Internal Revenue
bulletin

Bulletin No. 1997–43
October 27, 1997

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. 8733, page 8.

Final regulations under section 6114 of the Code provide that reporting is specifically required if the residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

T.D. 8735, page 4.

Final regulations under section 861 of the Code relate to the taxation of certain payments made pursuant to a cross-border securities lending transaction.

EMPLOYEE PLANS

Notice 97–56, page 19.

Weighted average interest rate update. Guidelines are set forth for determining for October 1997, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

Notice 97–57, page 19.

Education individual retirement accounts. This notice informs certain entities that they are approved to serve as nonbank trustees and custodians of Education individual retirement accounts. It also provides guidance on the procedures for being approved to be a nonbank trustee or custodian of an Education IRA.

EXEMPT ORGANIZATIONS

Announcement 97–108, page 25.

A list is provided of organizations now classified as private foundations.

EXCISE TAX

Announcement 97–107, page 25.

This announcement corrects Rev. Proc. 97–46, 1997–42 I.R.B. 10, which contains a list of "rural airports," as defined in section 4261(e)(1)(B), for purposes of computing the tax on air transportation.

ADMINISTRATIVE

P.L. 105–35, page 13.

An Act to amend the Internal Revenue Code of 1986 to prevent the unauthorized inspection of tax returns or tax return information.

Rev. Proc. 97–48, page 19.

Automatic relief for S elections. Special procedures permit taxpayers in certain situations to obtain automatic late S corporation election relief instead of applying for a private letter ruling.

Rev. Proc. 97–49, page 22.

Requests to report intercompany transactions on a separate entity basis. Guidance is provided for requesting consent under section 1.1502–13(e)(3) of the Code to treat certain intercompany transactions on a separate entity basis, to revoke such consent, or to change from the unauthorized use of separate entity reporting to single entity reporting. This procedure cross-references Rev. Proc. 97–27. Rev. Proc. 82–36 modified and superseded.

Finding Lists begin on page 31.
Announcement of Disbarments and Suspensions begins on page 27.

Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

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 of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

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

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

Section 861.—Income From Sources Within the United States

26 CFR 1.861–2: Interest.

T.D. 8735

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Certain Payments Made Pursuant to a Securities Lending Transaction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the taxation of certain payments made pursuant to a cross-border securities lending transaction. These regulations provide guidance concerning the source, character, and income tax treaty treatment of such payments and affect United States payors and recipients and foreign payors and recipients.

DATES: These regulations are effective October 14, 1997.

Applicability: These regulations are applicable to payments made after November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Ramon Camacho or Paul Epstein at (202) 622-3870 (not a toll-free number) of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARYINFORMATION:

Background

On January 9, 1992, the IRS published proposed amendments (INTL–106–89) to the Income Tax Regulations (26 CFR part 1) under sections 861, 871, 881, 894, and 1441 of the Internal Revenue Code of 1986 (Code) in the **Federal Register** (57 FR 860). A public hearing was scheduled but was subsequently cancelled because no one requested to testify. However, several written comments were received. After consideration of all of the comments, the regulations proposed by INTL–106–89 are adopted by this Treasury decision, as modified.

Explanation of Provisions

I. *The 1992 Proposed Regulations*

On January 9, 1992, the Internal Revenue Service (IRS) issued proposed regulations that provided guidance on the source and character of substitute payments made in cross-border securities lending transactions. In general, the regulations proposed to source substitute payments by reference to the source of the payments (dividend or interest) for which they substitute. In addition, the regulations proposed to characterize substitute payments under a transparency rule. Under the transparency rule, substitute payments are treated as having the same character as the dividend or interest income for which they substitute.

Under the proposed regulations, the source rule applies for all purposes of the Code in cross-border securities lending transactions. In contrast, the transparency rule addressing the character of substitute payments applies only for purposes of determining the tax liability under sections 871 and 881 and nonresident alien withholding under chapter 3 of the Code and for treaty purposes. Generally, public comments welcomed the transparency rule because it eliminated unjustifiable tax biases between similar economic investments. After considering all the public comments, the proposed regulations are adopted as final regulations by this Treasury decision, substantially as proposed.

II. *The Final Regulations*

1. General rule

The final regulations, like the proposed regulations, provide that a substitute payment made with respect to a securities lending or sale-repurchase transaction is sourced using the general rules governing the source of interest or dividend income contained in sections 861 and 862. The definitions of securities lending transactions and sale-repurchase transactions are provided in §§1.861–2(a)(7) and 1.861–3(a)(6) of the regulations. These provisions define a substitute payment as a payment made to the transferor of a security of an amount equal to any distributions of dividends or interest which the owner of the transferred security would normally receive. The regulations also provide that substitute interest or dividend payments have the same character as interest or dividend income, respectively, for purposes of applying sections 864(c)(4)(B), 871, 881, 894, 4948(a) and the withholding provisions under chapter 3 of the Internal Revenue Code.

2. Scope of regulation

Some commentators questioned whether a sale-repurchase transaction is considered a transaction that is substantially similar to a securities lending transaction for purposes of the proposed regulations. They noted that most sale-repurchase transactions contractually permit the purchaser to deal freely with the underlying securities, specifying only that substantially identical securities be returned on the repurchase date. In such cases the purchaser must also make substitute payments to the seller. The final regulations clarify that substitute payments made in a sale-repurchase transaction are sourced and characterized in the same manner that substitute payments are sourced and characterized in securities lending transactions.

The final regulations only address the tax treatment of substitute payments received by the transferor in securities lending or sale-repurchase transactions. The regulations do not address the treatment of fees or interest paid to the transferee in such transactions. For example, the transparency rule does not extend to characterize the interest component of the repurchase price of a sale-repurchase agreement, which is treated as interest and sourced under the general source rules for interest contained in sections 861 and 862. See Rev. Rul. 74-27 (1974–1 C.B. 24); Rev. Rul. 77–59 (1977–1 C.B. 196); *Nebraska Department of Revenue v. Loewenstein*, 115 S. Ct. 557 (1994).

In response to comments, the final regulations apply for purposes of determin-

ing the source of substitute payments, regardless of whether the recipient of the income is U.S. or foreign. When source is determined under these regulations, it applies for all purposes of the Code (e.g., foreign tax credit limitations under sections 904 and 906). However, with respect to the characterization of substitute payments, the IRS and Treasury believe that it is appropriate, and more consistent with existing guidance regarding the treatment of substitute payments, to apply the transparency rule only with respect to foreign taxpayers and only for limited purposes. Accordingly, the transparency rule applies to determine character only for certain purposes of sections 864, 871, 881, 894, 4948(a) and chapter 3 of the Code. For example, under this rule, substitute payments to a foreign person with respect to stocks and securities that, absent the securities lending transaction, would give rise to foreign source effectively connected income in the hands of such person, will retain their character as dividend or interest income for purposes of determining whether the income is effectively connected to the U.S. trade or business of such person.

The transparency rule does not apply, however, to characterize the U.S. source income of U.S. trades or businesses of foreign taxpayers. Accordingly, U.S. source effectively connected income of foreign taxpayers and U.S. source income of U.S. taxpayers will be treated the same. In this regard, the final regulations do not affect existing guidance applicable to both U.S. and foreign taxpayers concerning the characterization of substitute payments for purposes of other sections not specifically identified in these final regulations. See, e.g., Rev. Rul. 60–177 (1960–1 C.B. 9), (substitute payments are ineligible for the dividends received deduction under section 243); Rev. Rul. 80–135 (1980–1 C.B. 18), (substitute payments are ineligible for the tax-exemption on state and local bonds under section 103).

Because the transparency rule does not apply for purposes of sections 901 and 903, nothing in the final regulations affects the determination required under §1.901–2(f) concerning the identity of the person by whom a foreign tax is considered paid for purposes of sections 901 and 903.

3. Substitute payments on portfolio debt instruments

Under the final regulations, substitute interest payments made with respect to a debt instrument, the interest on which qualifies as portfolio interest under section 871(h) or section 881(c) in the hands of the lender, is characterized as portfolio interest if, in the case of an obligation in registered form, the lender provides the withholding agent with a beneficial owner withholding certificate or documentary evidence in accordance with §1.871–14(c) and no exception from the portfolio interest exemption applies. For example, if a bank lends securities in a transaction that the facts and circumstances indicate in substance is an extension of credit pursuant to a loan agreement in the ordinary course of the bank's trade or business, the substitute payment may be characterized as interest which would not qualify as portfolio interest under section 881(c)(3)(A).

4. Tax treaties

Some commentators noted that the transparency rule adversely affects foreign taxpayers that might otherwise rely on a different characterization of substitute payments in order to claim benefits under certain income tax treaties. The transparency rule would eliminate these benefits in a number of cases. Those commentators questioned the government's authority to issue regulations that would characterize substitute payments as dividend or interest income in light of U.S. income tax treaty provisions.

The IRS and Treasury believe that the transparency rule in general is properly issued pursuant to the general grant of authority under section 7805 because it eliminates opportunities for abuse that arise from a rule that would characterize substitute payments in a manner different from the treatment of the underlying payment. A transparency approach provides uniform results for economically similar investments.

Moreover, the IRS and Treasury believe that, in the absence of a transparency rule, many taxpayers would use securities lending transactions in order to avoid tax under tax treaties or under the Code. For this reason, authority to characterize substitute payments for Code and treaty purposes in the manner proposed in 1992 also is amply provided in section 7701(l), which was enacted after these comments were received. Section 7701(l) provides a broad grant of authority to issue regulations recharacterizing multiple party financing arrangements to prevent the avoidance of any tax.

In this regard, the legislative history provides that "the committee seeks to bolster the Treasury's ability to prevent unwarranted avoidance of tax through multiple-party financial engineering as well as to provide a mechanism for issuing additional guidance to taxpayers entering into financial transactions." See H.R. Rep. No. 103–111, 103rd Cong., 1st Sess. 729 (1993). The committee also made clear that this authority was not limited to the types of back-to-back loan transactions addressed in prior rulings. See Rev. Rul. 84–152 (1984–2 C.B. 381); Rev. Rul. 84–153 (1984–2 C.B. 383); Rev. Rul. 87–89 (1987–2 C.B. 195). Section 7701(l) in fact has been applied to a broad range of financial transactions. See, e.g., Prop. Regs. §1.7701(l)–2 (treatment of obligation-shifting transactions); and Notice 97–21 (IRB 1997–11, March 17, 1997), (tax avoidance using self-amortizing investments in conduit financing entities).

The 1992 proposed regulation under section 894 provided that where an income tax convention refers to United States law, the relevant law is the section or sections of the Internal Revenue Code and regulations thereunder governing the tax which is the subject of the provision. Some commentators have suggested that the proposed securities lending regulations would be invalid for purposes of characterizing dividends that are specifically defined by treaties. However, under conduit principles and additional authority to characterize payments pursuant to section 7701(l), the regulations adopted under §1.894–1(c) address the identity of the owner of dividend and interest income for treaty purposes as opposed to the character of the payments received under varying treaty definitions. These regulations therefore are consistent with the government's authority under treaties to determine the identity of the beneficial owner of income.

Special Analyses

It has been determined that this Trea-

sury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These regulations affect entities engaged in cross-border multiple-party financing arrangements. These regulations affect the tax treatment of substitute payments made with respect to stocks and debt securities. The primary participants who engage in cross-border multiple party financing arrangements of this type are large regulated commercial banks and brokerage firms. In addition, comments received in response to the notice of proposed rulemaking were from law associations, other associations that represent large regulated financial companies or from individuals. Accordingly, Treasury and IRS do not believe that a substantial number of small entities engages in cross-border multiple party financing arrangements of the type covered by these regulations. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ramon Camacho of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

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

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

Section 1.861–2 also issued under 26 U.S.C. 863(a).

Section 1.861–3 also issued under 26 U.S.C. 863(a). * * *

Section 1.864–5 also issued under 26 U.S.C. 7701(l). * * *

Section 1.871–7 also issued under 26 U.S.C. 7701(l). * * *

Section 1.881–2 also issued under 26 U.S.C. 7701(l). * * *

Section 1.894–1 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. Section 1.861–2 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(7); and revising paragraph (e) to read as follows:

§1.861–2 Interest.

(a) * * * (1) * * * See paragraph (a)(7) of this section for special rules concerning substitute interest paid or accrued pursuant to a securities lending transaction.

* * * * *

(7) A substitute interest payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to an interest payment which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute interest payment shall be sourced in the same manner as the interest accruing on the transferred security for purposes of this section and §1.862–1. See also §§1.864–5(b)(2)(iii), 1.871–7(b)(2), 1.881–2(b)(2) and for the character of such payments and §1.894–1(c) for the application tax treaties to these transactions.

* * * * *

(e) *Effective dates.* Except as otherwise provided, this section applies with respect to taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (a)(7) of this section is applicable to payments made after November 13, 1997.

Par. 3. Section 1.861–3 is amended by adding a sentence at the end of paragraph (a)(1); adding paragraph (a)(6); and removing the first sentence of paragraph (d) and adding three sentences in its place to read as follows:

§1.861–3 Dividends.

(a) * * * (1) * * * See also paragraph (a)(6) of this section for special rules concerning substitute dividend payments received pursuant to a securities lending transaction.

* * * * *

(6) *Substitute dividend payments.* A substitute dividend payment is a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. A securities lending transaction is a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. A sale-repurchase transaction is an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. A substitute dividend payment shall be sourced in the same manner as the distributions with respect to the transferred security for purposes of this section and §1.862–1. See also §§1.864–5(b)(2)(iii), 1.871–7(b)(2) and 1.881–2(b)(2) for the character of such payments and §1.894–1(c) for the application of tax treaties to these transactions.

* * * * *

(d) * * * Except as otherwise provided in this paragraph this section applies with respect to dividends received or accrued after December 31, 1966. Paragraph (a)(5) of this section applies to certain dividends from a DISC or former DISC in taxable years ending after December 31, 1971. Paragraph (a)(6) of this section is applicable to payments made after November 13, 1997. * * *

Par. 4. Section 1.864–5 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii) and adding new paragraph (b)(2)(ii) to read as follows:

§1.864–5 Foreign source income effectively connected with U.S. business.

* * * * *

(b) * * *

(2) * * *

(ii) *Substitute payments.* For purposes of this paragraph (b)(2), a substitute interest payment (as defined in §1.861–2(a)(7)) received by a foreign person subject to tax under this paragraph (b) pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–2(a)(7)) with respect to a security (as defined in §1.864–6(b)(2)(ii)(c)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this paragraph (b)(2), a substitute dividend payment (as defined in §1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–3(a)(6)) with respect to a stock shall have the same character as a distribution received with respect to the transferred security. This paragraph (b)(2)(ii) is applicable to payments made after November 13, 1997.

* * * * *

Par. 5. Section 1.871–7 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding paragraph (b)(2); and removing the first sentence of paragraph (f) and adding two sentences in its place to read as follows:

§1.871–7 Taxation of nonresident alien individuals not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income*—(1) General rule. * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in §1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–2(a)(7)) shall have the same character as interest income paid or accrued with respect to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in §1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–3(a)(6)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 871(h) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in §1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in §1.871–14(c)(1)(ii)(C) with respect to the payment of the substitute interest and none of the exceptions to the portfolio interest exemption in sections 871(h)(3) and (4) apply. See also §§1.861–2(b)(2) and 1.894–1(c).

* * * * *

(f) * * * Except as otherwise provided in this paragraph, this section shall apply for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 6. Section 1.881–2 is amended by redesignating the text of paragraph (b) as paragraph (b)(1); adding a paragraph heading for newly designated paragraph (b)(1); adding a paragraph (b)(2); and removing the first sentence of paragraph (e) and adding two sentences in its place to read as follows:

§1.881–2 Taxation of foreign corporations not engaged in U.S. business.

* * * * *

(b) *Fixed or determinable annual or periodical income—(1) General rule.* * * *

(2) *Substitute payments.* For purposes of this section, a substitute interest payment (as defined in §1.861–2(a)(7)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–2(a)(7)) shall have the same character as interest income received pursuant to the terms of the transferred security. Similarly, for purposes of this section, a substitute dividend payment (as defined in §1.861–3(a)(6)) received by a foreign person pursuant to a securities lending transaction or a sale-repurchase transaction (as defined in §1.861–2(a)(7)) shall have the same character as a distribution received with respect to the transferred security. Where, pursuant to a securities lending transaction or a sale-repurchase transaction, a foreign person transfers to another person a security the interest on which would qualify as portfolio interest under section 881(c) in the hands of the lender, substitute interest payments made with respect to the transferred security will be treated as portfolio interest, provided that in the case of interest on an obligation in registered form (as defined in §1.871–14(c)(1)(i)), the transferor complies with the documentation requirement described in §1.871–14(c)(1)(ii)(C) with respect to the payment of substitute interest and none of the exceptions to the portfolio interest exemption in sections 881(c)(3) and (4) apply. See also §§1.871–7(b)(2) and 1.894–1(c).

* * * * *

(e) * * * Except as otherwise provide in this paragraph, this section applies for taxable years beginning after December 31, 1966. Paragraph (b)(2) of this section is applicable to payments made after November 13, 1997. * * *

Par. 7. Section 1.894–1 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§1.894–1 Income affected by treaty.

* * * * *

(c) *Substitute interest and dividend payments.* The provisions of an income tax convention dealing with interest or dividends paid to or derived by a foreign person include substitute interest or dividend payments that have the same character as interest or dividends under §1.864–5(b)(2)(ii), 1.871–7(b)(2) or 1.881–2(b)(2). The provisions of this paragraph (c) shall apply for purposes of securities lending transactions or sale-repurchase transactions as defined in §1.861–2(a)(7) and §1.861–3(a)(6).

(d) *Effective dates.* Paragraphs (a) and (b) of this section apply for taxable years

beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, (see 26 CFR part 1 revised April 1, 1971). Paragraph (c) of this section is applicable to payments made after November 13, 1997.

§1.7701(l)–1 [Amended]

Par. 10. Section 1.7701(l)–1 is amended as follows:

1. Paragraph (a) is amended by removing the paragraph designation (a) and the heading.

2. Paragraph (b) is removed.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved August 28, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on October 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for October 14, 1997, 62 F.R. 53498)

Section 1362.—Election; Revocation; Termination.

26 CFR 1.1362–6: Elections and consents.

If a taxpayer applies for late S corporation election relief under §1362(b)(5) of the Internal Revenue Code under Rev. Proc. 97–48, who must file the consent to apply for late S corporation election relief? See Rev. Proc. 97–48, page 19.

Section 1502.—Regulations

26 CFR 1.1502–13: Intercompany transactions.

This revenue procedure provides guidance for requesting consent under §1.1502–13(e)(3) to treat certain intercompany transactions on a separate entity basis, to revoke such consent, or to change from the unauthorized use of separate entity reporting to single entity reporting. This revenue procedure cross-references Rev. Proc. 97–27 and modifies and supersedes Rev. Proc. 82–36. *See* Rev. Proc. 97–49, page 22.

Section 4261.—Imposition of Tax

26 CFR 49.4261–1: Imposition of tax; in general.

This announcement corrects Rev. Proc. 97–46, which provides a list of "rural airports" as that term is defined in § 4261(e)(1)(B) of the Internal Revenue Code, for purposes of computing the tax on air transportation. See Announcement 97–107, page 25.

Section 6114.—Treaty-Based Return Positions

26 CFR 301.6114–1: Treaty-based return positions.

T.D. 8733

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

Treaty-Based Return Positions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6114 of the Internal Revenue Code of 1986 providing that reporting is specifically required if the residency of an individual is determined under a treaty and apart from the Code. The IRS concluded, in the process of completing the regulations under section 7701(b), that the rules of section 6114 should apply to individuals determining their residency under a treaty. These final regulations are necessary to implement the section 6114 rules to individuals determining their residency under a treaty. Also contained in this document are final regulations relating to section 7701(b) and conforming changes to regulations under sections 6038 and 6046.

EFFECTIVE DATE: These regulations are effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: David A. Juster, telephone (202-622-3850) (not a toll-free number), regarding sections 6114 and 7701(b) and Carl M. Cooper, telephone (202-622-3840) (not a toll-free number) regarding sections 6038 and 6046, both of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS.

SUPPLEMENTARYINFORMATION:

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) under control number 1545–1126. Responses to these collections of information are mandatory.

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

The estimated annual burden per respondent varies from 1/2 hour to 3 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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 April 27, 1992, a notice of proposed rulemaking was published in the **Federal Register** (57 F.R. 15272) proposing amendments to the final Regulations on Procedure and Administration (26 CFR 301.6114–1), published in the **Federal Register** on March 14, 1990 (55 F.R. 9438) and on July 12, 1990 (55 F.R. 28608). The proposed amendments related to §301.6114–1(b) and (c) and §301.7701(b)–7(c)(2). No written comments responding to the notice were received. No public hearing was requested or held. The proposed amendments are adopted without change by this Treasury decision. This Treasury decision also includes modifications to §§1.6038–2(j), 1.6046–1(g), 301.6114–1(d), 301.7701(b)–3(b)(3) and (4), 301.7701(b)–7(c)(1) and 301.7701(b)–8(b)(1) and (2).

Explanation of Provisions

Section 301.6114–1(b) is amended by adding paragraph (b)(8) to provide that

reporting is required under section 611 4 where residency of an individual is determined under a treaty and apart from the Internal Revenue Code (Code). The regulations provide, however, that reporting is waived for an individual if payments or income items reportable by reason of paragraph (b)(8) do not exceed $100,000 in the aggregate. Section 301.6114–1(d) currently provides that when reporting is required under section 6114, a taxpayer must furnish as an attachment to his or her return a written statement with the information as set forth in paragraph (d). Section 301.7701(b)–7(b) currently provides that a dual resident taxpayer who claims a treaty benefit as a nonresident of the United States must file a statement in the form required by paragraph (c) of that section. Section 301.6114–1(d) is now amended to provide that, when reporting is required under section 6114, a taxpayer must furnish, as an attachment to his or her return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Section 301.7701(b)–7(c)(1) is amended to provide that the written statement required to be furnished under paragraph (b) of that section, as an attachment to a dual resident taxpayer's return, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. Form 8833 was developed to provide standardized reporting of the information currently required by §§301.6114–1(d) and 301.7701(b)–7(c).

In an effort to provide standardized reporting of the information currently required to be reported, under §301.7701-(b)–8(b), by taxpayers claiming the closer connection exception and exempt individuals and individuals with a medical condition, the Service has developed Form 8840 (Closer Connection Exception Statement) and Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition). Accordingly, §301.7701(b)–8(b)(1) is amended to provide that the statement filed by alien individuals claiming the closer connection exception, described in §301.7701(b)–2, must be in the form of a fully completed Form 8840 or appropriate successor form. Section 301.7701(b)–8(b)(2) is amended to provide that the statement filed by exempt individuals and individuals with a medical condition, described in §301.7701(b)–3, must be in the form of a fully completed Form 8843 or appropriate successor form.

Sections 3121(b)(19), 3306(c)(19) and 3231(e)(1) of the Code provide that "J" class visa holders (teachers and trainees) are exempt from FICA, FUTA and Railroad Retirement Act taxes, respectively. Section 320 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296 (108 Stat. 1464), extends the FICA, FUTAand Railroad Retirement Act tax exemptions and certain other tax rules to "Q" class visa holders (participants in international cultural exchange programs). Accordingly, conforming changes have been made to §301.7701(b)–3(b)(3) and (4) to reflect the revisions in the Code to the definitions of a *teacher or trainee* and *student* contained in section 7701(b)(5).

Section 301.7701(b)–7(c)(2), adopted as proposed, provides that, for purposes of stating the approximate amount of subpart F income to be included in the statement required to be furnished under paragraph (b) of that section by a dual resident taxpayer who is a shareholder in a *controlled foreign corporation* (as defined in section 957 or section 953(c)), the approximate amount of income may be based on the audited foreign financial statements of the CFC if there are no other United States shareholders in that CFC. Parallel rules with respect to information reporting under sections 6038 and 6046 are added in §§1.6038–2(j)(2)(ii) and 1.6046–1(g). Under these rules, a taxpayer who claims a treaty benefit as a nonresident of the United States, but who is a United States person for purposes of the information reporting requirements of sections 6038 or 6046, may satisfy certain information reporting requirements by filing the audited foreign financial statements of the foreign corporation with respect to which the information reporting is required. However, these rules apply only if the taxpayer is the sole United States person for purposes of the information reporting requirements with respect to the foreign corporation. If there are other United States persons for those purposes, then the taxpayer must report the information required by the regulations in the form and manner generally prescribed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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

Various personnel from the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS and the Treasury Department participated in developing the regulations.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 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 1.6038-2 is amended by:

1. Redesignating paragraph (j)(2)(ii) as paragraph (j)(2)(iii).

2. Adding new paragraph (j)(2)(ii) to read as follows:

§1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(2) * * *

(ii) If an individual who is a United States person required to furnish information with respect to a foreign corporation under section 6038 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6038 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (f)(10), (f)(11), (g), and (h) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6038.

* * * * *

Par. 3. In §1.6046–1, paragraph (g) is amended by adding a sentence at the end to read as follows:

§1.6046–1 Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

* * * * *

(g) * * * If an individual who is a United States person required to make a return with respect to a foreign corporation under section 6046 is entitled under a treaty to be treated as a nonresident of the United States, and if the individual claims this treaty benefit, and if there are no other United States persons that are required to furnish information under section 6046 with respect to the foreign corporation, then the individual may satisfy the requirements of paragraphs (b)(10), (11) and (12), (c)(3)(ii)(d), and (g) of this section by filing the audited foreign financial statements of the foreign corporation with the individual's return required under section 6046.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 301.6114–1 also issued under 26 U.S.C. 6114; * * *

Par. 5. Section 301.6114–1 is amended by:

1. Removing the language "(c)(1)" in paragraph (b)(4) introductory text and adding "(c)(1)(i)" in its place.

2. Removing the language "(c)(1)" in paragraph (b)(5) introductory text and adding "(c)(1)(i)" in its place.

3. Removing the language"(c)(4)" in paragraph (b)(6) and adding "(c)(1)(iv)" in its place.

4. Removing the language "or" at the end of paragraph (b)(6).

5. Removing the period at the end of paragraph (b)(7) and adding "; or" in its place.

6. Adding a paragraph (b)(8).

7. Paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (c)(1)(i) through (c)(1)(vi), respectively.

8. Paragraphs (c)(7) introductory text, (c)(7)(i), (c)(7)(ii), and (c)(7)(iii) are redesignated as paragraphs (c)(1)(vii) introductory text, (c)(1)(vii)(A), (c)(1)(vii)(B) and (c)(1)(vii)(C), respectively.

9. The introductory text of paragraph (c) is redesignated as the introductory text of paragraph (c)(1).

10. Revising newly designated paragraph (c)(1)(ii).

11. Removing the concluding text immediately following newly designated paragraph (c)(1)(vii)(C).

12. Adding paragraphs (c)(2), (c)(3), (c)(4) and (c)(5).

13. Revising paragraph (d).

The additions and revisions read as follows:

§301.6114–1 Treaty-based return positions.

* * * * *

(b) * * *

(8) For returns relating to taxable years for which the due date for filing returns (without extensions) is after December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

(c) *Reporting requirement waived.* (1) * * *

(ii) For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, that residency of an individual is determined under a treaty and apart from the Internal Revenue Code.

* * * * *

(2) Reporting is waived for an individual if payments or income items otherwise reportable under this section (other than by reason of paragraph (b)(8) of this section), received by the individual during the course of the taxable year do not exceed $10,000 in the aggregate or, in the case of payments or income items reportable only by reason of paragraph (b)(8) of this section, do not exceed $100,000 in the aggregate.

(3) Reporting with respect to payments or income items the treatment of which is mandated by the terms of a closing agreement with the Internal Revenue Service, and that would otherwise be subject to the reporting requirements of this section, is also waived.

(4) If a partnership, trust, or estate that has the taxpayer as a partner or beneficiary discloses on its information return a position for which reporting is otherwise required by the taxpayer, the taxpayer (partner or beneficiary) is then excused from disclosing that position on a return.

(5) This section does not apply to a withholding agent with respect to the performance of its withholding functions.

(d) *Information to be reported*—(1) *Returns due after December 15, 1997.* When reporting is required under this section for a return relating to a taxable year for which the due date (without extensions) is after December 15 1997, the taxpayer must furnish, in accordance with paragraph (a) of this section, as an attachment to the return, a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form.

(2) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the taxpayer must furnish information in accordance with paragraph (d) of this section in effect prior to December 15, 1997 (see §301.6114–1(d) as contained in 26 CFR part 301, revised April 1, 1997).

(3) *In general*—(i) *Permanent establishment.* For purposes of determining the nature and amount (or reasonable estimate thereof) of gross receipts, if a taxpayer takes a position that it does not have a permanent establishment or a fixed base in the United States and properly discloses that position, it need not separately report its payment of actual or deemed dividends or interest exempt from tax by

reason of a treaty (or any liability for tax imposed by reason of section 884).

(ii) *Single income item.* For purposes of the statement of facts relied upon to support each separate Treaty-Based Return Position taken, a taxpayer may treat payments or income items of the same type (e.g., interest items) received from the same ultimate payor (e.g., the obligor on a note) as a single separate payment or income item.

(iii) *Foreign source effectively connected income*. If a taxpayer takes the return position that, under the treaty, income that would be income effectively connected with a U.S. trade or business is not subject to U.S. taxation because it is income treated as derived from sources outside the United States, the taxpayer may treat payments or income items of the same type (e.g., interest items) as a single separate payment or income item.

(iv) *Sales or services income*. Income from separate sales or services, whether or not made or preformed by an agent (independent or dependent), to different U.S. customers on behalf of a foreign corporation not having a permanent establishment in the United States may be treated as a single payment or income item.

(v) *Foreign insurers or reinsurers.* For purposes of reporting by foreign insurers or reinsurers, as described in paragraph (c)(1)(vii)(B) of this section, such reporting must separately set forth premiums paid with respect to casualty insurance and indemnity bonds (subject to section 4371(1)); life insurance, sickness and accident policies, and annuity contracts (subject to section 4371(2)); and reinsurance (subject to section 4371(3)). All premiums paid with respect to each of these three categories may be treated as a single payment or income item within that category. For reports first due before May 1, 1991, the report may disclose, for each of the three categories, the total amount of premiums derived by the foreign insurer or reinsurer in U.S. dollars (even if a portion of these premiums relate to risks that are not U.S. situs). Reasonable estimates of the amounts required to be disclosed will satisfy these reporting requirements.

* * * * *

Par. 6. Section 301.7701(b)–0 is amended in the contents listing by:

1. Adding entries for §301.7701(b)–7, paragraphs (c)(1)(i) and (c)(1)(ii).

2. Removing the language "[Reserved]" in the entry for §301.7701(b)–7, paragraph (c)(2).

3. Adding entries for §301.7701(b)–8, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i) and (b)(2)(ii).

The additions read as follows:

§301.7701(b)–0 Outline of regulation provision for section 7701(b)–1 through (b)–9.

* * * * *

§301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

§301.7701(b)–8 Procedural rules.

* * * * *

(b) * * *

(1) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

(2) * * *

(i) *Returns due after December 15, 1997.*

(ii) *Earlier returns.*

* * * * *

Par. 7. Section 301.7701(b)3 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§301.7701(b)–3 Days of presence in the United States that are excluded for purposes of section 7701(b).

* * * * *

(b) * * *

(3) *Teacher or trainee.* A teacher or trainee includes any individual (and that individual's immediate family), other than a student, who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J), (Q)) and who substantially complies with the requirements of being admitted.

(4) *Student.* A student is any individual (and that individual's immediate family) who is admitted temporarily to the United States as a nonimmigrant under section 101(a)(15)(F) or (M) (relating to the admission of students into the United States) or as a student under section 101(a)(15)(J) (relating to the admission of teachers and trainees into the United States) or section 101(a)(15)(Q) (relating to the admission of participants in international cultural exchange programs) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F), (J), (M), (Q)) who substantially complies with the requirements of being admitted. For rules concerning taxation of certain nonresident students or trainees, see section 871 (c) and §1.871–9(a) of this chapter.

* * * * *

Par. 8. Section 301.7701(b)–7 is amended by:

1. Revising paragraph (c)(1).

2. Adding text for paragraph (c)(2).

The revision and addition read as follows:

§301.7701(b)–7 Coordination with income tax treaties.

* * * * *

(c) * * * (1) *In general*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) or appropriate successor form. See section 6114 and §301.6114–1 for rules relating to other treaty-based return positions taken by the same taxpayer.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the

statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (c)(1) of this section in effect prior to December 15, 1997 (see §301.7701(b)–7(c)(1) as contained in 26 CFR part 301, revised April 1, 1997).

(2) *Controlled foreign corporation shareholders.* If the taxpayer who claims a treaty benefit as a nonresident of the United States is a United States shareholder in a controlled foreign corporation (CFC), as defined in section 957 or section 953(c), and there are no other United States shareholders in that CFC, then for purposes of paragraph (c)(1) of this section, the approximate amount of subpart F income (as defined in section 952) that would have been included in the taxpayer's income may be determined based on the audited foreign financial statements of the CFC.

* * * * *

Par. 9. Section 301.7701(b)–8 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§301.7701(b)–8 Procedural rules.

* * * * *

(b) * * *

(1) *Closer connection exception*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(1) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8840 (Closer Connection Exception Statement) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(1) of this section must contain the information in accordance with paragraph (b)(1) of this section in effect prior to December 15, 1997 (see §301.7701(b)–8(b)(1) as contained in 26 CFR Part 301, revised April 1, 1997).

(2) *Exempt individuals and individuals with a medical condition*—(i) *Returns due after December 15, 1997.* The statement filed by an individual described in paragraph (a)(2) of this section, for a return relating to a taxable year for which the due date (without extensions) is after December 15, 1997, must be in the form of a fully completed Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition) or appropriate successor form.

(ii) *Earlier returns.* For returns relating to taxable years for which the due date for filing returns (without extensions) is on or before December 15, 1997, the statement filed by the individual described in paragraph (a)(2) of this section must contain the information in accordance with paragraph (b)(2) of this section in effect prior to December 15, 1997 (see §301.7701(b)–8(b)(2) as contained in 26 CFR Part 301, revised April 1, 1997).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In §602.101, paragraph (c) is amended by adding an entry in numerical order to the table and revising the entry for 301.7701(b)–7 to read as follows:

§602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6114–1	1545–1126
* * * * *	
301.7701(b)–7	1545–0089 1545–1126
* * * * *	

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved August 28, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on October 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for October 14, 1997, 62 F.R. 53384)

Subpart B.—Legislation and Related Committee Reports

Public Law 105–35
105th Congress, H.R. 1226
August 5, 1997

An Act to amend the Internal Revenue Code of 1986 to prevent the unauthorized inspection of tax returns or tax returns information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORTTITLE.

This Act may be cited as the "Taxpayer Browsing Protection Act."

SEC. 2. PENALTYFOR UNAUTHORIZED INSPECTION OF TAX RETURNS OR TAX RETURN INFORMATION.

(a) IN GENERAL.—Part I of subchapter A of chapter 75 of the Internal Revenue Code of 1986 (relating to crimes, other offenses, and forfeitures) is amended by adding after section 7213 the following new section:

"SEC. 7213A. UNAUTHORIZED INSPECTION OFRETURNS OR RETURN INFORMATION.

"(a) PROHIBITIONS.—

"(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—It shall be unlawful for—

"(A) any officer or employee of the United States, or

"(B) any person described in section 6103(n) or an officer or employee of any such person,

willfully to inspect, except as authorized in this title, any return or return information.

"(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2).

"(b) PENALTY.—

"(1) IN GENERAL.—Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

"(2) FEDERAL OFFICERS OR EMPLOYEES.—An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

"(c) DEFINITIONS.—For purposes of this section, the terms 'inspect', 'return', and 'return information' have the respective meanings given such terms by section 6103(b).".

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 7213(a) of such Code is amended by inserting "(5)," after "(m)(2), (4),".

(2) The table of sections for part I of subchapter A of chapter 75 of such Code 1986 is amended by inserting after the item relating to section 7213 the following new item:

"Sec. 7213A. Unauthorized inspection of returns or return information.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to violations occurring on and after the date of the enactment of this Act.

SEC. 3. CIVILDAMAGES FOR UNAUTHORIZED INSPECTION OF RETURNS AND RETURN INFORMATION; NOTIFICATION OFUNLAWFULINSPECTION OR DISCLOSURE.

(a) CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION.—Subsection (a) of section 7431 of the Internal Revenue Code of 1986 is amended—

(1) by striking "DISCLOSURE" in the headings for paragraphs (1) and (2) and inserting "INSPECTION OR DISCLOSURE", and

(2) by striking "discloses" in paragraphs (1) and (2) and inserting "inspects or discloses".

(b) NOTIFICATION OF UNLAWFUL INSPECTION OR DISCLOSURE.—Section 7431 of such Code is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.—If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

"(1) paragraph (1) or (2) of section 7213(a),

"(2) section 7213A(a), or

"(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.".

(c) NO DAMAGES FOR INSPECTION REQUESTED BY TAXPAYER.—Subsection (b) of section 7431 of such Code is amended to read as follows:

"(b) EXCEPTIONS.—No liability shall arise under this section with respect to any inspection or disclosure—

"(1) which results from a good faith, but erroneous, interpretation of section 6103, or

"(2) which is requested by the taxpayer.".

(d) CONFORMING AMENDMENTS.—

(1) Subsections (c)(1)(A), (c)(1)(B)(i), and (d) of section 7431 of such Code are each amended by inserting "inspection or" before "disclosure".

(2) Clause (ii) of section 7431(c)-(1)(B) of such Code is amended by striking "willful disclosure or a disclosure" and inserting "willful inspection or disclosure or an inspection or disclosure".

(3) Subsection (f) of section 7431 of such Code, as redesignated by subsection (b), is amended to read as follows:

"(f) DEFINITIONS.—For purposes of this section, the terms 'inspect', 'inspection', 'return', and 'return information'have the respective meanings given such terms by section 6103(b).".

(4) The section heading for section 7431 of such Code is amended by inserting "INSPECTION OR" before "DISCLOSURE".

(5) The table of sections for subchapter B of chapter 76 of such Code is amended by inserting "inspection or" before "disclosure" in the item relating to section 7431.

(6) Paragraph (2) of section 7431(g) of such Code, as redesignated by subsection (b), is amended by striking "any use" and inserting "any inspection or use".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

Approved August 5, 1997.

105th Congress 1st Session | HOUSE OF REPRESENTATIVES | Report 105–51

TAXPAYER BROWSING PROTECTION ACT

APRIL 14, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ARCHER, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 1226]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1226) to amend the Internal Revenue Code of 1986 to prevent the unauthorized inspection of tax returns or tax return information, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. 3. CIVILDAMAGES FOR UNAUTHORIZED INSPECTION OF RETURNS AND RETURN INFORMATION; NOTIFICATION OF UNLAWFULINSPECTION OR DISCLOSURE.

(a) CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION.—Subsection (a) of section 7431 of the Internal Revenue Code of 1986 is amended—

(1) by striking "DISCLOSURE" in the headings for paragraphs (1) and (2) and inserting "INSPECTION OR DISCLOSURE", and

(2) by striking "discloses" in paragraphs (1) and (2) and inserting "inspects or discloses".

(b) NOTIFICATION OF UNLAWFUL INSPECTION OR DISCLOSURE.—Section 7431 of such Code is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.—If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

"(1) paragraph (1) or (2) of section 7213(a),

"(2) section 7213A(a), or

"(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.".

(c) NO DAMAGES FOR INSPECTION REQUESTED BY TAXPAYER.—Subsection (b) of section 7431 of such Code is amended to read as follows:

"(b) EXCEPTIONS.—No liability shall arise under this section with respect to any inspection or disclosure—

"(1) which results from a good faith, but erroneous, interpretation of section 6103, or

"(2) which is requested by the taxpayer.".

(d) CONFORMING AMENDMENTS.—

(1) Subsections (c)(1)(A), (c)(1)(B)(i), and (d) of section 7431 of such Code are each amended by inserting "inspection or" before "disclosure".

(2) Clause (ii) of section 7431(c)(1)(B) of such Code is amended by striking "willful disclosure or a disclosure" and inserting "willful inspection or disclosure or an inspection or disclosure".

(3) Subsection (f) of section 7431 of such Code, as redesignated by subsection (b), is amended to read as follows:

"(f) DEFINITIONS.—For purposes of this section, the terms 'inspect', 'inspection', 'return', and 'return information'have the respective meanings given such terms by section 6103(b).".

(4) The section heading for section 7431 of such Code is amended by inserting "INSPECTION OR" before "DISCLOSURE".

(5) The table of sections for subchapter B of chapter 76 of such Code is amended by inserting "inspection or" before "disclosure" in the item relating to section 7431.

(6) Paragraph (2) of section 7431(g) of such Code, as redesignated by subsection (b), is amended by striking "any use" and inserting "any inspection or use".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. SUMMARY

H.R. 1226, as reported by the Commit-

tee on Ways and Means, provides for a criminal penalty for unauthorized willful inspection ("browsing") of tax returns and return information. The bill provides for civil damages for unauthorized inspection, and also contains a notification requirement.

B. Background and Reasons for Legislation

Widespread indications of browsing have made it imperative that Congress create a criminal penalty in the Internal Revenue Code to penalize this behavior.

C. Legislative History

Committee bill

H.R. 1226 was introduced by Chairman Archer (for himself, Ms. Dunn, Mr. Rangel, Mrs. Johnson of Connecticut, Mr. Coyne, Mr. Thomas, Mr. Herger, Mr. Camp, Mr. Ensign, Mr. Hayworth, Mr. Weller, Mrs. Kennelly of Connecticut, Mr. Levin, Mr. Kleczka, Mr. Lewis of Georgia, Mr. Neal of Massachusetts, Mr. Jefferson, Mr. Tanner, Mrs. Thurman, and Mr. Portman) on April 8, 1997. The bill was considered in a Committee on Ways and Means markup on April 9, 1997, and was ordered favorably reported, with an amendment, by voice vote.

II. EXPLANATION OF THE BILL

PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized willful disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

There is no explicit criminal penalty in the Internal Revenue Code for unauthorized inspection (absent subsequent disclosure) of tax returns and return information. Such inspection is, however, explicitly prohibited by the Internal Revenue Service ("IRS").[1] In a recent case, an individual was convicted of violating the Federal wire fraud statute (18 U.S.C. 1343 and 1346) and a Federal computer fraud statute (18 U.S.C. 1030) for unauthorized inspection. However, the U.S. First Circuit Court of Appeals overturned this conviction.[2] Unauthorized inspection of information of any department or agency of the United States (including the IRS) via computer was made a crime under 18 U.S.C. 1030 by the Economic Espionage Act of 1996.[3] This provision does not apply to unauthorized inspection of paper documents.

REASONS FOR CHANGE

The Committee believes that it is important to have a criminal penalty in the Internal Revenue Code to punish this type of behavior. The Committee also believes that it is appropriate to provide for civil damages for unauthorized inspection parallel to civil damages for unauthorized disclosure.

EXPLANATION OF PROVISIONS

Criminal penalties (sec. 2 of the bill and new sec. 7213A of the Code)

The bill creates a new criminal penalty in the Internal Revenue Code. The penalty is imposed for willful inspection (except as authorized by the Code) of any tax return or return information by any Federal employee or IRS contractor. The penalty also applies to willful inspection (except as authorized) by any State employee or other person who acquired the tax return or return information under specific provisions of section 6103. Upon conviction, the penalty is a fine in any amount not exceeding $1,000,[4] or imprisonment of not more than 1 year, or both, together with the costs of prosecution. In addition, upon conviction, an officer or employee of the United States would be dismissed from office or discharged from employment.

The Congress views any unauthorized inspection of tax return information as a very serious offense; this new criminal penalty reflects that view. The Congress also believes that unauthorized inspection warrants very serious personnel sanctions against IRS employees who engage in unauthorized inspection, and that it is appropriate to fire employees who do this.

Civil damages (sec. 3 of the bill and sec. 7431 of the Code)

The bill amends the provision providing for civil damages for unauthorized disclosure by also providing for civil damages for unauthorized inspection. Damages are available for unauthorized inspection that occurs either knowingly or by reason of negligence. Accidental or inadvertent inspection that may occur (such as, for example, by making an error in typing in a TIN) would not be subject to damages because it would not meet this standard. The bill also provides that no damages are available to a taxpayer if that taxpayer requested the inspection or disclosure.

The bill also requires that, if any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of section 7213(a) or (b), section 7213A (as added by the bill), or 18 U.S.C. section 1030 (a)(2)(B), the Secretary notify that taxpayer as soon as practicable of the inspection or disclosure.

EFFECTIVE DATE

The bill is effective for violations occurring on or after the date of enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote on the motion to report the bill. The bill (H.R. 1226) was ordered favorably reported, as amended by voice vote on April 9, 1997, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimates

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the estimated budget effects of the bill as reported.

The bill, as reported, is estimated to have an indeterminate revenue effect.

B. Budget Authority and Tax Expenditures

Budget authority

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of

[1] IRS Declaration of Privacy Principles, May 9, 1994.

[2] *U.S.* v. *Czubinski*, DTR 2/25/97, p. K–2.

[3] P.L. 104–294, sec. 201 (October 11, 1996).

[4] Pursuant to 18 U.S.C. sec. 3571 (added by the Sentencing Reform Act of 1984), the amount of the fine is not more than the greater of the amount specified in this new Code section or $100,000.

the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased budget authority.

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following Statement on this bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 11, 1997.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1226, the Taxpayer Browsing Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1226—Taxpayer Browsing Protection Act

H.R. 1226 would ban the authorized inspection of federal tax returns or tax return information. Violators of the bill's provisions would be subject to a criminal fine and imprisonment. In addition, H.R. 1226 would permit taxpayers whose returns are unlawfully inspected to bring a civil action against the United States.

CBO estimates that enacting this legislation would have no significant impact on the federal budget. While the bill could lead to increases in both direct spending and receipts, the amounts involved would be less than $500,000 a year. Because H.R. 1226 could affect direct spending and receipts, pay-as-you-go procedures would apply.

Enacting H.R. 1226 could increase government receipts from criminal fines. Such fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag. In any case, CBO estimates that the criminal fines would likely total less than $500,000 a year.

Enacting this legislation also could increase civil actions by taxpayers against the Internal Revenue Service. Successful litigants would be paid from a permanent, indefinite appropriation for Claims, Judgments, and Relief Acts. CBO estimates that any increase in direct spending from such payments also would total less than $500,000 annually.

H.R. 1226 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not impose costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OFTHE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Committee's oversight activities concerning reports of unauthorized "browsing" of taxpayer's returns and return information by Internal Revenue Service personnel that the Committee concluded that it is appropriate to enact the provisions contained in the bill as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts * * * of the United States").

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the provisions of the bill do not impose a Federal mandate on the private sector nor a Federal intergovernmental mandate. Thus, the provisions of the bill do not affect the competitive balance between the private sector and State, local, and tribal government.

E. APPLICABILITYOF HOUSE RULE XXI5(C)

Rule XXI5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BYTHE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made

by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

INTERNALREVENUE CODE OF 1986

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Subtitle F–Procedure and Administration

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

SubchapterA—Crimes

PART I—GENERALPROVISIONS

Sec. 7201. Attempt to evade or defeat tax.

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Sec. 7213A. Unauthorized inspection of returns or return information.

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SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) RETURNSAND RETURN INFORMATION.—

(1) * * *

(2) STATEAND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), (8), (9), (10), (12), or (15) or (m)(2), (4), *(5),* (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

* * * * * * *

SEC. 7213A. UNAUTHORIZED INSPECTION OF RETURNS OR RETURN INFORMATION.

(a) PROHIBITIONS.—

(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—It shall be unlawful for—

(A) any officer or employee of the United States, or

(B) any person described in section 6103(n) or an officer or employee of any such person,

willfully to inspect, except as authorized in this title, any return or return information.

(2) STATE AND OTHER EMPLOYEES.— It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2).

(b) PENALTY.—

(1) IN GENERAL.—Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) FEDERAL OFFICERS OR EMPLOYEES. — An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) DEFINITIONS.—For purposes of this section, the terms "inspect", "return", and "return information" have the respective meanings given such terms by section 6103(b).

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CHAPTER 76—JUDICIALPROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

Sec. 7421. Prohibition of suits to restrain assessment or collection.

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Sec. 7431. Civil damages for unauthorized *inspection or* disclosure of returns and return information.

* * * * * * *

SEC. 7431. CIVILDAMAGES FOR UNAUTHORIZED *INSPECTION OR* DISCLOSURE O FRETURNS AND RETURN INFORMATION.

(a) IN GENERAL.—

(1) **[**DISCLOSURE**]** *INSPECTION OR DISCLOSURE* BY EMPLOYEE OF UNITED STATES.— If any officer or employee of the United States knowingly, or by reason of negligence, *inspects or* discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) **[**DISCLOSURE**]** *INSPECTION OR DISCLOSURE* BY A PERSON WHO IS NOT AN EMPLOYEE OF UNITED STATES.— If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, *inspects or* discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

[(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.**]**

(b) EXCEPTIONS. —No liability shall arise under this section with respect to any inspection or disclosure—

(1) which results from a good faith, but erroneous, interpretation of section 6103, or

(2) which is requested by the taxpayer.

(c) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) $1,000 for each act of unauthorized *inspection or* disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized *inspection or* disclosure, plus

(ii) in the case of a **[**willful disclosure or a disclosure**]** *willful inspection or disclosure or an inspection or disclosure* which is the result of gross negligence, punitive damages, plus

(2) the costs of the action.

(d) PERIOD FOR BRINGING ACTION.—

Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized *inspection or* disclosure.

[(e) RETURN; RETURN INFORMATION.—For purposes of this section, the terms "return" and "return information" have the respective meanings given such terms in section 6103(b).**]**

(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.— If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of—

(1) paragraph (1) or (2) of section 7213(a),

(2) section 7213A(a), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secre t a ry shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) DEFINITIONS. — For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

[(f)**]** *(g)* EXTENSION TO INFORMATION OBTAINED UNDER SECTION 3406.—For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any *inspection or* use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

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Weighted Average Interest Rate Update

Notice 97–56

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

The average yield on the 30-year Treasury Constant Maturities for September 1997 is 6.50 percent.

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

Month	Year	Weighted Average	90% to 107% Permissible Range	90% to 110% Permissible Range
October	1997	6.83	6.14 to 7.30	6.14 to 7.51

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

Nonbank Trustees and Custodians for Education Individual Retirement Accounts

Notice 97–57

(1) Purpose

This notice informs entities already approved to serve as nonbank trustees and custodians of individual retirement accounts (IRAs) that they are also approved to serve as nonbank trustees and custodians of Education IRAs and provides guidance on the procedures for being approved to be a nonbank trustee or custodian of an Education IRA.

(2) Education IRAs

Section 530 of the Internal Revenue Code, added by section 213 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, provides a new type of tax-free savings vehicle for higher education expenses, called an Education Individual Retirement Account (Education IRA). A total amount of $500 per year may be contributed to Education IRAs for any beneficiary under the age of 18 years. To contribute the maximum of $500 for a beneficiary, a contributor must have adjusted gross income for the year not exceeding $95,000 ($150,000 for joint returns). The $500 maximum permitted contribution is phased out for contributors with adjusted gross income between $95,000 and $110,000 ($150,000 and $160,000 for joint returns). Education IRAs may be established in taxable years beginning after 1997.

(3) Approval of nonbank trustees and custodians

Under section 530 of the Code, the trustee or custodian of an Education IRA must be a bank (as defined in section 408(n) of the Code) or another person approved by the Internal Revenue Service. Section 1.408–2(e) of the Income Tax Regulations sets forth the rules which an entity must meet to be approved by the Service as a nonbank trustee or custodian of an individual retirement account (IRA). Pursuant to this notice, any entity already approved by the Service to be a nonbank trustee or custodian of an IRA is automatically approved by the Service to be a nonbank trustee or custodian of an Education IRA. In addition, entities other than banks or previously approved nonbank IRA trustees or custodians may request approval to be a trustee or custodian of an Education IRA in accordance with the procedures set forth in section 1.408–2(e) and section 3.10 of Rev. Proc. 97-4, 1997–1 I.R.B. 97, dated January 6, 1997.

(4) Drafting information

The principal author of this notice is William Gibbs of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information concerning who may be a nonbank trustee for Education IRAs, contact Mr. Gibbs at (202) 622-6030 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, § 1362; 1.1362–6.)

Rev. Proc. 97–48

SECTION 1. PURPOSE

This revenue procedure grants automatic relief under § 1362(b)(5) of the Internal Revenue Code for certain late S corporation elections.

SECTION 2. BACKGROUND

Section 1361(a)(1) defines an "S corporation," with respect to any taxable year, as a small business corporation for which an S election is in effect for that year.

Section 1362(a)(1) provides that, except in a situation described in § 1362(g), a small business corporation may elect to be treated as an S corporation.

Section 1362(b)(1) provides that the corporation may make an election to be treated as an S corporation (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year. Under § 1362(b)(3), if an S corporation election is made for a taxable year after the 15th day of the 3rd month of that taxable year and on or before the 15th day of the 3rd month of the following taxable year, then the S corporation election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for

any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the taxable year or no election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

SECTION 3. SCOPE

This revenue procedure provides special procedures to obtain relief for certain late S corporation elections. The revenue procedure only applies to the following two situations:

(1) A corporation intends to be an S corporation, the corporation and its shareholders reported their income consistent with S corporation status for the taxable year the S corporation election should have been made and for every subsequent year, and the corporation did not receive notification from the Service regarding any problem with the S corporation status within 6 months of the date on which the Form 1120S for the first year was timely filed; and

(2) For periods prior to January 1, 1997, a corporation intends to be an S corporation; however, due to a late S corporation election the corporation was not permitted to be an S corporation for the first taxable year specified in the election (because late S corporation election relief was not available during this period), the corporation and the shareholders treated the corporation as an S corporation for all succeeding years, and all relevant taxable years for both the corporation and all of its shareholders are open.

This revenue procedure does not provide relief for late shareholder elections including a qualified subchapter S trust (QSST) election or electing small business trust (ESBT) election.

The procedures in this revenue procedure are in lieu of the letter ruling procedure that is used to obtain relief for a late S corporation election under § 1362(b)(5). Accordingly, user fees do not apply to corrective action under this revenue procedure.

Acorporation that is not eligible for relief under this revenue procedure may request relief by applying for a private letter ruling. The Service will not ordinarily issue a private letter ruling under § 1362(b)(5) if the period of limitations on assessment under § 6501(a) has lapsed for any taxable year in which an election should have been made or any taxable year that would have been affected by the election had it been timely made. The procedural requirements for requesting a private letter ruling are described in Rev. Proc. 97–1, 1997–1 I.R.B. 11 (or its successor). See, also, Rev. Proc. 97–40, 1997–33 I.R.B. 50, for the special procedure to request relief for late S corporation elections that are filed within 6 months of the original due date of the election.

SECTION 4. AUTOMATIC RELIEF FOR LATE S CORPORATION ELECTIONS UNDER THIS REVENUE PROCEDURE

.01 *Situation 1: Automatic Relief Where Return Filed as an S Corporation.*

(1) *Eligibility for Automatic Relief.* Automatic relief is available in situation 1 if all of the following conditions are met:

(a) The corporation fails to qualify as an S corporation solely because the Form 2553 (Election by a Small Business Corporation) was not filed timely;

(b) The corporation and all of its shareholders reported their income consistent with S corporation status for the year the S corporation election should have been made, and for every subsequent taxable year (if any);

(c) At least 6 months have elapsed since the date on which the corporation filed its tax return for the first year the corporation intended to be an S corporation; and

(d) Neither the corporation nor any of its shareholders was notified by the Internal Revenue Service of any problem regarding the S corporation status within 6 months of the date on which the Form 1120S for the first year was timely filed.

(2) *Procedural Requirements for Automatic Relief.* The corporation must file with the applicable service center (or district director if under examination) a completed Form 2553, signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation. The Form 2553 must state at the top of the document "FILED PURSUANTTO REV. PROC. 97–48." Attached to the Form 2553 must be a dated declaration signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation, attesting (but, in the case of a shareholder, only with respect to that shareholder) that:

(a) the corporation and the shareholder reported their income (on all affected returns) consistent with S corporation status for the year the S corporation election should have been made, and for every subsequent taxable year; and

(b) "Under penalties of perjury, to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete."

.02 *Situation 2: Automatic Relief Where First Intended S Corporation Year Filed as a C Corporation.*

(1) *Eligibility for Automatic Relief.* Automatic relief is available in situation 2 if all of the following conditions are met:

(a) The corporation fails to qualify as an S corporation solely because the Form 2553 (Election by a Small Business Corporation) was not filed timely for a taxable year that began prior to January 1, 1997;

(b) The corporation received notification from the Service that the Form 2553 was not filed timely, that the corporation must file as a C corporation for the first taxable year the corporation intended to be an S corporation, and that the election would be treated as an S corporation election for the following taxable year;

(c) The corporation and all of its shareholders reported their income (if any) properly treating the corporation as a C corporation for the first taxable year the corporation intended to be an S corporation;

(d) The corporation and all of its shareholders reported their income consistent with S corporation status for all subsequent years;

(e) The period of limitations on assessment under § 6501(a) has not lapsed for any of the taxable years of the corporation beginning on or after the date the corporation intended to be taxable as an S corporation; and

(f) The period of limitations on assessment under § 6501(a) has not lapsed for any taxable year of any of the corporation's shareholders in which any taxable

year described in paragraph (e) above ends.

(2) *Procedural Requirements for Automatic Relief.* The corporation must file with the applicable service center (or district director if under examination) a completed Form 2553, signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation. The Form 2553 must state at the top of the document "FILED PURSUANTTO REV. PROC. 97–48." Attached to the Form 2553 must be a dated declaration signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation, attesting (but, in the case of a shareholder, only with respect to that shareholder) that:

(a) the corporation and the shareholder reported their income (on all affected returns) consistent with the requirements for automatic relief under section 4.02 of this revenue procedure;

(b) the corporation and the shareholder agree to amend their tax returns for the first year and any other affected returns to reflect S corporation status; and

(c) "Under penalties of perjury, to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete."

.03 *Relief for Late S Corporation Elections.* A corporation that satisfies the requirements of either section 4.01 or 4.02 of this revenue procedure will be deemed to have reasonable cause for the failure to file a timely S corporation election and will automatically be granted relief to file the election for S corporation status to commence on the date that it intended to have the S corporation election become effective. The Service will notify the corporation of the acceptance of its untimely filed S corporation election under this revenue procedure, or the denial of a request that fails to satisfy the requirements of this revenue procedure.

.04 *Deemed Shareholders.* Any reference in this revenue procedure to a shareholder of an S corporation shall be treated as including a reference to those persons whose consent is required under § 1.1362–6(b) of the Income Tax Regulations.

SECTION 5. EXAMPLES

.01 *S corporation return filed and no notification from the Service. A, B,* and *C* formed *X* corporation on January 1, 1996. *X* intended to file an S corporation election; however, *X* did not file a timely Form 2553 (Election by a Small Business Corporation). On March 13, 1997, *X* files a Form 1120S (S corporation income tax return) for the 1996 taxable year, and *A, B,* and *C* file their individual tax returns as if *X* were an S corporation. In November 1997, *X* realizes that an S corporation election was not timely filed. Neither *X* nor its shareholders received any notification from the Service of any problem regarding the S corporation status of *X*. In this case, the shareholders and *X* meet the requirements of section 4.01 of this revenue procedure. Consequently, *X* will be granted automatic late S corporation election relief if *A, B, C,* and *X* file a request for relief in accordance with the procedures described in this revenue procedure.

.02 *C corporation return for first year. A* formed *X* corporation on January 1, 1990. *X* intended to file an S corporation election effective as of January 1, 1995; however, *X* did not file a Form 2553 (Election by a Small Business Corporation) until May 5, 1995. On June 15, 1995, *X* received a letter from the Service notifying *X* that its S corporation election was denied for the 1995 taxable year because the S corporation election was not timely filed, and that the election would be treated as effective for the 1996 taxable year. *X* filed a Form 1120 (C corporation income tax return) for the 1995 taxable year and *A* filed the individual tax return for 1995 as if *X* were a C corporation. For the 1996 taxable year, *X* filed a Form 1120S (S corporation income tax return) and *A* filed the individual tax return as if *X* were an S corporation. The period of limitations on assessment under § 6501(a) has not lapsed for either the 1995 or the 1996 taxable years for either *X* or for *A*. In this case, *A* and *X* meet the requirements of section 4.02 of this revenue procedure. Consequently, *X* will be granted automatic late S corporation election relief if *X* and *A* file a request for relief in accordance with the procedures described in this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for all applications for relief satisfying the requirements of section 4 of this revenue procedure, including those applications now being considered by the Service.

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1562.

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.

The collection of information in this revenue procedure is in Sections 4.01(2) and 4.02(2). This information is required to be submitted to the applicable service center in order to obtain relief for late S corporation elections. This information will be used to satisfy the reasonable cause requirement in § 1362(b)(5). The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 100 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 100.

The estimated annual frequency of responses is once.

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.

DRAFTING INFORMATION

The principal author of this revenue procedure is Mark D. Harris of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Harris at (202) 622-3050 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters. (Also §§ 1502; 1.1502–13.)

Rev. Proc. 97–49

SECTION 1. PURPOSE

This revenue procedure provides the procedures by which a taxpayer may (1) obtain the consent of the Internal Revenue Service (the "Service") to treat some or all intercompany transactions on a separate entity basis under § 1.1502–13(e)(3) of the Income Tax Regulations, (2) revoke such consent, or have such consent revoked by the Service, and (3) obtain the Service's consent to change from separate entity reporting to single entity reporting where a valid consent from the Service to report intercompany transactions on a separate entity basis was not previously obtained.

This revenue procedure modifies and supersedes Rev. Proc. 82–36, 1982–1 C.B. 490.

SECTION 2. BACKGROUND

.01 The consolidated return regulations generally require that intercompany transactions be treated in a manner that produces the effect of transactions between divisions of a single corporation (that is, the regulations treat intercompany transactions on a "single entity basis"). The single entity approach for intercompany transactions is an integral part of the overall tax treatment of affiliated groups filing consolidated returns ("consolidated groups") under § 1502 of the Internal Revenue Code. Treating intercompany transactions on a single entity basis is required to clearly reflect consolidated taxable income ("CTI"). However, in certain circumstances, the Service may exercise discretion and grant consent, under § 1.1502–13(e)(3), to a consolidated group to treat some or all intercompany transactions (other than intercompany transactions with respect to stock or obligations of members of a consolidated group) on a separate entity basis (that is, without the application of § 1.1502–13). Consent under § 1.1502–13(e)(3) may require changes in the methods of accounting for intercompany transactions of members of a consolidated group.

.02 Section 4 sets forth the time and manner in which requests for consent under § 1.1502–13(e)(3) must be filed.

.03 Section 5 provides a checklist which is similar to the checklist set forth in Rev. Proc. 82–36 to facilitate the filing and handling of requests under § 1.1502–13(e)(3) by specifying the information that should be included so that applications will be as complete as possible when originally filed. However, because the information necessary to rule on a particular case depends upon all the facts and circumstances, information in addition to that listed in this revenue procedure may be requested by the Service prior to determining whether consent will be granted.

.04 Section 6 sets forth certain factors and guidelines used by the Service in considering requests for consent under § 1.1502–13(e)(3).

.05 Section 7 sets forth the effect of receiving the Service's consent under § 1.1502–13(e)(3).

.06 Section 8 describes the procedures applicable to the revocation of consent under § 1.1502–13(e)(3). Section 8 provides that consent will generally not be revoked simply because the effect of the consent causes a substantial increase or decrease in CTI in any one taxable year. When consent was granted under Rev. Proc. 82–36, the Service typically stated in the ruling letter that the consent would be revoked whenever the effect of the consent would cause a substantial increase or decrease in CTI.

.07 Section 9 sets forth the manner in which requests for consent to change from separate entity reporting to single entity reporting must be filed in cases where a valid consent from the Service to report intercompany transactions on a separate entity basis was not previously obtained.

.08 The authority and general procedures with respect to the issuance of advance rulings are set forth in Rev. Proc. 97–1, 1997–1 I.R.B. 11, or its successor, and are applicable to requests under § 1.1502–13(e)(3).

SECTION 3. APPLICABILITY

This revenue procedure applies to (1) all requests to obtain the Service's consent to treat some or all intercompany transactions on a separate entity basis under § 1.1502–13(e)(3), (2) all revocations of such consent, whether the revocation is made by the consolidated group or by the Service, and (3) all requests to obtain the Service's consent to change from separate entity reporting to single entity reporting in cases where a valid consent from the Service to report intercompany transactions on a separate entity basis was not previously obtained.

SECTION 4. TIME AND MANNER IN WHICH REQUESTS FOR CONSENT UNDER § 1.1502–13(e)(3) MUST BE FILED

.01 Requests for consent under § 1.1502–13(e)(3) must be filed with the Service on or before the due date of the consolidated return (not including extensions of time) for the first taxable year for which the consent would apply (the "consent year"). These requests for consent must be submitted as a private letter ruling request pursuant to Rev. Proc. 97–1, or its successor. All applicable items of information listed in Section 5 must be included in the request.

.02 The filing requirement of § 1.1502–13(e)(3) will be deemed satisfied where the request for consent is timely filed with the Service and contains all available information. The request must provide an explanation of any omitted information, and state that the omitted information will be submitted not later than the earlier of the following two dates: (1) 90 days after the original due date of the return, or (2) the date the consolidated return is filed with the Service Center.

SECTION 5. INFORMATION TO BE INCLUDED IN REQUESTS FOR CONSENT UNDER § 1.1502–13(e)(3)

.01 Each of the items of information requested in this Section 5 must be addressed in the request for consent under § 1.1502–13(e)(3). If an item is not applicable, the letters "N.A." should be inserted after that item. The presentation of the information should follow the format of this revenue procedure as closely as possible.

.02 Information needed in order to make a determination regarding a request for consent to treat some or all intercompany transactions on a separate entity basis:

1. The date the consolidated group elected to file consolidated returns.

2. The taxable year used by the consolidated group.

3. A calculation of the difference, for the consent year and for each of the two

taxable years preceding the consent year, between (a) CTI computed by treating all intercompany transactions on a single entity basis and (b) CTI computed by treating those intercompany transactions for which consent is requested, and those intercompany transactions for which consent has previously been obtained, on a separate entity basis. For any taxable year, the percentage difference between (a) and (b) in the preceding sentence is hereinafter referred to as the "Effect on CTI."

4. An analysis of all intercompany transactions for the consent year and for each of the two taxable years preceding the consent year. This analysis must include the number and a description of all intercompany transactions and the dollar amounts thereof.

5. An analysis of the effect of treating those intercompany transactions for which consent is requested on a separate entity basis on the following items for the consent year:

(a) Net operating loss carryovers.

(b) Capital loss carryovers.

(c) Tax credits (for example, foreign tax credits) in the consent year as well as carryovers to the consent year.

With respect to any carryovers referred to in items (a) through (c) above, the analysis should include amounts for each of the carryover years and the date the losses or credits expire.

6. An analysis of whether any sales of property for which consent is requested between members of the consolidated group that would be depreciable or depletable property in the hands of the buying member would result in long-term capital gain to the selling member, taking into account the provisions of §§ 1239, 1245, and 1250, relating to gain from dispositions of certain depreciable property or certain depreciable realty.

7. An analysis of whether any of the members involved in those intercompany transactions for which consent is requested are subject to the separate return limitation year rules or the change of ownership rules under §§ 382 or 383, and a calculation of any amounts subject to limitation under those rules.

8. A description of the type or types of property to which the consent would apply.

9. An analysis of the frequency of those intercompany transactions for which consent is requested, whether they occur in the ordinary course of the consolidated group's business, and whether the amounts or prices charged in connection with these intercompany transactions are for fair market value based on arm's - length bargaining, providing examples thereof. Also include a discussion of whether gains from these intercompany transactions have resulted from arm's length charges or prices.

10. An explanation as to why the consent is being requested, why the consolidated group believes it should not be required to treat these intercompany transactions on a single entity basis, and how treating such transactions on a separate entity basis will clearly reflect CTI under § 446.

SECTION 6. FACTORS AND GUIDELINES USED BYTHE SERVICE IN CONSIDERING REQUESTS FOR CONSENT UNDER § 1.1502–13(e)(3)

.01 Whether it is difficult for the consolidated group to account for those intercompany transactions for which consent is requested when they are treated on a single entity basis and, if so, why it is difficult to do so.

.02 Whether the Effect on CTI for the consent year or the average of the Effect on CTI for the consent year and each of the preceding two taxable years is greater than 10 percent. Consent under § 1.1502–13(e)(3) will not be granted in cases where either (a) the Effect on CTI is greater than 10 percent for the consent year or (b) the average of the Effect on CTI for the consent year and each of the two preceding taxable years is greater than 10 percent. However, consent will generally be granted in cases where (a) the Effect on CTI is less than 10 percent for the consent year and (b) the average of the Effect on CTI for the consent year and each of the two preceding taxable years is less than 10 percent.

.03 Whether the consolidated group will secure the benefit of any deduction, credit, or other allowance that it would not otherwise secure if consent to treat those intercompany transactions for which consent is requested on a separate entity basis were not granted.

.04 Whether the gains that are the subject of the consent to treat intercompany transactions on a separate entity basis have resulted from arm's-length charg e s or prices.

SECTION 7. EFFECT OF THE CONSENT UNDER § 1.1502–13(e)(3)

.01 A consent under § 1.1502–13(e)(3) shall, unless revoked pursuant to Section 8, apply to all members of the consolidated group for the consent year and all subsequent taxable years ending prior to the first taxable year for which the group does not file a consolidated return.

.02 Section 446(e) consent is granted under § 1.1502–13(e)(3)(iii) for any changes in methods of accounting for intercompany transactions that are necessary solely to conform a member's methods to a consent obtained pursuant to this revenue procedure, provided the changes are made in the consent year. Any such changes in methods are effected on a cut-off basis (that is, no § 481(a) adjustment will be made). For any subsequent taxable year, § 446(e) consent must be separately requested under applicable administrative procedures if a member has failed to conform its accounting practices to the treatment of intercompany transactions required as a result of obtaining a consent pursuant to this revenue procedure. *See* R e v. Proc. 97–27, 1997–21 I.R.B. 10, or its successor. Any such changes in methods are effected on a cut-off basis (that is, no § 481(a) adjustment will be made).

.03 A consent shall not preclude the application of § 482 to members of a consolidated group.

.04 A consent granted under § 1.1502–13(e)(3) to treat intercompany transactions on a separate entity basis does not apply for purposes of taking into account losses and deductions deferred under § 267(f).

SECTION 8. REVOCATION OF CONSENT UNDER § 1.1502–13(e)(3)

.01 Consent to treat intercompany transactions on a separate entity basis under § 1.1502–13(e)(3) is revoked automatically for any taxable year in which the Effect on CTI, when averaged with the Effect on CTI for each of the two preceding taxable years, is greater than 10 percent. The consolidated group must attach a statement to its original return for the taxable year in which the consent is revoked, indicating that the consent under

§ 1.1502–13(e)(3) has been revoked pursuant to this Section 8.01.

.02 The Service's consent under § 1.1502–13(e)(3) is granted for any consolidated group to revoke a valid consent received from the Service under § 1.1502–13(e)(3) to treat intercompany transactions on a separate entity basis, and thus treat intercompany transactions on a single entity basis, provided a statement is attached to the consolidated group's original return for the taxable year in which the revocation is to be effective indicating its revocation of the consent pursuant to this Section 8.02. In cases where a valid consent from the Service to report intercompany transactions on a separate entity basis was not previously obtained and the consolidated group wants to change from separate entity reporting to single entity reporting, see Section 9.

.03 Notwithstanding that the Service has granted consent under § 1.1502–13(e)(3) and that such consent has not been revoked pursuant to Section 8.01 or 8.02, the district director may, upon examination of tax returns for years subsequent to the consent year, recommend that the ruling granting such consent be modified or revoked if the conditions and circumstances under which the ruling was granted have changed substantially and it is determined that single entity reporting is necessary in order to clearly reflect CTI under § 446. If the district director recommends that the ruling granting such consent be modified or revoked, the district director will forward the matter to the national office for consideration before any further action is taken. Such a referral to the national office will be treated as a request for technical advice, and the provisions of Rev. Proc. 97–2, 1997–1 I.R.B. 64, or its successor, will be followed.

.04 When consent under § 1.1502–13(e)(3) is revoked pursuant to Section 8.01, 8.02 or 8.03, each member of the consolidated group must report those intercompany transactions for which consent has been revoked on a single entity basis for the taxable year of the revocation and all subsequent taxable years (ending prior to the first taxable year for which the group does not file a consolidated return) unless consent is received pursuant to a new request submitted under Section 4.

.05 Section 446(e) consent is granted under § 1.1502–13(e)(3)(iii) for any changes in methods of accounting for intercompany transactions that are necessary solely to conform a member's methods to a revocation of consent made pursuant to this revenue procedure, provided the changes are made in the taxable year for which the revocation is made. Any such changes in methods are effected on a cut-off basis (that is, no § 481(a) adjustment will be made). For any subsequent taxable year, § 446(e) consent must be separately requested under applicable administrative procedures if a member has failed to conform its accounting practices to the treatment of intercompany transactions required as a result of a revocation made pursuant to this revenue procedure. *See* Rev. Proc. 97–27, or its successor. Any such changes in methods are effected on a cut-off basis (that is, no § 481(a) adjustment will be made).

SECTION 9. REQUESTS FOR CONSENTTO CHANGE FROM SEPARATE ENTITYREPORTING TO SINGLE ENTITY REPORTING IN CASES WHERE AVALID CONSENT FROM THE SERVICE TO REPORT INTERCOMPANY TRANSACTIONS ON ASEPARATE ENTITY BASIS WAS NOT PREVIOUSLY OBTAINED

The Service's consent under § 446(e) to change from separate entity reporting to single entity reporting must be separately requested under applicable administrative procedures in cases where a valid consent from the Service to report intercompany transactions on a separate entity basis was not previously obtained. *See* Rev. Proc. 97–27, or its successor. Any such changes in methods of accounting are effected on a cut-off basis (that is, no § 481(a) adjustment will be made).

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 82–36 is modified and superseded.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective October 27, 1997, the date it is published in the Internal Revenue Bulletin.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Jeffrey L. Vogel and Michael J. Wilder of the Office of Assistant Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Jeffrey L. Vogel or Michael J. Wilder at (202) 622-7770 (not a toll-free call).

Part IV. Items of General Interest

Rev. Proc. 97–46, Correction

Announcement 97–107

On September 30, 1997, the Internal Revenue Service released Rev. Proc. 97–46, which sets forth a list of "rural airports" as that term is defined in § 4261(e)(1)(B) of the Internal Revenue Code. This list was based on information provided by the Office of Airline Information at the Department of Transportation (DOT). Subsequent to that time, DOT determined that Mitchell Municipal Airport (MHE), located in Mitchell, South Dakota, does not qualify as a rural airport.

Rev. Proc. 97–46 will be published on October 20, 1997, in Internal Revenue Bulletin 1997–42. The list of rural airports contained in the Bulletin will not include Mitchell Municipal Airport (MHE).

For amounts paid for transportation segments beginning or ending at Mitchell Municipal Airport (MHE), taxpayers may rely on Rev. Proc. 97–46 as released to the tax services by the Service on September 30, 1997. Thus, amounts paid between October 1, 1997, and October 20, 1997, for transportation segments beginning or ending at Mitchell Municipal Airport (MHE) are subject to tax at the 7.5 percent rate and are not subject to the segment tax.

The principal author of this announcement is Patrick S. Kirwan of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this announcement contact Mr. Kirwan at 202-622-3130 (not a toll-free call).

Foundations Status of Certain Organizations

Announcement 97–108

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Aleut Foundation, Anchorage, AK
American Friends of Beth Asher, Brooklyn, NY
American Friends of Children, Inc., New York, NY
American Friends of Mesorot Yisroel of Haifa, Inc., Brooklyn, NY
American Graphic Arts Museum, Inc., Pittsfield, MA
Andover Foundation Inc., Andover, OH
Arthur M. Handy Scholarship Fund, Catumet, MA
Blessings, Schenectady, NY
Camp Phoenix Partnership, Inc., Providence, RI
Caroling Angels, Inc., Charlestown, RI
Changing Our Minds, Inc., New York, NY
Chester Housing, Inc., Chester, CT
Children Afflicted by Toxic Substances Foundation, Inc., Hauppauge, NY
Christian Computer Community Corporation, Glen Burnie, MD
Cranford Housing II Inc., Cranford, NJ
Crime Victims Assistance Center of New York, Inc., New York, NY
David Prouty H.S. Permanent Scholarship Fund, Spenser, MA
Delta Epsilon Kappa, Inc. Accounting Honor Society, Montgomery, AL
Dreamers, Inc., Cambridge, MA
Echo Lake Wild Life Rehab, Inc., Presque Isle, ME
Enchanted Rain Forest Inc., Lavernia, TX
Fond du Lac Area Congregations United and Strong, Fond du Lac, WI
Friends of Chosen Mishpat, Inc., Brooklyn, NY
Friends of Cranberry Lake Preserve, Inc., Rye, NY
Friends of Douai, Haverford, PA
Hamptons International Film Festival, Inc., East Hampton, NY
Impact 90s, Inc., Memphis, TN
Institution of Torah & Charity of Haifa, Inc., Brooklyn, NY
Margalit Chana Rappaport Childrens Library, New Hempstead, NY
Marthas Vineyards Pop Warner Football, Edgartown, MA
Martin House Restoration Corporation, Buffalo, NY
Mascom Express, Lebanon, NH
Massachusetts Toxics Campaign Fund, Inc., Cambridge, MA
Matt Talbot Retreat Movement Group 20, Inc., Forest Hills, NY
Maynard Food Pantry, Inc., Maynard, MA
Mechtech of New Hampshire, Inc., Nashua, NH
Metropolitan Black Bar Association Scholarship Fund, Inc., Brooklyn, NY
Mianus River Historical Society, Inc., Stamford, CT
Minority Parents Organization, Bayshore, NY
Mitch Nathanson Classic Memorial Scholarship Fund Charitable Trust, Manchester, NH
Monrovia Resources Development Corporation, Pasadena, CA
Mount Alverno Residence Corporation, Warwick, NY
Mt. Greylock Babe Ruth League, Inc., Williamstown, MA
Mt. Tom School, Woodstock, VT
Musical Explorations Society, Inc., New York, NY
Musical Reflections of America, Inc., Syracuse, NY
Narragansett Housing Development Fund, Corp., New York, NY
National Coalition for Child Protection Reform, Cambridge, MA
National Progressive Institute for Community Development Inc., Chicago, IL
New Hampshire Peer Helpers Association, Goffstown, NH
New World Media Alliance, Inc., New York, NY
Nihon Ki-In America, Inc., New York, NY
Nokomis Rainbow Services Inc., Ukiah, CA
Pathfinders for Positive Parenting and Nurturing of the Black Family, Birmingham, AL
Police Athletic League of Newark and Licking County Ohio Inc., Newark, OH
Prison Life Foundation, Inc., New York, NY
Ronald O. Rogers, Jamaica, NY

Shrewsbury Boosters Association, Inc., Shrewsbury, MA

The Stewardship Community Fund Inc., Boston, MA

Stillhouse Trestle Corporation, Danville, VA

Tov Lakol, Inc., Brooklyn, NY

Training Connecticut, Inc., Needham, MA

21st Century Networking, Greensburg, PA

Vermont Entological Society, South Burlington, VT

Women and Family Counseling Services Inc., E. Lansing, MI

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Ta x Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Booker, William G.	Winston-Salem, NC	CPA	Indefinite from June 12, 1997
Acevado, Gustavo	Laredo, TX	Attorney	Indefinite from July 23, 1997
Piotti, Wayne H.	Homer, NY	CPA	Indefinite from July 23, 1997
Burley, Franklin R.	Monroe, LA	CPA	Indefinite from July 23, 1997
Kent, William F.	Winston-Salem, NC	CPA	Indefinite from July 23, 1997
Levine, Jack	Phoenix, AZ	Attorney	Indefinite from July 23, 1997
Kapral, Stephen M.	Richmond, VA	Attorney	Indefinite from July 23, 1997
Bell, Abraham E.	St. Louis, MO	CPA	Indefinite from July 30, 1997
Jackson, Paul	Burley, ID	CPA	Indefinite from September 11, 1997
Clay, Henry	New York, NY	Attorney	Indefinite from September 11, 1997
Cooley, Donald	Springfield, MO	Attorney	Indefinite from September 11, 1997
Duke, Charla R.	Oakland, CA	Attorney	Indefinite from September 11, 1997
Devins, George	Munsey Park, NY	CPA	Indefinite from September 11, 1997
Williams, Ronald A.	Doylestown, PA	Enrolled Agent	Indefinite from September 11, 1997

Announcement of the Consent Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been

suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Weksler, Mark R.	Arlington Heights, IL	CPA	June 16, 1997 to June 15, 2000
Womble, Bill R.	Dallas, TX	Attorney	Indefinite from June 19, 1997
Robinson II, Vaughn	Midland, TX	CPA	Indefinite from June 19, 1997
Kim, Kwang W.	Schaumburg, IL	CPA	June 30, 1997 to December 29, 1997
Tymas, George M.	Russellton, PA	CPA	July 1, 1997 to February 28, 1999
Rattet, Robert L.	New Rochelle, NY	Attorney	July 26, 1997 to June 25, 1998
Noles, R. Leon	N. Little Rock, AR	CPA	July 30, 1997 to October 29, 1997
Harbin, Glenn E.	Bakersfield, CA	CPA	July 31, 1997 to December 30, 1998
Harms, John G.	Lemont, PA	CPA	August 1, 1997 to November 30, 1997
Lewis, Craig S.	Savannah, GA	CPA	August 1, 1997 to July 31, 1998
Terranova, Michael P.	Lake Charles, LA	CPA	August 7, 1997 to May 6, 1998
Frantz, Barbara A.	Pontiac, IL	Attorney	August 8, 1997 to July 31, 1999
Smith, Glen L.	Edina, MN	Attorney	August 9, 1997 to November 8, 1997
Bayus Sr., Gerald A.	Hubbard, OH	CPA	August 11, 1997 to July 10, 1998
Winton, D. Michael	Clovis, NM	Enrolled Agent	August 15, 1997 to November 14, 1997
McNabb, Gerald	White Bear, MN	Attorney	August 22, 1997 to January 21, 2000
Ness, Stanley L.	Minneapolis, MN	CPA	August 25, 1997 to February 24, 1998
Culmer, Thomas A.	Devils Lake, ND	CPA	September 1, 1997 to November 30, 1997
Ziskind, Sherman	Dunlevy, PA	CPA	September 1, 1997 to February 28, 1999
Huston, James L.	Kingman, AZ	CPA	September 1, 1997 to December 31, 1997
Fulthorpe, Douglas R.	St. Petersburg, FL	CPA	September 1, 1997 to August 30, 1998
Suszko, Richard J.	La Mesa, CA	Enrolled Agent	September 1, 1997 to August 31, 1999
Bromagen, Kent E.	Dayton, OH	CPA	September 1, 1997 to February 28, 2000
Shawhan, David W.	Xenia, OH	CPA	September 1, 1997 to August 31, 1999
Kennedy Jr., Joseph	Santa Barbara, CA	Enrolled Agent	September 1, 1997 to May 31, 1998
Brummet, Richard E.	Hinsdale, IL	CPA	September 3, 1997 to January 2, 1998
Pollard, E. Dwain	Idabell, OK	CPA	September 4, 1997 to August 3, 1999
Tamminga, Roland R.	Belmont, NH	Attorney	September 5, 1997 to December 4, 1997
Ayala, Simon	Oxnard, CA	Enrolled Agent	Indefinite from September 19, 1997
Balmer, Alan J.	Fairfield, IA	CPA	September 30, 1997 to August 29, 1999
Fox, Eugene	Rockville Centre, NY	CPA	October 1, 1997 to March 31, 1998
Sanford, Paul L.	Avon, CT	CPA	November 1, 1997 to July 31, 1997
Glemann, Richard P.	Jacksonville Beach, FL	CPA	November 1, 1997 to October 31, 1999
Rubey, Patrick J.	Chicago, IL	CPA	November 1, 1997 to January 31, 1999
Coverdale Jr., Alphonso	Philadelphia, PA	Enrolled Agent	December 1, 1997 to November 30, 2000

Announcement of the Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents, or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been disbarred or suspended from such practice, their designation as attorney, certified public accountant, enrolled agent, or enrolled actuary, and date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been suspended from further practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Makos, Deborah	Green Bay, WI	Enrolled Agent	June 20, 1997 to May 19, 2000
Friberg, John P.	Milwaukee, WI	CPA	July 20, 1997 to June 19, 2001

Announcement of the Disbarment of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents, or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

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After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Hoyt III, Walter J.	Burns, OR	Enrolled Agent	July 13, 1997
Lu, John S.	New York, NY	Enrolled Agent	July 21, 1997
McCue, William T.	Glen Rock, NJ	Attorney	July 21, 1997
Foster, Dennis S.	Pittsburgh, PA	CPA	September 8, 1997

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 1997–27 through 1997–42

Announcements:

97–61, 1997–29 I.R.B. *13*
97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*
97–70, 1997–29 I.R.B. *14*
97–71, 1997–29 I.R.B. *15*
97–72, 1997–29 I.R.B. *15*
97–73, 1997–30 I.R.B. *86*
97–74, 1997–31 I.R.B. *16*
97–75, 1997–32 I.R.B. *28*
97–76, 1997–32 I.R.B. *28*
97–77, 1997–33 I.R.B. *58*
97–78, 1997–34 I.R.B. *11*
97–79, 1997–35 I.R.B. *8*
97–80, 1997–34 I.R.B. *12*
97–81, 1997–34 I.R.B. *12*
97–82, 1997–34 I.R.B. *12*
97–83, 1997–34 I.R.B. *13*
97–84, 1997–34 I.R.B. *13*
97–85, 1997–35 I.R.B. *8*
97–86, 1997–35 I.R.B. *9*
97–87, 1997–35 I.R.B. *9*
97–88, 1997–35 I.R.B. *9*
97–89, 1997–36 I.R.B. *10*
97–90, 1997–36 I.R.B. *10*
97–91, 1997–37 I.R.B. *25*
97–92, 1997–37 I.R.B. *26*
97–93, 1997–36 I.R.B. *11*
97–94, 1997–36 I.R.B. *12*
97–95, 1997–36 I.R.B. *12*
97–96, 1997–39 I.R.B. *15*
97–97, 1997–38 I.R.B. *22*
97–98, 1997–39 I.R.B. *15*
97–99, 1997–40 I.R.B. *7*
97–100, 1997–40 I.R.B. *8*
97–101, 1997–41 I.R.B. *13*
97–102, 1997–41 I.R.B. *15*
97–103, 1997–41 I.R.B. *16*
97–104, 1997–42 I.R.B. *39*
97–105, 1997–42 I.R.B. *40*

Court Decisions:

2061, 1997–31 I.R.B. *5*
2062, 1997–32 I.R.B. *8*

Delegation Orders:

97 (Rev. 34), 1997–41 I.R.B. *14*
172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*
97–42, 1997–29 I.R.B. *12*
97–43, 1997–30 I.R.B. *9*
97–44, 1997–31 I.R.B. *15*
97–45, 1997–33 I.R.B. *7*
97–46, 1997–34 I.R.B. *10*
97–47, 1997–35 I.R.B. *5*
97–48, 1997–35 I.R.B. *5*
97–49, 1997–36 I.R.B. *8*
97–50, 1997–37 I.R.B. *21*
97–51, 1997–38 I.R.B. *20*

Notices–Continued

97–52, 1997–38 I.R.B. *20*
97–53, 1997–40 I.R.B. *6*
97–54, 1997–41 I.R.B. *7*
97–55, 1997–40 I.R.B. *6*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Proposed Regulations:

REG–104893–97, 1997–29 I.R.B. *13*
REG–105160–97, 1997–37 I.R.B. *22*
REG–106043–97, 1997–37 I.R.B. *24*
REG–107644–97, 1997–32 I.R.B. *24*
REG–208151–91, 1997–38 I.R.B. *21*
REG–246250–96, 1997–42 I.R.B. *30*

Revenue Procedures:

97–32, 1997–27 I.R.B. *9*
97–32A, 1997–34 I.R.B. *10*
97–33, 1997–30 I.R.B. *10*
97–34, 1997–30 I.R.B. *14*
97–35, 1997–33 I.R.B. *11*
97–36, 1997–33 I.R.B. *14*
97–37, 1997–33 I.R.B. *18*
97–38, 1997–33 I.R.B. *43*
97–39, 1997–33 I.R.B. *48*
97–40, 1997–33 I.R.B. *50*
97–41, 1997–33 I.R.B. *5*
97–42, 1997–33 I.R.B. *57*
97–43, 1997–39 I.R.B. *12*
97–44, 1997–41 I.R.B. *8*
97–45, 1997–41 I.R.B. *10*
97–46, 1997–42 I.R.B. *10*
97–47, 1997–42 I.R.B. *19*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*
97–30, 1997–31 I.R.B. *12*
97–31, 1997–32 I.R.B. *4*
97–32, 1997–33 I.R.B. *4*
97–33, 1997–34 I.R.B. *4*
97–34, 1997–34 I.R.B. *14*
97–35, 1997–35 I.R.B. *4*
97–36, 1997–36 I.R.B. *5*
97–37, 1997–37 I.R.B. *15*
97–38, 1997–38 I.R.B. *14*
97–39, 1997–39 I.R.B. *4*
97–40, 1997–39 I.R.B. *8*
97–41, 1997–40 I.R.B. *4*
97–42, 1997–41 I.R.B. *4*
97–43, 1997–42 I.R.B. *8*

Treasury Decisions:

8722, 1997–29 I.R.B. *4*
8723, 1997–30 I.R.B. *4*
8724, 1997–36 I.R.B. *4*
8725, 1997–37 I.R.B. *16*
8726, 1997–34 I.R.B. *7*
8727, 1997–34 I.R.B. *5*
8728, 1997–37 I.R.B. *4*
8729, 1997–38 I.R.B. *4*
8730, 1997–38 I.R.B. *16*
8731, 1997–42 I.R.B. *6*
8732, 1997–42 I.R.B. *4*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

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

Bulletins 1997–27 through 1997–42

*Denotes entry since last publication

Revenue Procedures:

96–36
Superseded by
97–34, 1997–30 I.R.B. *14*

96–42
Superseded by
97–27, 1997–27 I.R.B. *9*

97–32
Modified and amplified by
97–32A, 1997–34 I.R.B. *10*

Revenue Rulings:

89–42
Supplemented by
97–31, 1997–32 I.R.B. *4*

93–76
Clarified, modified, partially obsoleted, and superceded by
97–39, 1997–39 I.R.B *4*

94–7
Clarified, modified, partially obsoleted, and superceded by
97–39, 1997–39 I.R.B *4*

[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Notes

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