacy submitted comments on the notice of proposed rulemaking, which are discussed elsewhere in this preamble.

*Final Regulatory Flexibility Analysis*

When an agency either promulgates a final rule that follows a required notice of proposed rulemaking or promulgates a final interpretative rule involving the internal revenue laws as described in 5 U.S.C. 603(a), the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to "prepare a final regulatory flexibility analysis." A final regulatory flexibility analysis must, pursuant to 5 U.S.C. 604(a), contain the five elements listed in this final regulatory flexibility analysis. For

purposes of this final regulatory flexibility analysis, a small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)-(6). The Treasury Department and the IRS conclude that the final regulations (together with other contemplated guidance provided for in these regulations) will impact a substantial number of small entities and the economic impact will be significant.

*A statement of the need for, and the objectives of, the final rule*

The final regulations are necessary for tax administration. The final regulations are needed to identify tax return preparers and the tax returns and claims for refund that they prepare, to aid the IRS's oversight of tax return preparers, and to administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Mandating a single type of identifying number for all tax return preparers and assigning a prescribed identifying number to registered tax return preparers is critical to effective oversight.

Taxpayers' reliance on paid tax return preparers has grown steadily in recent decades, and a large number of U.S. taxpayers rely on paid tax return preparers for assistance in meeting the taxpayers' income tax filing obligations. Beyond preparing tax returns, tax return preparers also help educate taxpayers about the tax laws and facilitate electronic filing. Tax return preparers provide advice to taxpayers, identify items or issues for which the law or guidance is unclear, and inform taxpayers of the benefits and risks of positions taken on a tax return, and the tax treatment or reporting of items and transactions. Competent tax return preparers who are well educated in the rules and subject matter of their field can prevent costly errors, potentially saving a taxpayer from unwanted problems later on and relieving the IRS from expending valuable examination and collection resources.

Given the important role that tax return preparers play in Federal tax administration, the IRS has a significant interest in being able to accurately identify tax return preparers and monitor their tax return preparation activities. The final regulations, therefore, enable the IRS to more accurately identify tax return preparers and improve the IRS's ability to associate filed tax returns and refund claims with the responsible tax return preparer. The final regulations are intended to accomplish this result, and thereby advance tax administration, by requiring all individuals who are paid to prepare all or substantially all of a tax return or claim for refund of tax to obtain a preparer identifying number prescribed by the IRS. Pursuant to the final regulations, the IRS will require individuals who sign tax returns or claims for refund to furnish the tax return preparer's PTIN on a tax return or claim for refund when the return or refund claim is signed. The final regulations also provide that the IRS may require tax return preparers to apply for, and regularly renew, their PTINs. Under the final regulations, the IRS may prescribe a user fee payable when applying for a number and for renewal.

*Summaries of the significant issues raised in the public comments responding to the initial regulatory flexibility analysis and of the agency's assessment of the issues, and a statement of any changes made to the rule as a result of the comments*

The IRS did not receive specific comments from the public responding to the initial regulatory flexibility analysis in the proposed regulations that preceded these final regulations. The IRS did receive comments from the public on the proposed amendments to §1.6109–2. A summary of the comments is set forth elsewhere in this preamble, along with the Treasury Department's and the IRS's assessment of the issues raised in the comments and descriptions of any revisions resulting from the comments.

*A description and an estimate of the number of small entities to which the rule will apply or an explanation of why an estimate is not available*

The final regulations apply to individuals who prepare tax returns and claims for refund of tax. The estimated number of paid tax return preparers is as high as 1.2 million, which means the final regulations are likely to impact a large number of individuals. Most paid tax return preparers are employed by firms. A substantial number of paid tax return preparers are employed at small tax return preparation firms or are self-employed tax return preparers. Any economic impact of these regulations on small entities generally will be on self-employed tax return preparers who prepare and sign tax returns or on small businesses that employ one or more individuals who prepare tax returns.

The appropriate NAICS codes for PTINs are those that relate to tax preparation services (NAICS code 541213), other accounting services (NAICS code 541219), offices of lawyers (NAICS code 541110), and offices of certified public accountants (NAICS code 541211). Entities identified as tax preparation services and offices of lawyers are considered small under the SBA's size standards (13 CFR 121.201) if their annual revenue is less than $7 million. Entities identified as other accounting services and offices of certified public accountants are considered small under the SBA's size standards if their annual revenue is less than $8.5 million. The IRS estimates that approximately 70 to 80 percent of the individuals subject to these final regulations are tax return preparers operating as, or employed by, small entities.

*A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of a report or record*

The final regulations do not directly impose any reporting, recordkeeping, or similar requirements on any small entities. Rather, the final regulations provide that the IRS may prescribe in forms, instructions, or other guidance (including regulations) requirements for PTINs issued to tax return preparers, regular renewal of PTINs, and payment of a user fee when applying for or renewing a PTIN. In addition, other guidance may require certain tax return preparers to complete competency testing, complete continuing education courses, and adhere to established rules of practice governing attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents.

Applying for a PTIN and subsequent renewal will require reporting of certain

information, but they are not expected to require recordkeeping. No particular or special professional skills will be necessary. These activities also will not require the purchase or use of any special business equipment or software. To the extent it will be necessary to apply for a PTIN (or similar identifying number that may subsequently replace a PTIN) online at *www.irs.gov*, most if not all tax return preparation businesses have computers and Internet access. The IRS estimates that applying for a PTIN will take 10 to 20 minutes per individual, with an average of 15 minutes per individual.

Under amendments to Circular 230 that the IRS will issue to implement recommendations in the Report, tax return preparers who apply to be registered tax return preparers and who regularly renew their status may be subject to recordkeeping requirements because they may be required to maintain specified records, such as documentation and educational materials relating to completion of continuing education courses. These requirements do not involve any specific professional skills other than general recordkeeping abilities already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that tax return preparers will annually spend approximately 30 minutes to 1 hour in maintaining records relating to the continuing education requirements, depending on individual circumstances.

A separate regulation addressing reasonable user fees has been proposed. Tax return preparers may be required to pay a user fee when first applying for a PTIN and at every renewal. Small entities may be affected by these costs if the entities choose to pay some or all of these fees for their employees.

Under the amendments to Circular 230, tax return preparers may also incur costs for commercial continuing education courses and minimum competency examinations, plus incidental costs, such as for travel and accommodations, in order to maintain their status as registered tax return preparers under Circular 230. Course prices can vary greatly, from free to hundreds of dollars. Many small tax return preparation firms may choose, as with the user fee, to bear these costs for their employees. In some cases, small entities may lose sales and profits while their employed tax return preparers attend training or educational classes or are studying and sitting for examinations. Some small entities that employ tax return preparers may even need to alter their business operations if a significant number of their employees cannot satisfy the necessary registration and competency requirements. The Treasury Department and the IRS conclude, however, that only a small percentage of small entities, if any, may need to cease doing business or radically change their business model due to the final regulations.

Although each of the reporting and recordkeeping requirements and the costs identified above (in connection with the final regulations and the other anticipated guidance necessary to implement the Report) is not expected to singly result in a significant economic impact, taken together it is anticipated that they may have a significant economic impact on a substantial number of small entities.

*A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting any alternative adopted in the final rule and why other significant alternatives affecting the impact on small entities that the agency considered were rejected*

The Treasury Department and the IRS are not aware of any steps that could be taken to minimize the economic impact on small entities that would also be consistent with the objectives of these final regulations. These regulations do not impose any more requirements on small entities than are necessary to effectively administer the internal revenue laws. Further, the regulations do not subject small entities to any requirements that are not also applicable to larger entities covered by the regulations.

The Treasury Department and the IRS have determined that there are no viable alternatives to the final regulations that would enable the IRS to accurately identify tax return preparers, other than through the use of a PTIN, as provided in the regulations.

The Treasury Department and the IRS considered alternatives at multiple points. These final regulations are, in large measure, an outgrowth of, and in part carry out, the Report, which extensively reviewed different approaches to improving how the IRS oversees and interacts with tax return preparers. As part of the Report, the IRS received a large volume of comments on the issue of increased oversight of tax return preparers generally and on the proposed recommendation requiring tax return preparers to use a uniform prescribed identifying number. The comments were received from all categories of interested stakeholders, including tax professional groups representing large and small entities, IRS advisory groups, tax return preparers, and the public. The input received from this large and diverse community overwhelmingly expressed support for the proposed requirements.

Among the alternatives contemplated at the time were:

(1) Requiring all paid tax return preparers to comply with the ethical standards in Circular 230 or an ethics code similar to Circular 230, but not requiring any paid preparers to demonstrate their qualification and competency;

(2) Requiring tax return preparers who are not currently authorized to practice before the IRS to register with the IRS, complete annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;

(3) Requiring all paid tax return preparers to pass a minimum competency examination and meet other registration requirements; and

(4) Requiring all paid tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other registration requirements, but "grandfather in" tax return preparers who have accurately and competently prepared tax returns for a certain period of years.

These and other issues were raised in the public comments to the proposed regulations and were carefully considered in developing the final regulations. After consideration of all of the various alternatives and the responses received in the public comment process, the Treasury Department and the IRS conclude that the provisions of the final regulations will most effectively promote sound tax administration. Establishing a single, prescribed identifying number for tax return preparers will enable the IRS to accurately

identify tax return preparers, match preparers with the tax returns and claims for refund they prepare, and better administer the tax laws with respect to tax return preparers and their clients.

Under the final regulations and the additional guidance described, the IRS will establish a process intended to assign PTINs only to qualified, competent, and ethical tax return preparers. The testing requirements that may be set forth in other guidance will establish a benchmark of minimum competency necessary for tax return preparers to obtain their professional credentials, while the purpose of the continuing education provisions is to require tax return preparers to remain current on the Federal tax laws and continue to develop their tax knowledge. The extension in other, prospective guidance of the rules in Circular 230 to any paid tax return preparer will require all practitioners to meet certain ethical standards and allow the IRS to suspend or otherwise appropriately discipline tax return preparers who engage in unethical or disreputable conduct. Accordingly, the implementation of qualification and competency standards is expected to increase tax compliance and allow taxpayers to be confident that the tax return preparers to whom they turn for assistance are knowledgeable, skilled, and ethical.

**Drafting Information**

The principal author of these final regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

* * * * *

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

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

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

Section 1.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Par. 2. Section 1.6109–2 is amended by revising the section heading, revising paragraphs (a)(2) and (d), and adding paragraphs (e), (f), (g), (h), and (i) to read as follows:

***§1.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.***

(a) * * *

(2)(i) For tax returns or claims for refund filed on or before December 31, 2010, the identifying number of an individual tax return preparer is that individual's social security number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) For tax returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's preparer tax identification number or such other number prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

* * * * *

(d) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.

(e) The Internal Revenue Service may designate an expiration date for any preparer tax identification number or other prescribed identifying number and may further prescribe the time and manner for renewing a preparer tax identification number or other prescribed identifying number, including the payment of a user fee, as set forth in forms, instructions, or other appropriate guidance. The Internal Revenue Service may provide that any identifying number issued by the Internal Revenue Service prior to the effective date of this regulation will expire on December 31, 2010, unless properly renewed as set forth in forms, instructions, or other appropriate guidance, including these regulations.

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

(g) Only for purposes of paragraphs (d), (e), and (f) of this section, the term *tax return preparer* means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. The preparation of a form, statement, or schedule, such as Schedule EIC (Form 1040), "*Earned Income Credit*," may constitute the preparation of all or substantially all of a tax return or claim for refund based on the application of the foregoing factors. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701–15(b)(2), or who is an individual described in §301.7701–15(f). The provisions of this paragraph (g) are illustrated by the following examples:

*Example 1.* Employee A, an individual employed by Tax Return Preparer B, assists Tax Return Preparer B in answering telephone calls, making copies, inputting client tax information gathered by B into the data fields of tax preparation software on a computer, and using the computer to file electronic returns of tax prepared by B. Although Employee A must exercise judgment regarding which data fields in the tax prepa-

ration software to use, A does not exercise any discretion or independent judgment as to the clients' underlying tax positions. Employee A, therefore, merely provides clerical assistance or incidental services and is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

*Example 2*. The facts are the same as in *Example 1*, except that Employee A also interviews B's clients and obtains from them information needed for the preparation of tax returns. Employee A determines the amount and character of entries on the returns and whether the information provided is sufficient for purposes of preparing the returns. For at least some of B's clients, A obtains information and makes determinations that constitute all or substantially all of the tax return. Employee A is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. Employee A is a tax return preparer even if Employee A relies on tax preparation software to prepare the return.

*Example 3*. C is an employee of a firm that prepares tax returns and claims for refund of tax for compensation. C is responsible for preparing a Form 1040, "*U.S. Individual Income Tax Return*," for a client. C obtains the information necessary for the preparation of the tax return during a meeting with the client, and makes determinations with respect to the proper application of the tax laws to the information in order to determine the client's tax liability. C completes the tax return and sends the completed return to employee D, who reviews the return for accuracy before signing it. Both C and D are tax return preparers required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

*Example 4*. E is an employee at a firm which prepares tax returns and claims for refund of tax for compensation. The firm is engaged by a corporation to prepare its Federal income tax return on Form 1120, "*U.S. Corporation Income Tax Return*." Among the documentation that the corporation provides to E in connection with the preparation of the tax return is documentation relating to the corporation's potential eligibility to claim a recently enacted tax credit for the taxable year. In preparing the return, and specifically for purposes of the new tax credit, E (with the corporation's consent) obtains advice from F, a subject matter expert on this and similar credits. F advises E as to the corporation's entitlement to the credit and provides his calculation of the amount of the credit. Based on this advice from F, E prepares the corporation's Form 1120 claiming the tax credit in the amount recommended by F. The additional credit is one of many tax credits and deductions claimed on the tax return, and determining the credit amount does not constitute preparation of all or substantially all of the corporation's tax return under this paragraph (g). F will not be considered to have prepared all or substantially all of the corporation's tax return, and F is not a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance. The analysis is the same whether or not the tax credit is a substantial portion of the return under §301.7701–15 of this chapter (as opposed to substantially all of the return), and whether or not F is in the same firm with E. E is a tax return preparer required to apply for a PTIN or other identifying number as the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration. The Internal Revenue Service, through other appropriate guidance, may also specify specific returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of these regulations.

(i) *Effective/applicability date*. Paragraph (a)(1) of this section is applicable to tax returns and claims for refund filed after December 31, 2008. Paragraph (a)(2)(i) of this section is applicable to tax returns and claims for refund filed on or before December 31, 2010. Paragraph (a)(2)(ii) of this section is applicable to tax returns and claims for refund filed after December 31, 2010. Paragraph (d) of this section is applicable to tax return preparers after December 31, 2010. Paragraphs (e) through (h) of this section are effective after September 30, 2010.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 USC 7805.

Par. 4. In §602.101, paragraph (b) is amended by revising the entry for "1.6109–2" in the table to read as follows:

***§601.101 OMB Control numbers.***

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.6109–2 | 1545–2176 |
| * * * * * | |

Steven T. Miller,
*Deputy Commissioner for Services and Enforcement.*

Approved August 11, 2010.

Michael Mundaca,
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 28, 2010, 11:15 a.m., and published in the issue of the Federal Register for September 30, 2010, 75 F.R. 60309)

## Section 6323.—Validity and Priority Against Certain Persons

The Service provides inflation adjustments for calendar year 2011 to (1) the maximum amount of a casual sale of personal property below which a federal tax lien will not be valid against a purchaser of the property and (2) the maximum amount of a contract for the repair or improvement of certain residential property at or below which a federal tax lien will not be valid against a mechanic's lienor. See Rev. Proc. 2010-40, page 663.

## Section 6334.—Property Exempt From Levy

The Service provides inflation adjustments to the value of certain property exempt from levy (fuel, provisions, furniture, household personal effects, arms for personal use, livestock, poultry, and books and tools of a trade, business or profession) for calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 6601.—Interest on Underpayment, Nonpayment or Extension of Time for Payment, of Tax

The Service provides an inflation adjustment to the amount used to determine the amount of interest charged on a certain portion of the estate tax payable in installments for the estate of a decedent dying in calendar year 2011. See Rev. Proc. 2010-40, page 663.

## Section 7430.—Awarding of Costs and Certain Fees

The Service provides an inflation adjustment to the hourly limit on attorney fees incurred in calendar year 2011 that may be awarded in a judgement or settlement of an administrative or judicial proceeding concerning the determination, collection, or refund of tax, interest, or penalty. See Rev. Proc. 2010-40, page 663.

## Section 7702B.—Treatment of Qualified Long-Term Care Insurance

The Service provides an inflation adjustment to the stated dollar amount for calendar year 2011 of the *per diem* limitation regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual. See Rev. Proc. 2010-40, page 663.

# Part III. Administrative, Procedural, and Miscellaneous

## 2010 Section 43 Inflation Adjustment

## Notice 2010–72

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins is greater than $28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds $28 (as adjusted) by at least $6.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2009 calendar year ($56.39) exceeds $28 multiplied by the inflation adjustment factor for the 2009 calendar year ($42.57) by $13.82, the enhanced oil recovery credit for qualified costs paid or incurred in 2010 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2010 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2009 calendar years.

Notice 2010–72 TABLE 1

GNP IMPLICIT PRICE DEFLATORS

| Calendar Year | GNP Implicit Price Deflator |
|---|---|
| 1990 | 112.9 (used for 1991) |
| 1991 | 117.0 (used for 1992) |
| 1992 | 120.9 (used for 1993) |
| 1993 | 124.1 (used for 1994) |
| 1994 | 126.0 (used for 1995)* |
| 1995 | 107.5 (used for 1996) |
| 1996 | 109.7 (used for 1997)** |
| 1997 | 112.35 (used for 1998) |
| 1998 | 112.64 (used for 1999)*** |
| 1999 | 104.59 (used for 2000) |
| 2000 | 106.89 (used for 2001) |
| 2001 | 109.31 (used for 2002) |
| 2002 | 110.63 (used for 2003) |
| 2003 | 105.67 (used for 2004)**** |
| 2004 | 108.23 (used for 2005) |
| 2005 | 112.129 (used for 2006) |
| 2006 | 116.036 (used for 2007) |
| 2007 | 119.656 (used for 2008) |
| 2008 | 122.407 (used for 2009) |
| 2009 | 109.764 (used for 2010)***** |

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

***** Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2010 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in the 1991 through 2009 calendar years.

2010–72 TABLE 2

INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS

| Calendar Year | Inflation Adjustment Factor | Phase-out Amount |
|---|---|---|
| 1991 | 1.0000 | 0 |
| 1992 | 1.0363 | 0 |
| 1993 | 1.0708 | 0 |
| 1994 | 1.0992 | 0 |
| 1995 | 1.1160 | 0 |
| 1996 | 1.1485 | 0 |
| 1997 | 1.1720 | 0 |
| 1998 | 1.1999 | 0 |
| 1999 | 1.2030 | 0 |
| 2000 | 1.2087 | 0 |
| 2001 | 1.2353 | 0 |
| 2002 | 1.2633 | 0 |
| 2003 | 1.2785 | 0 |
| 2004 | 1.2952 | 0 |
| 2005 | 1.3266 | 0 |
| 2006 | 1.3743 | 100 percent |
| 2007 | 1.4222 | 100 percent |
| 2008 | 1.4666 | 100 percent |
| 2009 | 1.5003 | 100 percent |
| 2010 | 1.5203 | 100 percent |

DRAFTING INFORMATION

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. McRee at (202) 622–3110 (not a toll-free call).

## 2010 Marginal Production Rates

## Notice 2010–73

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2010 calendar year.

Section 613A(c)(6)(C) defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2009 calendar year is $56.39.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2010.

Notice 2010–73 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

| Calendar Year | Applicable Percentage |
|---|---|
| 1991 | 15 percent |
| 1992 | 18 percent |
| 1993 | 19 percent |
| 1994 | 20 percent |
| 1995 | 21 percent |
| 1996 | 20 percent |
| 1997 | 16 percent |
| 1998 | 17 percent |
| 1999 | 24 percent |
| 2000 | 19 percent |
| 2001 | 15 percent |
| 2002 | 15 percent |
| 2003 | 15 percent |
| 2004 | 15 percent |
| 2005 | 15 percent |
| 2006 | 15 percent |
| 2007 | 15 percent |
| 2008 | 15 percent |
| 2009 | 15 percent |
| 2010 | 15 percent |

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. McRee at (202) 622–3110 (not a toll-free call).

## 2010 National Pool

## Notice 2010–74

This notice informs taxpayers that there is no unused housing credit carryover amount to be allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2010.

Rev. Proc. 92–31, 1992–1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92–31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). Qualified states are states that have allocated all their credits in a calendar year and who request, by May 1st of the following calendar year, to receive an allocation of credit from the National Pool determined in the year of the request.

For 2010 there is no unused housing credit carryover amount assigned to the National Pool. Consequently, there is no National Pool amount from which credits can be redistributed to qualified states.

The principal author of this notice is Christopher J. Wilson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Wilson at (202) 622–3040 (not a toll-free call).

*26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 36C, 42, 59, 62, 135, 137, 146, 147, 148, 170, 213, 220, 512, 513, 877, 877A, 911, 2032A, 2503, 2523, 4161, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B; 1.148–3, 1.148–5.)*

## Rev. Proc. 2010–40

Table of Contents

SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2011.

SECTION 2. CHANGES

.01 This revenue procedure does not include the following items: the tax rate tables under § 1 of the Internal Revenue Code (Code), the child tax credit under § 24, the Hope Scholarship and Lifetime Learning Credits under § 25A, the earned income credit under § 32, the standard deduction under § 63, the overall limitation on itemized deductions under § 68, the qualified transportation fringe under § 132, the personal exemption under § 151, and the interest on education loans under § 221. Those items will be addressed in future guidance.

.02 Sections 10909(a)(1) and (b) of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111–148, 124 Stat. 119 (PPACA), redesignated § 23 of the Code as § 36C, made the adoption credit refundable, and for taxable years beginning in 2010, increased the maximum adoption credit from $10,000 (as adjusted

for inflation under former § 23(h)) to $13,170. For taxable years beginning after December 31, 2010, the maximum adoption credit amounts in § 36C(a)(3) and (b)(1) are adjusted for inflation under § 36C(h). (See section 3.02 of this revenue procedure and Rev. Proc. 2010–35, 2010–42 I.R.B. 438).

.03 For taxable years beginning in 2010, § 10909(a)(2) of PPACA increased the maximum adoption assistance exclusion under § 137(a)(2) and (b)(1) of the Code from $10,000 (as adjusted for inflation under former § 137(f)) to $13,170, and amended the inflation adjustment provisions of § 137(f). For taxable years beginning after December 31, 2010, the amounts under § 137(a)(2) and (b)(1) are adjusted for inflation under amended § 137(f). (See section 3.08 of this revenue procedure and Rev. Proc. 2010–35.)

.04 For taxable years beginning after December 31, 2009, and before January 1, 2011, § 201(a) of the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111–147, 124 Stat. 71 (HIRE), amended § 179(b) of the Code to temporarily increase the amount of § 179 property placed into service during the taxable year that a taxpayer may elect to expense. In addition, for taxable years beginning after December 31, 2009, § 201(a) of HIRE eliminated the inflation adjustment to the dollar amounts under § 179(b)(1) and (2). Accordingly, those amounts are no longer included in this revenue procedure. (See Rev. Proc. 2010–24, 2010–25 I.R.B. 764.)

.05 The passenger air transportation excise taxes imposed under § 4261(b) and (c), as extended by § 2(b)(1) of the Airport and Airway Extension Act of 2010, Part III, Pub. L. No. 111–249, 124 Stat. 2627, apply to transportation taken through December 31, 2010, and to amounts paid on or before December 31, 2010, for transportation beginning after that date. Accordingly, the amounts in § 4261(b) and (c) are not included in this revenue procedure.

SECTION 3. 2011 ADJUSTED ITEMS

.01 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax").* For taxable years beginning in 2011, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $950. The same $950 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2011 must be more than $950 but less than $9,500.

.02 *Adoption Credit.* For taxable years beginning in 2011, under § 36C(a)(3) the credit allowed for an adoption of a child with special needs is $13,360. For taxable years beginning in 2011, under § 36C(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $13,360. The available adoption credit begins to phase out under § 36C(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $185,210 and is completely phased out for taxpayers with modified adjusted gross income of $225,210 or more. (See section 3.08 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.03 *Rehabilitation Expenditures Treated as Separate New Building.* For calendar year 2011, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is $6,100.

.04 *Low-Income Housing Credit.* For calendar year 2011, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) $2.15 multiplied by the State population, or (2) $2,465,000.

.05 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2011, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $6,800.

.06 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans.* For calendar year 2011, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to $16 per hour for rig-related expenses that is deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to $10 per hour is deemed substantiated if paid under Rev. Proc. 2002–41.

.07 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses.* For taxable years beginning in 2011, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above $106,650 for joint returns and $71,100 for other returns. The exclusion is completely phased out for modified adjusted gross income of $136,650 or more for joint returns and $86,100 or more for other returns.

.08 *Adoption Assistance Programs.* For taxable years beginning in 2011, under § 137(a)(2) the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is $13,360. For taxable years beginning in 2011, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is $13,360. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $185,210 and is completely phased out for taxpayers with modified adjusted gross income of $225,210 or more. (See section 3.02 of this revenue procedure for the adjusted items relating to the adoption credit.)

.09 *Private Activity Bonds Volume Cap.* For calendar year 2011, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) $95 multiplied by the State population, or (2) $277,820,000.

.10 *Loan Limit on Agricultural Bonds.* For calendar year 2011, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $477,000.

.11 *General Arbitrage Rebate Rules*. For bond years ending in 2011, the amount of the computation credit determined under § 1.148–3(d)(4) of the proposed Income Tax Regulations is $1,520.

.12 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2011, under § 1.148–5(e)(2)(iii)(B)(*1*), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $36,000, and (B) 0.2 percent of the computational base (as defined in § 1.148–5(e)(2)(iii)(B)(*2*)) or, if more, $4,000; and (2) the issuer does not treat more than $101,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.13 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2011, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

| *Attained Age Before the Close of the Taxable Year* | *Limitation on Premiums* |
|---|---|
| 40 or less | $ 340 |
| More than 40 but not more than 50 | $ 640 |
| More than 50 but not more than 60 | $1,270 |
| More than 60 but not more than 70 | $3,390 |
| More than 70 | $4,240 |

.14 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2011, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,050 and not more than $3,050, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $4,100.

(2) *Family coverage*. For taxable years beginning in 2011, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $4,100 and not more than $6,150, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $7,500.

.15 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2011, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $148.

.16 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns*.

(1) *Low cost article*. For taxable years beginning in 2011, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of $9.70 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2011, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and modified by Rev. Proc. 92–102, 1992–2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are $9.70, $48.50, and $97, respectively.

.17 *Expatriation to Avoid Tax*. For calendar year 2011, an individual with "average annual net income tax" of more than $147,000 for the five taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is a covered expatriate for purposes of § 877A(g)(1).

.18 *Tax Responsibilities of Expatriation*. For taxable years beginning in 2011, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by $636,000.

.19 *Foreign Earned Income Exclusion*. For taxable years beginning in 2011, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $92,900.

.20 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2011, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed $1,020,000.

.21 *Annual Exclusion for Gifts*.

(1) For calendar year 2011, the first $13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2011, the first $136,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.22 *Tax on Arrow Shafts*. For calendar year 2011, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is $0.45 per shaft.

.23 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2011, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98–19, 1998–1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is $103 or less.

.24 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2011, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the ag-

gregate value of gifts received in a taxable year exceeds $14,375.

.25 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2011, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,400, or (2) a mechanic's lienor under § 6323(b)(7) that repaired or improved certain residential property if the contract price with the owner is not more than $6,990.

.26 *Property Exempt from Levy*. For calendar year 2011, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed $8,370. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed $4,180.

.27 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2011, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is $1,360,000.

.28 *Attorney Fee Awards*. For fees incurred in calendar year 2011, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $180 per hour.

.29 *Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts*. For calendar year 2011, the stated dollar amount of the *per diem* limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is $300.

## SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2011.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2011 for purposes of sections 3.03 (rehabilitation expenditures treated as separate new building), 3.04 (low-income housing credit), 3.06 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.09 (private activity bonds volume cap), 3.10 (loan limit on agricultural bonds), 3.11 (general arbitrage rebate rules), 3.12 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.17 (expatriation to avoid tax), 3.20 (valuation of qualified real property in decedent's gross estate), 3.21 (annual exclusion for gifts), 3.22 (tax on arrow shafts), 3.25 (persons against whom a federal tax lien is not valid), 3.26 (property exempt from levy), 3.27 (interest on a certain portion of the estate tax payable in installments), 3.28 (attorney fee awards), and 3.29 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

## SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Christina M. Glendening of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Glendening at (202) 622–4920 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulation

## Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

## REG–137486–09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: In this issue of the Bulletin, the IRS is issuing final and temporary regulations (T.D. 9500) to disclose return information to the Bureau of the Census. The text of the temporary regulations published in this issue of the Bulletin serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by November 24, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–137486–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137486–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–137486–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Melissa Segal, (202) 622–7950; concerning submissions of comments, Regina Johnson, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains proposed amendments to the Procedure and Administration regulations [26 CFR Part 301] relating to section 6103(j)(1)(A) of the Internal Revenue Code (Code). Section 6103(j)(1)(A) of the Code authorizes the Secretary of the Treasury to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary of Treasury may prescribe by regulation to officers and employees of the Bureau of the Census (Bureau) for the purpose of, but only to the extent necessary in, the structuring of censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations provides an itemized description of the items of return information authorized to be disclosed for this purpose. This document contains proposed regulations authorizing the disclosure of additional items requested by the Secretary of Commerce. The text of temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

**Special Analyses**

It has been determined 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 Procedures 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 Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are timely submitted 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 will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Melissa Segal, Office of the Associate Chief Counsel (Procedure & Administration).

* * * * *

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION.

Paragraph 1. The authority for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(j)(1)–1 is amended by adding paragraphs (b)(3)(xxix) and (b)(3)(xxx), and revising paragraph (e) to read as follows:

*§301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce, for certain statistical purposes and related activities.*

* * * * *

(b) * * *

(3) * * *

(xxix) [The text of proposed §301.6103(j)(1)–1(b)(3)(xxix) is the same as the text of

§301.6103(j)(1)–1T(b)(3)(xxix) published elsewhere in this issue of the Bulletin].

(xxx) [The text of proposed §301.6103(j)(1)–1(b)(3)(xxx) is the same as the text of §301.6103(j)(1)–1T(b)(3)(xxx) published elsewhere in this issue of the Bulletin].

* * * * *

(e) *Effective/applicability date*. Paragraph (b)(3)(xxix) through (b)(3)(xxx) of this section is applicable to disclosures to the Bureau of the Census on or after the date final regulations are published in the **Federal Register**.

Steven T. Miller,
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on August 25, 2010, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2010, 75 F.R. 52486)

## Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

## Announcement 2010–89

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November 15, 2010, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Consumer Debt Management, Northeast
Methuen, MA

Partners in Charity, Inc
West Dundee, IL

Hope and Dreams Foundation
Palo Alto, 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 laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

*A*—Individual.
*Acq.*—Acquiescence.
*B*—Individual.
*BE*—Beneficiary.
*BK*—Bank.
*B.T.A.*—Board of Tax Appeals.
*C*—Individual.
*C.B.*—Cumulative Bulletin.
*CFR*—Code of Federal Regulations.
*CI*—City.
*COOP*—Cooperative.
*Ct.D.*—Court Decision.
*CY*—County.
*D*—Decedent.
*DC*—Dummy Corporation.
*DE*—Donee.
*Del. Order*—Delegation Order.
*DISC*—Domestic International Sales Corporation.
*DR*—Donor.
*E*—Estate.
*EE*—Employee.
*E.O.*—Executive Order.
*ER*—Employer.
*ERISA*—Employee Retirement Income Security Act.
*EX*—Executor.
*F*—Fiduciary.
*FC*—Foreign Country.
*FICA*—Federal Insurance Contributions Act.
*FISC*—Foreign International Sales Company.
*FPH*—Foreign Personal Holding Company.
*F.R.*—Federal Register.
*FUTA*—Federal Unemployment Tax Act.
*FX*—Foreign corporation.
*G.C.M.*—Chief Counsel's Memorandum.
*GE*—Grantee.
*GP*—General Partner.
*GR*—Grantor.
*IC*—Insurance Company.
*I.R.B.*—Internal Revenue Bulletin.
*LE*—Lessee.
*LP*—Limited Partner.
*LR*—Lessor.
*M*—Minor.
*Nonacq.*—Nonacquiescence.
*O*—Organization.
*P*—Parent Corporation.
*PHC*—Personal Holding Company.
*PO*—Possession of the U.S.
*PR*—Partner.
*PRS*—Partnership.
*PTE*—Prohibited Transaction Exemption.
*Pub. L.*—Public Law.
*REIT*—Real Estate Investment Trust.
*Rev. Proc.*—Revenue Procedure.
*Rev. Rul.*—Revenue Ruling.
*S*—Subsidiary.
*S.P.R.*—Statement of Procedural Rules.
*Stat.*—Statutes at Large.
*T*—Target Corporation.
*T.C.*—Tax Court.
*T.D.* —Treasury Decision.
*TFE*—Transferee.
*TFR*—Transferor.
*T.I.R.*—Technical Information Release.
*TP*—Taxpayer.
*TR*—Trust.
*TT*—Trustee.
*U.S.C.*—United States Code.
*X*—Corporation.
*Y*—Corporation.
*Z* —Corporation.

## Numerical Finding List[1]

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