

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.

SPECIAL ANNOUNCEMENT

Announcement 2001-87, page 208.

This announcement informs the public when and where IRS seminars providing tax law and magnetic media/electronic filing information for Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, are being held. The announcement also provides the telephone number and e-mail address that can be used to register and obtain additional information.

INCOME TAX

Rev. Rul. 2001-41, page 193.

LIFO; price indexes; department stores. The June 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, June 30, 2001.

T.D. 8961, page 194.

REG-103735-00, REG-110311-98, REG-103736-00, page 204.

Temporary and proposed regulations provide the public with additional guidance to comply with the disclosure rules under section 6011(a) of the Code, the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters.

T.D. 8962, page 201.

Final regulations amend section 301.7701-7 of the regulations to provide that certain listed trusts are deemed to satisfy the control test for treatment as domestic trusts for fed-

eral tax purposes if U.S. trustees control all of the substantial decisions made by the trustees of the trusts.

EMPLOYEE PLANS

T.D. 8962, page 201.

Final regulations amend section 301.7701-7 of the regulations to provide that certain listed trusts are deemed to satisfy the control test for treatment as domestic trusts for federal tax purposes if U.S. trustees control all of the substantial decisions made by the trustees of the trusts.

Notice 2001-52, page 203.

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

Announcement 2001-83, page 205.

Employee Plans (EP) determination letters; future of program. The Service invites the public to participate in a dialogue on the long-term future of the EP determination letter program and gives an Internet address to download a white paper that is available to begin that dialogue.

EXEMPT ORGANIZATIONS

Announcement 2001-84, page 206.

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

(Continued on the next page)

Finding Lists begin on page ii.



EXCISE TAX

T.D. 8963, page 197.

Final regulations under section 6302(a) of the Code simplify the requirements for excise tax returns, payments, and deposits. The regulations provide for one filing date for quarterly returns; one deposit date for all taxes other than air transportation and communications taxes under the alternative method; and a deposit requirement for each semi-monthly period of 95 percent of liability incurred unless the look-back safe harbor rule is met.

ADMINISTRATIVE

T.D. 8961, page 194.

REG-103735-00, REG-110311-98, REG-103736-00, page 204.

Temporary and proposed regulations provide the public with additional guidance to comply with the disclosure rules under section 6011(a) of the Code, the registration require-

ment under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters.

Rev. Proc. 2001-44, page 203.

Low-income housing tax credit. This procedure publishes the unused housing credit carryover amounts allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2001.

Announcement 2001-86, page 207.

This document contains corrections to proposed regulations (REG-106917-99, 2001-27 I.R.B. 4) relating to certain adoptions, changes, and retentions of annual accounting periods.

Announcement 2001-90, page 208.

This document contains corrections to final regulations (T.D. 8948, 2001-28 I.R.B. 27) relating to the minimum cost requirement under section 420 of the Code, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

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

Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The June 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, June 30, 2001.

Rev. Rul. 2001-41

The following Department Store Inventory Price Indexes for June 2001 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46 (1986-2 C.B. 739) for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years

ended on, or with reference to, June 30, 2001.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	June 2000	June 2001	Percent Change from June 2000 to June 2001 ¹
1. Piece Goods	496.1	478.7	-3.5
2. Domestics and Draperies	615.8	603.2	-2.0
3. Women's and Children's Shoes	626.5	644.8	2.9
4. Men's Shoes	926.1	888.8	-4.0
5. Infants' Wear	642.2	605.2	-5.8
6. Women's Underwear	568.3	562.2	-1.1
7. Women's Hosiery	334.2	354.0	5.9
8. Women's and Girls' Accessories	538.3	547.3	1.7
9. Women's Outerwear and Girls' Wear	385.0	378.1	-1.8
10. Men's Clothing	613.5	582.1	-5.1
11. Men's Furnishings	621.5	599.6	-3.5
12. Boys' Clothing and Furnishings	491.7	488.5	-0.7
13. Jewelry	924.3	936.8	1.4
14. Notions	768.3	780.7	1.6
15. Toilet Articles and Drugs	971.1	963.4	-0.8
16. Furniture and Bedding	670.6	639.9	-4.6
17. Floor Coverings	607.9	615.4	1.2
18. Housewares	780.7	767.7	-1.7
19. Major Appliances	233.6	225.9	-3.3
20. Radio and Television	59.8	53.9	-9.9
21. Recreation and Education ²	93.0	90.1	-3.1
22. Home Improvements ²	128.2	124.7	-2.7
23. Auto Accessories ²	106.3	109.1	2.6
Groups 1 - 15: Soft Goods	592.9	584.1	-1.5
Groups 16 - 20: Durable Goods	438.1	422.5	-3.6
Groups 21 - 23: Misc. Goods ²	100.2	98.5	-1.7
Store Total ³	534.9	524.5	-1.9

¹ Absence of a minus sign before the percentage change in this column signifies a price increase.

² Indexes on a January 1986=100 base.

³ The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Alan J. Tomsic of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Tomsic at (202) 622-4930 (not a toll-free call).

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-4T: Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary)

T.D. 8961

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

Modification of Tax Shelter Rules II

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations modify the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These regulations provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters. The temporary regulations affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-103735-00, REG-110311-98, and REG-103736-00) on page 204 in this issue of the Bulletin.

DATES: *Effective Date:* These temporary regulations are effective August 2, 2001.

Applicability Date: For dates of applicability, see §1.6011-4T(g) and §301.6111-2T(h).

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm (202) 622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of certain reportable transactions by corporate investors on their Federal corporate income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (T.D. 8877, 2000-11 I.R.B. 747; REG-103735-00, 2000-11 I.R.B. 770), section 6111 (T.D. 8876, 2000-11 I.R.B. 753; REG-110311-98, 2000-11 I.R.B. 767), and section 6112 (T.D. 8875, 2000-11 I.R.B. 761; REG-103736-00, 2000-11 I.R.B. 768) (collectively, the February regulations). The February regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (T.D. 8896, 2000-36 I.R.B. 249; REG-103735-00, REG-110311-98, REG-103736-00, 2000-36 I.R.B. 258) (collectively, the August regulations). The August regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations.

Based on comments that have been received, the IRS and Treasury have determined that certain additional interim changes to the temporary and proposed regulations are warranted. The changes in the proposed rules are published on page 204 in this issue of the Bulletin.

These interim changes are intended to assist taxpayers and ease tax administration by simplifying and clarifying certain provisions of the regulations, addressing certain practical problems relating to compliance with the regulations, and making certain other changes relating to the scope of the regulations. The IRS and Treasury continue to evaluate all the com-

ments and recommendations received, and other changes may be made in the final regulations.

Explanation of Provisions

1. *Different Foreign Tax Treatment*

Characteristic in §1.6011-4T(b)(3)(i)(F)

Under section 6011, reportable transactions include listed transactions and transactions that have at least two of six specified characteristics. One of the characteristics is present if the expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country. Commentators have suggested that the inclusion of this characteristic causes the regulations to be overinclusive. Based on these comments and further review, the IRS and Treasury have removed this characteristic from the temporary and proposed regulations.

2. *Clarification of Exceptions Under*

§1.6011-4T

a. *“Long-standing and generally accepted exception” in §1.6011-4T(b)(3)(ii)(B)*

The temporary regulations under section 6011 provide that a transaction, other than a listed transaction, is not a reportable transaction if one of four exceptions is satisfied. One exception applies if the taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits (taking into account any combination of intended tax consequences) from the transaction are allowable under the Code for substantially similar transactions.

Commentators have requested additional guidance on the meaning of the phrase “long-standing and generally accepted” that is contained in this exception. This exception is intended to apply to transactions the structure of which is customary and the intended tax treatment of which is widely known and generally accepted as properly allowable under the Internal Revenue Code. Ordinarily, a determination as to whether the intended tax

treatment of a transaction has achieved such a level of general acceptance cannot be made unless information relating to the structure and tax treatment of substantially similar transactions has been in the public domain and widely known for a period of years. However, the applicability of this exception does not depend on such general acceptance having existed for any minimum period of time. Accordingly, the IRS and Treasury have eliminated the phrase “long-standing” from the exception and have added language to clarify the scope of the exception. Corresponding changes have been made in §301.6111-2T.

b. “No reasonable basis exception” in §1.6011-4T(b)(3)(ii)(C)

This exception generally provides that a transaction, other than a listed transaction, is not reportable if the taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Commentators have requested additional guidance on the no reasonable basis determination. Accordingly, the regulations clarify that for purposes of this exception, whether the IRS would have a reasonable basis for its position is to be determined by applying the same standard as that applicable to taxpayers under §1.6662-3(b)(3). Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. The determination of whether the IRS would have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS. Corresponding changes have been made to newly redesignated §301.6111-2T(b)(4)(i).

3. Economic Substance Test

Commentators have suggested that the economic substance test, as articulated in §301.6111-2T(b)(3), may encompass transactions for which registration pursuant to section 6111(d) or list maintenance under section 6112 would not be appropriate. Further, the IRS and Treasury believe that substantially all transactions encompassed by the economic substance test for which

registration and list maintenance are appropriate will constitute other tax structured transactions within the meaning of §301.6111-2T(b)(4). Accordingly, the economic substance test as described in §301.6111-2T(b)(3) is removed from the temporary and proposed regulations under section 6111.

4. Presumption Against Confidentiality

Section 301.6111-2T(c)(3) contains a presumption that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure. There has been a request to clarify the phrase “to disclose the structure and tax aspects of the transaction.” Accordingly, the IRS and Treasury have added language to clarify that this phrase is to be construed broadly and includes all materials (including opinions or other tax analyses) that are provided to the offeree related to the structure and tax aspects of the transaction.

5. Tax Shelter Registration in §301.6111-2T(e)(2)(ii)(E)

The August regulations provided that the Form 8264, “Application for Registration of a Tax Shelter,” was to be filed with the Kansas City Service Center. Recently, the Service issued Announcement 2001-62 (2001-24 I.R.B. 1337) instructing taxpayers to file these forms with the Ogden Service Center. The instructions to Form 8264 will be revised to reflect the change in filing location. Accordingly, the regulations are amended to provide that the Form 8264 is to be filed as prescribed in the instructions to the form.

6. Effective Date

The regulations are applicable August 2, 2001. However, in general, taxpayers may rely on the regulations after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866.

Therefore, a regulatory assessment is not required. It 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 these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 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 1.6011-4T is amended as follows:

1. Paragraph (b)(3)(i)(F) is removed.
2. Paragraphs (b)(3)(ii)(B) and (C) are revised.
3. Paragraph (b)(5) is amended by removing the language “long-standing and” from the fifth sentence in *Example 1* and the seventh sentence in *Example 3*.
4. Paragraph (g) is revised.

The revisions and addition read as follows:

§1.6011-4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

* * * * *

- (b) * * *
- (3) * * *
- (ii) * * *

(B) The taxpayer has participated in the transaction in the ordinary course of its

business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a generally accepted understanding that the taxpayer's intended tax treatment of the transaction (taking into account any combination of intended tax consequences) is properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a taxpayer cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that the taxpayer may have received an opinion or advice from one or more knowledgeable tax practitioners to the effect that the taxpayer's intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii)(B).

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(3)(ii)(C) applies only if the taxpayer reasonably determines that there is no basis that would meet the standard applicable to taxpayers under §1.6662-3(b)(3) under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the taxpayer's determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on

any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

* * * * *

(g) *Effective date.* This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section apply to Federal corporate income tax returns filed after August 2, 2001. Taxpayers may rely on the rules in paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3*, of this section for Federal corporate income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and on or before August 2, 2001, are contained in §1.6011-4T in effect prior to August 2, 2001 (see 26 CFR part 1 revised as of April 1, 2001).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111-2T is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraph (b)(3) is removed.
3. Paragraphs (b)(4), (b)(5), (b)(6) and (b)(7) are redesignated paragraphs (b)(3), (b)(4), (b)(5) and (b)(6), respectively.
4. Newly redesignated paragraph (b)(3) introductory text is amended by revising the reference to “(b)(4)” with “(b)(3).”

5. Newly redesignated paragraph (b)(3)(ii) is revised.

6. Newly redesignated paragraph (b)(4) introductory text is amended by removing the reference “(b)(5)(i)” and

adding “(b)(4)(i)” in its place.

7. Newly redesignated paragraph (b)(4)(i) is revised.

8. Newly redesignated paragraph (b)(4)(ii) is amended by removing the reference “(b)(6)” and adding “(b)(5)” in its place.

9. Newly redesignated paragraph (b)(6) is amended as follows:

a. Paragraph (b)(6), introductory text, is revised.

b. *Example 1* is removed.

c. “*Example 2.*” is redesignated as “*Example.*”

d. The language “long-standing and” is removed from paragraph (i) in the newly redesignated *Example*.

e. The fourth sentence of paragraph (i) in the newly redesignated *Example* is removed.

f. Paragraph (ii) in the newly redesignated “*Example*” is revised.

10. Paragraphs (c)(3) and (e)(2)(ii)(E) are revised.

11. Paragraph (h) is amended by adding 3 sentences at the end.

The revisions and additions read as follows:

§301.6111-2T Confidential corporate tax shelters (temporary).

* * * * *

(b) * * * (1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2) or (3) of this section. However, a transaction described in paragraph (b)(3) of this section need not be registered if the transaction is described in paragraph (b)(4) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

* * * * *

(3) * * *

(ii) There is a generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of

intended tax consequences) are properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a tax shelter promoter (or other person who would be responsible for registration under this section) cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that one or more knowledgeable tax practitioners have provided an opinion or advice to the effect that the intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii).

(4) * * *

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(4)(i) applies only if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no basis that would meet the standard applicable to taxpayers under §1.6662-3(b)(3) of this chapter under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the

transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory v. Helvering*, 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

* * * * *

(6) *Example.* The following example illustrates the application of paragraphs (b)(1) through (4) of this section. Assume, for purposes of the example, that the transaction is not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6111 and, thus, is not described in paragraph (b)(2) of this section. The example is as follows:

Example. * * *

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(3) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(3) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph(b)(5) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) * * *

(3) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose to any and all persons, without limitation of any kind, the structure and tax aspects of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the offeree related to such structure and tax aspects.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(E) Sign the Form 8264 and file the form as prescribed in the instructions to the form.

* * * * *

(h) *Effective date.* * * * However, paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 2, 2001. The rules in paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E), of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before August 2, 2001, are contained in this §301.6111-2T in effect prior to August 2, 2001 (see 26 CFR part 301 revised as of April 1, 2001).

Par. 5. Section 301.6112-1T is amended by removing the authority citation immediately following the section.

David A. Mader,
Acting Deputy Commissioner
of Internal Revenue.

Approved July 31, 2001.

Mark Weinberger,
Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on August 2, 2001, 2:50 p.m., and published in the issue of the Federal Register for August 7, 2001, 66 F.R. 41133)

Section 6071.—Time for Filing Returns and Other Documents

26 CFR 40.6071(a)-1: Time for filing returns.

T.D. 8963

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 40

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the requirements for excise tax returns, payments, and deposits. These regulations affect persons required to report liability for excise taxes on Form 720, “*Quarterly Federal Excise Tax Return*.”

DATES: *Effective Date:* These regulations are effective August 9, 2001.

Applicability Date: These regulations are applicable with respect to returns and deposits that relate to calendar quarters beginning on or after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Athy (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Excise Tax Procedural Regulations (26 CFR part 40) relating to the requirements for excise tax returns, payments, and deposits. On January 7, 2000, an advance notice of proposed rulemaking (Ann. 2000–5, 2000–4 I.R.B. 427) that invited comments from the public on issues relating to the requirements for excise tax returns and deposits was published in the **Federal Register** (65 FR 1076). Several written comments were received and considered in drafting the proposed regulations. On February 16, 2001, a notice of proposed rulemaking (REG–106892–00, 2001–15 I.R.B. 1060) was published in the **Federal Register** (66 FR 10650). Written comments and requests for a public hearing were solicited.

Written comments responding to the notice were received from one commentator. The comments requested that the safe harbor rule based on look-back quarter liability be modified to be applicable: to each semimonthly period in a quarter if one-sixth of look-back quarter liability is deposited during that semimonthly period; when a taxpayer’s liability includes new or reinstated taxes; and when a new legal entity includes a party that filed a Form 720 for the second preceding quarter. The final regulations do not adopt the requested modifications to the look-back safe harbor rule because doing so could significantly reduce the percentage of excise tax liability deposited without any

corresponding reduction in the complexity of the deposit rules.

No public hearing was requested or held. After consideration of all of the comments, the proposed regulations are adopted without change by this Treasury decision.

Special Analyses

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

Drafting Information

The principal author of these regulations is Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

**PART 40—EXCISE TAX
PROCEDURAL REGULATIONS**

Paragraph 1. The authority citation for part 40 is amended by removing the entries for Sections 40.6071(a)–1 and 40.6071(a)–2, and Sections 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4; and adding entries in numerical order to read in part as follows:

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

Section 40.6071(a)–1 also issued under 26 U.S.C. 6071(a). * * *

Section 40.6302(c)–2 also issued under 26 U.S.C. 6302(a).

Section 40.6302(c)–3 also issued under 26 U.S.C. 6302(a). * * *

§40.0–1 [Amended]

Par. 2. Section 40.0–1 is amended as follows:

1. Paragraphs (d) and (e) are removed.
2. Paragraph (f) is redesignated as new paragraph (d).

§40.6011(a)–1 [Amended]

Par. 3. Section 40.6011(a)–1 is amended by removing paragraph (c).

§40.6011(a)–2 [Amended]

Par. 4. Section 40.6011(a)–2 is amended as follows:

1. In paragraph (b)(2), the language “§40.6302(c)–1(f)(2)” is removed and “§40.6302(c)–1(e)(2)” is added in its place.

2. Paragraph (d) is removed.

Par. 5. Section 40.6071(a)–1 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§40.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each quarterly return required under §40.6011(a)–1(a)(2) must be filed by the last day of the first calendar month following the quarter for which it is made.

(b) * * *

(2) *Semimonthly returns.* Each semimonthly return required under §40.6011(a)–1(b) must be filed by the last day of the semimonthly period (as defined in §40.0–1(c)) following the semimonthly period for which it is made.

(c) *Effective date.* This section is applicable with respect to returns that relate to calendar quarters beginning on or after October 1, 2001.

§40.6071(a)–2 [Removed]

Par. 6. Section 40.6071(a)–2 is removed.

§40.6091–1 [Amended]

Par. 7. Section 40.6091–1 is amended by removing paragraph (d).

Par. 8. Section 40.6101–1 is revised to read as follows:

§40.6101–1 Period covered by returns.

See §40.6011(a)-1(a)(2) for the rules relating to the period covered by the return.

Par. 9. Sections 40.6109(a)-1 and 40.6151(a)-1 are revised to read as follows:

§40.6109(a)-1 Identifying numbers.

Every person required under §40.6011(a)-1 to make a return must provide the identifying number required by the instructions applicable to the form on which the return is made.

§40.6151(a)-1 Time and place for paying tax shown on return.

Except as provided by statute, the tax must be paid at the time prescribed in §40.6071(a)-1 for filing the return, and at the place prescribed in §40.6091-1 for filing the return.

Par. 10. Section 40.6302(c)-1 is revised to read as follows:

§40.6302(c)-1 Use of Government depositories.

(a) *In general*—(1) *Semimonthly deposits required.* Except as provided by statute or by paragraph (e) of this section, each person required under §40.6011(a)-1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in §40.0-1(c)) in which tax liability is incurred.

(2) *Treatment of taxes imposed by chapter 33.* For purposes of this part 40, tax imposed by chapter 33 (relating to communications and air transportation) is treated as a tax liability incurred during the semimonthly period—

- (i) In which that tax is collected; or
- (ii) In the case of the alternative method, in which that tax is considered as collected.

(3) *Definition of net tax liability.* Net tax liability means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(4) *Computation of net tax liability for a semimonthly period.* The net tax liability for a semimonthly period may be computed by—

- (i) Determining the net tax liability incurred during the semimonthly period; or
- (ii) Dividing by two the net tax liability

incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(b) *Amount of deposit*—(1) *In general.* The deposit of tax for each semimonthly period must be not less than 95 percent of the amount of net tax liability incurred during the semimonthly period.

(2) *Safe harbor rules*—(i) *Applicability.* The safe harbor rules of this paragraph (b)(2) are applied separately to taxes deposited under the alternative method provided in §40.6302(c)-3 (alternative method taxes) and to the other taxes for which deposits are required under this section (regular method taxes).

(ii) *Regular method taxes.* Any person that made a return of tax reporting regular method taxes for the second preceding calendar quarter (the look-back quarter) is considered to have complied with the requirement of this part 40 for deposit of regular method taxes for the current calendar quarter if—

(A) The deposit of regular method taxes for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability for regular method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment of regular method taxes is paid by the due date of the return; and

(D) The person's liability does not include any regular method tax that was not imposed at all times during the look-back quarter or a tax on a chemical not subject to tax at all times during the look-back quarter.

(iii) *Alternative method taxes.* Any person that made a return of tax reporting alternative method taxes for the look-back quarter is considered to have complied with the requirement of this part 40 for deposit of alternative method taxes for the current calendar quarter if—

(A) The deposit of alternative method taxes for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability for alternative method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment

of alternative method taxes is paid by the due date of the return; and

(D) The person's liability does not include any alternative method tax that was not imposed at all times during the look-back quarter and the month preceding the look-back quarter.

(iv) *Modification for tax rate increase.* The safe harbor rules of this paragraph (b)(2) do not apply to regular method taxes or alternative method taxes for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies unless the deposit of those taxes for each semimonthly period in the calendar quarter is not less than 1/6 of the tax liability the person would have had with respect to those taxes for the look-back quarter if the increased rate of tax had been in effect for the look-back quarter.

(v) *Failure to comply with deposit requirements.* If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate IRS office and the IRS may withdraw the person's right to use the safe harbor rules of this paragraph (b)(2).

(c) *Time to deposit*—(1) *In general.* The deposit of tax for any semimonthly period must be made by the 14th day of the following semimonthly period unless such day is a Saturday, Sunday, or legal holiday in the District of Columbia in which case the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia is treated as the 14th day. Thus, generally, the deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th day of the following month.

(2) *Exceptions.* See §40.6302(c)-2 for the special rules for September. See §40.6302(c)-3 for the special rules for deposits under the alternative method.

(d) *Remittance of deposits*—(1) *Deposits by federal tax deposit coupon.* A completed Form 8109, "Federal Tax Deposit Coupon," must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depository for federal taxes (as provided in 31 CFR part 203).

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see §31.6302-1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302-1(h) of this chapter remains subject to the rules of this paragraph (d).

(e) *Exceptions—(1) Taxes excluded.* No deposit is required in the case of the taxes imposed by—

(i) Section 4042 (relating to fuel used on inland waterways);

(ii) Section 4161 (relating to sport fishing equipment and bows and arrow components);

(iii) Section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals); and

(iv) Section 48.4081-3(b)(1)(iii) of this chapter (relating to certain removals of gasohol from refineries).

(2) *One-time filings.* No deposit is required in the case of any taxes reportable on a one-time filing (as defined in §40.6011(a)-2(b)).

(3) *De minimis exception.* For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed \$2,500.

(f) *Effective date.* This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 11. Section 40.6302(c)-2 is revised to read as follows:

§40.6302(c)-2 Special rules for September.

(a) *In general—(1) Separate deposits required for the second semimonthly period.* In the case of deposits of taxes not deposited under the alternative method (regular method taxes) for the second semimonthly period in September, separate deposits are required for the period September 16th through 26th and for the period September 27th through 30th.

(2) *Amount of deposit—(i) In general.* The deposits of regular method taxes for the period September 16th through 26th and the period September 27th through 30th must be not less than 95 percent of the net tax liability for regular method taxes incurred during the respective periods. The net tax liability for regular method taxes incurred during these periods may be computed by—

(A) Determining the amount of net tax liability for regular method taxes reasonably expected to be incurred during the second semimonthly period in September;

(B) Treating 11/15 of the amount determined under paragraph (a)(2)(i)(A) of this section as the net tax liability for regular method taxes incurred during the period September 16th through 26th; and

(C) Treating the remainder of the amount determined under paragraph (a)(2)(i)(A) of this section (adjusted to reflect the amount of net tax liability for regular method taxes actually incurred through the end of September) as the net tax liability for regular method taxes incurred during the period September 27th through 30th.

(ii) *Safe harbor rules.* The safe harbor rules in §40.6302(c)-1(b)(2) do not apply for the third calendar quarter unless—

(A) The deposit of taxes for the period September 16th through 26th is not less than 11/90 of the net tax liability for regular method taxes reported for the look-back quarter; and

(B) The total deposit of taxes for the second semimonthly period in September is not less than 1/6 of the net tax liability for regular method taxes reported for the look-back quarter.

(3) *Time to deposit.* (i) The deposit required for the period beginning September 16th must be made by September 29th unless—

(A) September 29th is a Saturday, in which case the deposit must be made by September 28th; or

(B) September 29th is a Sunday, in which case the deposit must be made by September 30th.

(ii) The deposit required for the period ending September 30th must be made at the time prescribed in §40.6302(c)-1(c).

(b) *Persons not required to use electronic funds transfer.* The rules of this section are applied with the following modifications in the case of a person not required to deposit taxes by electronic funds transfer.

(1) *Periods.* The deposit periods for the separate deposits required under paragraph (a) of this section are September 16th through 25th and September 26th through 30th.

(2) *Amount of deposit.* In computing the amount of deposit required under paragraph (a)(2)(i)(B) of this section, the

applicable fraction is 10/15. In computing the amount of deposit required under paragraph (a)(2)(ii)(A) of this section, the applicable fraction is 10/90.

(3) *Time to deposit.* In the case of the deposit required under paragraph (a) of this section for the period beginning September 16th, the deposit must be made by September 28th unless—

(i) September 28th is a Saturday, in which case the deposit must be made by September 27th; or

(ii) September 28th is a Sunday, in which case the deposit must be made by September 29th.

(c) *Effective date.* This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 12. Section 40.6302(c)-3 is amended as follows:

1. In paragraph (b)(1)(ii), the language “9-day rule of §40.6302(c)-1(b)(6)” is removed and “rule of §40.6302(c)-1(c)(1)” is added in its place.

2. In paragraph (b)(3), last sentence, the language “6th” is removed and “16th” is added in its place.

3. In paragraph (d), first sentence, the language “not less than” is removed and “not less than 95 percent of” is added in its place.

4. In paragraph (f)(4) introductory text, the language “§40.6302(c)-1(c)(2)(i)” is removed and “§40.6302(c)-1(b)(2)” is added in its place.

5. Paragraphs (f)(5) and (f)(7) are removed.

6. Paragraph (f)(6) is redesignated as paragraph (f)(5).

7. Paragraph (g) is revised.

8. Paragraph (h) is removed.

The revision reads as follows:

§40.6302(c)-3 Special rules for use of Government depositaries under chapter 33.

(g) *Effective date.* This section is applicable with respect to deposits and returns that relate to taxes that are considered as collected in calendar quarters beginning on or after October 1, 2001.

§40.6302(c)-4 [Removed]

Par. 13. Section 40.6302(c)-4 is removed.

§40.9999-1 [Removed]

Par. 14. Section 40.9999-1 is removed.

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

Approved July 31, 2001.

Mark A. Weinberger,
*Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on August 8, 2001, 8:45 a.m., and published in the issue of the Federal Register for August 9, 2001, 66 F.R. 41775)

Section 7701.—Definitions

26 CFR 301.7701-7: *Trusts—domestic and foreign.*

T.D. 8962

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Classification of Certain Pension and Employee Benefit Trusts, and Other Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the regulations defining a domestic or foreign trust for federal tax purposes. The regulations will affect certain specified employee benefit trusts and investment trusts. The regulations provide that these employee benefit trusts and investment trusts are deemed to satisfy the control test for domestic trust treatment if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust.

DATES: *Effective Date:* These regulations are effective August 9, 2001.

Applicability Dates: For dates of applicability of §301.7701-7(d)(1)(iv) and (v) *Examples 1 and 5*, see § 301.7701-7(e)(3).

FOR FURTHER INFORMATION CONTACT: James A. Quinn at (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2000, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-108553-00, 2000-44 I.R.B. 452) under section 7701 of the Internal Revenue Code (Code) in the **Federal Register** (65 FR 60822). The proposed regulations add group trusts consisting of qualified plan trusts and IRA trusts, as described in Rev. Rul. 81-100 (1981-1 C.B. 326), and certain investment trusts to the categories of trusts that may use the safe harbor in §301.7701-7(d)(1)(iv) of the Procedure and Administration Regulations relating to the application of the control test of section 7701(a)(30)(E). The proposed regulations also modify the safe harbor in §301.7701-7(d)(1)(iv) to clarify that employee benefit trusts and investment trusts identified in the regulations are deemed to satisfy the control test if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust. No one requested to speak at the public hearing scheduled for January 31, 2001. Accordingly, the public hearing was canceled on January 26, 2001 (66 FR 7867). Comments in response to the notice of proposed rulemaking were received and are addressed in the following Explanation and Summary of Comments. This document finalizes the proposed regulations without change.

Explanation and Summary of Comments

Reporting Requirements for Foreign Widely Held Fixed Investment Trusts

Two commentators were concerned about United States investors in widely held fixed investment trusts that are outside the safe harbor provided by §301.7701-7(d)(1)(iv)(I) and therefore are treated as foreign trusts. These commentators suggested that United States investors in such trusts should not be subject to reporting under section 6048 and to the corresponding penalties in section 6677 for failure to comply with the section 6048 reporting requirements. A guidance project under section 671 concerning reporting requirements for all widely held fixed investment trusts is currently under consideration. Accordingly, these regulations do not specifically address this issue.

Application to Certain Pension Trusts Created or Organized in Puerto Rico

Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829) (September 2, 1974), provides for tax exemption for certain trusts created or organized in Puerto Rico that form part of a pension, profit-sharing, or stock bonus plan. Section 1022(i)(2) and §1.401(a)-50 of the Income Tax Regulations generally provide that the administrator of such a trust may elect to have the trust treated as a trust created or organized in the United States for purposes of section 401(a). In light of the changes made to section 7701(a)(30) in the Small Business Job Protection Act, Public Law 104-188 (110 Stat. 1755) (August 20, 1996), and the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788) (August 5, 1997), and the ensuing regulations, some taxpayers have expressed concerns regarding the continuing application of sections 1022(i)(1) and (2) and §1.401-50 to a pension trust created or organized in Puerto Rico that is not a domestic trust within the meaning of section 7701(a)(30). Because the application of these provisions is not restricted to trusts that are domestic trusts within the meaning of section 7701(a)(30), the 1996 and 1997 amendments to section 7701(a)(30) and the ensuing regulations do not affect the application of these provisions.

Special Analyses

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

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7701-7 is amended as follows:

1. Paragraph (d)(1)(iv) introductory text is revised.

2. Paragraph (d)(1)(iv)(H) is redesignated as paragraph (d)(1)(iv)(J).

3. New paragraphs (d)(1)(iv)(H) and (d)(1)(iv)(I) are added.

4. In paragraph (d)(1)(v), *Example 1* is revised and *Example 5* is added.

5. The first sentence of paragraph (e)(1) is revised.

6. Paragraph (e)(3) is added.

The revisions and additions read as follows:

§301.7701-7 Trusts—domestic and foreign.

* * * * *

(d) * * * (1) * * *

(iv) *Safe harbor for certain employee benefit trusts and investment trusts.* Notwithstanding the provisions of this paragraph (d), the trusts listed in this paragraph (d)(1)(iv) are deemed to satisfy the control test set forth in paragraph (a)(1)(ii) of this section, provided that United States trustees control all of the

substantial decisions made by the trustees of the trust—

* * * * *

(H) A group trust described in Rev. Rul. 81-100 (1981-1 C.B. 326) (see §601.601(d)(2) of this chapter);

(I) An investment trust classified as a trust under §301.7701-4(c), provided that the following conditions are satisfied—

(1) All trustees are United States persons and at least one of the trustees is a bank, as defined in section 581, or a United States Government-owned agency or United States Government-sponsored enterprise;

(2) All sponsors (persons who exchange investment assets for beneficial interests with a view to selling the beneficial interests) are United States persons; and

(3) The beneficial interests are widely offered for sale primarily in the United States to United States persons;

* * * * *

(v) * * *

Example 1. Trust is a testamentary trust with three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens, and *C* is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

* * * * *

Example 5. *X*, a foreign corporation, conducts business in the United States through various branch operations. *X* has United States employees and has established a trust as part of a qualified employee benefit plan under section 401(a) for these employees. The trust is established under the laws of State *A*, and the trustee of the trust is *B*, a United States bank governed by the laws of State *A*. *B* holds legal title to the trust assets for the benefit of the trust beneficiaries. A plan committee makes decisions with respect to the plan and the trust. The plan committee can direct *B*'s actions with regard to those decisions and under the governing documents *B* is not liable for those decisions. Members of the plan committee consist of United States persons and nonresident aliens, but nonresident aliens make up a majority of the plan committee. Decisions of the plan committee are made by majority vote. In addition, *X* retains

the power to terminate the trust and to replace the United States trustee or to appoint additional trustees. This trust is deemed to satisfy the control test under paragraph (d)(1)(iv) of this section because *B*, a United States person, is the trust's only trustee. Any powers held by the plan committee or *X* are not considered under the safe harbor of paragraph (d)(1)(iv) of this section. In the event that *X* appoints additional trustees including foreign trustees, any powers held by such trustees must be considered in determining whether United States trustees control all substantial decisions made by the trustees of the trust.

* * * * *

(e) *Effective date*—(1) *General rule.* Except for the election to remain a domestic trust provided in paragraph (f) of this section and except as provided in paragraph (e)(3) of this section, this section is applicable to taxable years ending after February 2, 1999. * * *

* * * * *

(3) *Effective date of safe harbor for certain employee benefit trusts and investment trusts.* Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section apply to trusts for taxable years ending on or after August 9, 2001. Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section may be relied on by trusts for taxable years beginning after December 31, 1996, and also may be relied on by trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the SBJP Act.

* * * * *

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

Approved July 31, 2001.

Mark Weinberger,
Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on August 8, 2001, 8:45 a.m., and published in the issue of the Federal Register for August 9, 2001, 66 F.R. 41778)

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2001-52

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 July 2001 is 5.61 percent.

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

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
August	2001	5.79	5.21 to 6.08	5.21 to 6.37

Drafting Information

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

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 42; 1.42-14.)

Rev. Proc. 2001-44

SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2001.

SECTION 2. BACKGROUND

Rev. Proc. 92-31 (1992-1 C.B. 775) provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused hous-

ing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 2001.

SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 2001 is as follows:

Qualified State	Amount Allocated
Delaware	\$ 5,771
Florida	117,712
Illinois	91,469
Maine	9,390
Maryland	39,009
Massachusetts	46,762
Minnesota	36,232
Missouri	41,209
Nebraska	12,604
New Hampshire	9,102
New Jersey	61,972
Ohio	83,617
Oregon	25,199
Tennessee	41,902
Texas	153,575
Utah	16,447
Virginia	52,134
West Virginia	13,319
Wisconsin	39,504

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 2001.

DRAFTING INFORMATION

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

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Modification of Tax Shelter Rules II

REG-103735-00;
REG-110311-98;
REG-103736-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking.

SUMMARY: These proposed rules provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters. The proposed rules affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. In T.D. 8961, on page 194 in this issue of the Bulletin, the IRS is issuing temporary regulations modifying the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 31, 2001.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-103735-00; REG-110311-98; REG-103736-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-103735-00; REG-110311-98; REG-103736-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by sub-

mitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Danielle M. Grimm at (202) 622-3080; concerning submissions, Guy Traynor at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

T.D. 8961 amends the Income Tax Regulations (26 CFR part 1) regarding rules relating to the filing and records requirements for certain corporate taxpayers under section 6011. The temporary regulations also amend the temporary procedure and administration regulations (26 CFR part 301) regarding the registration of confidential corporate tax shelters under section 6111.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically gener-

ated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended at 65 FR 49909 (August 16, 2000), are proposed to be further 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 1.6011-4 as proposed to be added at 65 FR 49909 (August 16, 2000) is amended as follows:

§1.6011-4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of the amendments to this proposed section is the same as the text of the amendments to §1.6011-4T published in T.D. 8961.]

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111-2 as proposed to be added at 65 FR 49909 (August 16, 2000) is amended as follows:

§301.6111-2 Confidential corporate tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to §301.6111-2T published in T.D. 8961.]

David A. Mader,
Acting Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on August 2, 2001, 2:50 p.m., and published in the issue of the Federal Register for August 7, 2001, 66 F.R. 41169)

Invitation to Participate in Dialogue on Long-Term Future of Employee Plans Determination Letter Program

Announcement 2001-83

The IRS invites the public to participate in a dialogue on the long-term future of the Employee Plans determination letter program.

Qualified plans offer significant tax advantages to employers and participants. Determination letters provide assurance to plan sponsors, participants, and other interested parties that the terms of employer-sponsored retirement plans satisfy the qualification requirements of the Code. The IRS has maintained an Employee Plans determination letter program for many years, essentially in its present form. Under this program, the Employee Plans (EP) segment of Tax Exempt and Government Entities (TE/GE) issues letters of determination regarding the qualified status of retirement plans under section 401(a) of the Internal Revenue Code and the status of related trusts under section 501(a).

A determination letter, however, only provides reliance that the plan is qualified under the rules in place at the time the letter was issued. The law and rules regarding qualified plans have changed frequently over the last twenty-seven years. This requires plan amendments that result in repeated applications for determination letters for the same plan. Currently, EP is reviewing applications for plans that have been amended to reflect changes in the law from 1994

through 2000. These are referred to as the GUST¹ amendments.

Following the recent reorganization of the IRS, EP has undertaken a project to consider the long-term future of the EP determination letter program after GUST. The question EP asks the public to consider with it is whether there might be better alternatives to the present determination letter program.

EP recently put into effect several improvements to the determination letter program (Announcement 2001-77, 2001-30 I.R.B. 83). The focus of the project that EP is now undertaking is long-term—perhaps five or more years into the future. While these long-term changes will not impact the GUST amendment process, they may have a significant impact on applications for determinations letters for changes in the law subsequent to GUST, such as those contained in the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16.

The scope of this project may be of interest to all parties who are involved in or affected by the determination letter program. The Service hopes to pursue this project in partnership with all stakeholders in the determination letter process who wish to participate, including plan sponsors and participants and employee benefits professionals. As a preliminary step, EP has prepared a white paper describing the project and outlining several options identified as possible alternatives to the present determination letter program. Legislative changes may be required to implement some of these options. The white paper is entitled *The Future of the Employee Plans Determination Letter Program: Some Possible Options* and it may be downloaded from the Internet at the following site: <http://www.irs.gov/ep>. EP asks the read-

¹ The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

ers of the white paper to consider it as an invitation to a dialogue on the subject. The dialogue is not intended to be limited to ideas in the paper.

EP personnel plan to discuss the ideas raised in the paper and listen to others' ideas and views in professional conferences and meetings in which government representatives participate and all other available forums. In addition, EP solicits comments on whether EP should also hold a series of nationwide town meetings to permit furtherance of this dialogue. Finally, EP invites interested parties to submit written comments, preferably two copies referencing Announcement 2001-83, to the following address:

CC:M&SP:RU (Announcement 2001-83), room 5626
Internal Revenue Service
POB 7604, Ben Franklin Station
Washington, DC 20044

Alternatively, comments may be hand delivered between the hours of 8:30 a.m. and 5 p.m. to:

CC:M&SP:RU (Announcement 2001-83)
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC

While not the subject of the white paper, commentators need not limit their comments to the long-term future of the determination letter program and are encouraged to submit any recommendations they have for short-term improvements. Written comments should be submitted by March 31, 2002. All written comments will be open to public inspection.

DRAFTING INFORMATION

The principal author of this announcement is James Flannery of Tax Exempt and Government Entities. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at (202) 283-9516 or (202) 283-9517 between the hours of 1:30 and 3:30 p.m. Eastern Time, Monday through Thursday. Mr. Flannery may be reached at (202) 283-9613. These telephone numbers are not toll-free.

Foundations Status of Certain Organizations

Announcement 2001-84

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:

4 R Environment, San Anselmo, CA
Alabama A & M Military Alumni Association, Huntsville, AL
Alabama Association for Gifted Children, Birmingham, AL
Alabama Community Service Corporation, Birmingham, AL
Al-Nur Mosque/Islamic Center, Inc., Louisville, KY
Alexander Graham Bell Association for the Deaf of Tennessee, Inc., Nashville, TN
American Foundation for Courtesy, Montgomery, AL
Amy Baker Team Ministries, Inc., Owensboro, KY
Andrea Glenn Concert Ministry, Inc., Mobile, AL
Arts in Action, Inc., Lexington, KY
Ashberry Terrace, Inc., Elizabethtown, KY
Association of Christian Transport Services, Inc., Nashville, TN
Atlantic Bridges Foundation, Nashville, TN
Awake, Inc., Mobile, AL
Ballard Fastpitch Softball, Inc., Prospect, KY
Baroque Brass, Inc., Belleville, TX
Bible Alive Ministries, Fergus Falls, MN
Birmingham 2000, Inc., Birmingham, AL
Birmingham Society of Piping, Inc., Birmingham, AL

Blessed Are They Which Are Called, Los Angeles, CA
Brothers About Change BAC, Memphis, TN
Buddies of Wilson County, Inc., Lebanon, TN
Cancer Support Network, Inc., Lexington, KY
Carpe Diem of the South, Memphis, TN
Carthage Quarterback Club, Carthage, TN
Catholic Oversight Reserve Foundation, (COR), Mobile, AL
Cedarbrook Family Enrichment, Inc., Lebanon, TN
Children Count Foundation, Seattle, WA
Christian Word Ministries, Inc., Lexington, KY
Christians in Action, Inc., Barbourville, KY
Clarence B. and Lillian D. Robinson Education Fund, Inc., Chattanooga, TN
Clarksville Area Young Mens Christian Association, Clarksville, TN
Clifford D. Mallory Cup Foundation, Inc., Atlanta, GA
Common Cup, Memphis, TN
Community Bridges, Inc., Tempe, AZ
Community Builders of America, Knoxville, TN
Comprehensive Child Care Council, Inc., Scottsville, KY
Country Christmas Celebration Association, Savannah, TN
Development Corporation of Orchard Knob, Inc., Chattanooga, TN
Don't Lose a Stroke of Breath, Inc., Birmingham, AL
Ebenezer Ministries, Inc., Knoxville, TN
Empowerment Network, Inc., Winston-Salem, NC
Fairhope Philanthropic Association, Inc., Fairhope, AL
For Little People Only, Inc., Atlanta, GA
For the Kids, Inc., Decatur, AL
Franklin County Christian Mens Fellowship, Inc., Frankfort, KY
Friends of Dare, Inc., Irondale, AL
Friends of Grassmere, Inc., Nashville, TN
Friends of Standing Stone State Park, Inc., Hilham, TN
Gain, Inc., Huntsville, AL
Gathering, Montgomery, AL
Gatlinburg Presbyterian Child Care Center, Gatlinburg, TN
Gilliam & Lynch, Inc., Birmingham, AL
Glendale Retirement Housing Association of Murray, Inc., Murray, KY

Gods Outreach, Inc., Owensboro, KY
Greensboro Baseball Association, Inc., Greensboro, AL
Habitat for Humanity International, Inc., Lawrenceburg, TN
Harvest Green Ministries, Inc., Birmingham, AL
Harvest Warriors Ministries, Inc., Lanett, AL
Hchs Patriot Quarterback Club, Inc., Paris, TN
Heart-to-Heart International, Inc., Birmingham, AL
Help Is Here, Inc., Miami, FL
Herman Maisel Gymnasium Renovation Fund, Inc., Mobile, AL
His Ministries, Franklinton, NC
In Touch in East Tennessee Crusade, Inc., Greeneville, TN
Innovative Solutions, Inc., Louisville, KY
Insa New York, Inc., New York, NY
International Child Care Alliance, Tucson, AZ
Island Creek Volunteer Fire Department, Inc., Pikeville, KY
Jericho Road, Inc., Memphis, TN
Johnsons Christian Care Home, Inc., Memphis, TN
Jonathans Servant Ministries, Nashville, TN
Just Us Kids Day Care and Learning Center, Memphis, TN
Justice Center, Birmingham, AL
Kare-N-Home, Inc., Birmingham, AL
Kentuckians for Intermodal Transportation, Inc., Louisville, KY
Kentucky Association of Senior Service Corps. Program, Inc., Louisville, KY
Kingdom Agenda Ministries, Inc., Lexington, KY
Kingdom News Outreach Program, Athens, AL
Knoxville Inner City Kids Outreach, Knoxville, TN
Lend-A-Hand Foundation, Inc., Paintsville, KY
Magnificat-Lexington, Inc., Lexington, KY
McCoy Center for Community Service, Inc., Birmingham, AL
Memphis Inner City Development Corporation, Memphis, TN
Michelle Shaffer Ministries, Inc., Murfreesboro, TN
Mid-South Africa Link, Inc., Memphis, TN

Mid-State Soccer League, Inc.,
Birmingham, AL
Middleton Art League, Middleton, TN
Millenium III Ministries, Huntsville, AL
Mission America Corporation,
Memphis, TN
Montauk Non-Profit Housing Corp.,
Elizabethtown, KY
National Access to Cryptosporidium
Testing, Murfreesboro, TN
National Community Development
Corporation (Reaching Our Cities
Kids), Land O Lakes, FL
National Donor Foundation, Inc.,
Louisville, KY
New Horizon Cooperative, Inc.,
Memphis, TN
Newports Ohio River Museum, Inc.,
Newport, KY
Nimbly Development Center,
Memphis, TN
NKM 2, Denver, CO
North Birmingham Junior Golfers
Charitable Trust, Birmingham, AL
North Henry Athletic Association, Inc.,
Stockbridge, GA
Our Daily Bread of Tennessee, Inc.,
Knoxville, TN
Owensboro Family YMCA Endowment
Fund, Inc., Owensboro, KY
Parrot, Dothan, AL
Pathways Teen Services, Inc.,
Clarksville, TN
Phenix City Art Council, Phenix City, AL
Preakness I, Inc., Lexington, KY
Preakness II, Inc., Lexington, KY
Preschool Daycare Institute of America,
Inc., Huntsville, AL
Resurrection Ministries, Inc.,
Lawrenceburg, TN
Rhema Development Foundation, Inc.,
Louisville, KY
Rhema-Grace Ministries, Inc.,
Madisonville, KY
Rutherford County Youth Ballet,
Murfreesboro, TN
Salt & Light Ministries, Inc.,
Louisville, KY
Sarah House, Maryville, TN
Saving Animals From Euthansia, Inc.,
Floral, AL
Simpson County Heritage Fund, Inc.,
Franklin, KY
South Baldwin Museum Foundation,
Inc., Foley, AL
South Central Alabama Coalition for
Citizens With Disabilities,
Andalusia, AL

Southwest Alabama Court Referral
Program, Inc., Jackson, AL
Stonebridge, Inc., Lexington, KY
Storm Soccer Club, Inc., Paducah, KY
Streetfire Youth Ministries,
Johnson City, TN
Students for a Drug-Free America, Inc.,
Nashville, TN
Turn Around Treasures, Inc., Tarrant, AL
United Eastern Lenape & Intertribal
Band, Somerset, KY
Upton Foundation, Inc., Louisville, KY
Village Point Foundation, Daphne, AL
Vision Inncercity Paducah, Inc.,
Paducah, KY
Widows Mite Home for Unwed Mothers
and Their Babies, Utica, MI
Wildlife Rescue, Knoxville, TN
Wings Ministries, Gray, TN
Work Unlimited, Inc., Morganfield, KY
World Outreach, Inc., Eclectic, AL
World War II Preservation Society, Inc.,
Ashland, KY
Wyngate, Inc., Lexington, KY
Young Adult Leadership Association,
Newport News, VA
Youth United With Senior Citizens,
Memphis, TN

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 Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Changes in Accounting Periods; Correction

Announcement 2001-86

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains corrections to a notice of proposed rule-

making and notice of public hearing (REG-106917-99, 2001-27 I.R.B. 4) that was published in the **Federal Register** on Wednesday, June 13, 2001 (66 FR 31850) relating to certain adoptions, changes, and retentions of annual accounting periods.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn and Martin Scully, Jr. at (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that are the subject of this correction are under sections 441, 442, 706, 898, and 1378 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG-106917-99), which was the subject of FR Doc. 01-13536, is corrected as follows:

1. On page 31850, column 3, in the preamble under the caption "SUMMARY:", line 3, the language "441, 442, 706, and 1378 of the Internal" is corrected to read "441, 442, 706, 898, and 1378 of the Internal".

2. On page 31851, column 2, in the preamble under the paragraph heading "A. Overview", line 4, the language "taxable income), and sections 442, 706," is corrected to read "taxable income), and sections 442, 706, 898."

3. On page 31851, column 3, in the preamble under the paragraph heading "B. Section 441: Period for Computing Taxable Income," the last line of the first paragraph, the language "514, 99th Cong., 2d Sess. 318 (1986)." is corrected to read "841, 99th Cong., 2d Sess., II-318 1986-3 (Vol. 4) C.B. 318."

4. On page 31852, column 2, in the preamble under the paragraph heading "3. 52-53-week Taxable Years.", line 8 from the top of the column, the language "and Notice 2001-35 (IRB 2001-23). In"

is corrected to read “and Notice 2001–35 (2001–23 I.R.B. 1314). In”.

5. On page 31852, column 2, in the preamble under the paragraph heading “5. *Personal Service Corporations.*”, paragraph 1, lines 3 and 4 from the bottom of the column, the language “now contained in Notice 2001–35 (I.R.B. 2001–23). Similarly, the rules regarding” is corrected to read “now contained in Notice 2001–35 (2000–23 I.R.B. 1314). Similarly, the rules regarding”.

6. On page 31852, column 3, in the preamble under the paragraph heading “5. *Personal Service Corporations.*”, paragraph 1, the last line of the paragraph, the language “and Notice 2001–34 (I.R.B. 2001–23).” is corrected to read “and Notice 2001–34 (2001–23 I.R.B. 1302).”.

§1.441–3 [Corrected]

7. On page 31859, column 3, §1.441–3, in paragraph (a)(2), line 3, the language “taxable year (i.e., a fiscal year) if elects” is corrected to read “taxable year (i.e., a fiscal year) if it elects”.

LaNita Van Dyke,
Acting Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax and Accounting).

(Filed by the Office of the Federal Register on August 6, 2001, 8:45 a.m., and published in the issue of the Federal Register for August 7, 2001, 66 F.R. 41170)

IRS Information Reporting Program (IRP) Seminars

Announcement 2001–87

*IRS Announces Year-End Training for
Withholding Agents/ Employers/Payers*

To help withholding agents, employers, and payers who file Forms 1042–S, *Foreign Person’s U.S. Source Income Subject to Withholding*, the Internal Revenue Service, Martinsburg Computing Center

(MCC) has arranged the following training sessions.

Three IRP seminars will be offered in one-day sessions, free of charge. The sessions will include the following topics:

- Changes to Internal Revenue Code Section 1441 and Regulations
- Effect of These Changes on Forms, Publications, and Instructions
- Service Center Processing Changes
- Magnetic/Electronic Format and Processing Changes

For more information, contact the IRS/MCC IRP Call Site at 304-263-8700 between 8:30 a.m. and 4:30 p.m., EST, Monday through Friday or e-mail: mccirp@irs.gov. The dates and locations are as follows:

<i>Location</i>	<i>Date</i>
Washington, DC	October 9
Oakland, CA	October 17
Chicago, IL	October 23

Minimum Cost Requirement Permitting the Transfer of Excess Assets of a Defined Benefit Pension Plan to a Retiree Health Account; Correction

Announcement 2001–90

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 8948, 2001–28 I.R.B. 27) that were published in the **Federal Register** on Tuesday, June 19, 2001 (66 F.R. 32897) relating to the minimum cost requirement under section 420, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account.

DATES: This correction is effective June 19, 2001.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer or Vernon S. Carter at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 420 of the Internal Revenue Code.

Need for Correction

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

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8948), which were the subject of FR Doc. 01–15255, is corrected as follows:

1. On page 32900, column 1, amendatory instruction Paragraph 1., lines 2 and 3, the language “for part 1 continues to read in part as follows:” is corrected to read “for part 1 is amended by adding a new entry in numerical order to read in part as follows:”.

2. On page 32900, column 1, the authority citation is corrected to read as follows:

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

§1.420–1 also issued under 26 U.S.C. 420(c)(3)(E).

LaNita Van Dyke,
Acting Chief, Regulations Unit,
Associate Chief Counsel
(Income Tax and Accounting).

(Filed by the Office of the Federal Register on August 6, 2001, 8:45 a.m., and published in the issue of the Federal Register for August 7, 2001, 66 F.R. 41133)

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 ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
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Z—Corporation.

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