Internal Revenue
bulletin

Bulletin No. 2001–31
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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.

EXEMPT ORGANIZATIONS

Announcement 2001–79, page 97.
A list is provided of organizations now classified as private foundations.

EMPLOYMENT TAX

Ct. D. 2070, page 90.
FICA and FUTA taxes. The Supreme Court has concluded that, under sections 3111 and 3301 of the Code, back wages are subject to FICA and FUTA taxes by reference to the year the wages are in fact paid. **United States v. Cleveland Indians Baseball Co.**

ADMINISTRATIVE

Announcement 2001–80, page 98.
The Service announces a reduction in the backup withholding rate under section 3406(a)(1) of the Code on reportable payments paid after August 6, 2001. The announcement also provides a listing of tax products that will be revised to reflect the reduced rate.

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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Actions Relating to Decisions of the Tax Court

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

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

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

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

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

The Commissioner ACQUIESCES in result only in the following decision:

Exxon v. Commissioner,[1]
113 T.C. 338 (1999)
(Dkt. Nos. 23331–95, 16692–97)

[1] Acquiescence in result only relating to whether the U.K. Petroleum Revenue Tax (PRT) is a creditable income tax under section 901.

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

Section 3111.—Rate of Tax

Ct. D. 2070

SUPREME COURT OF THE UNITED STATES

No. 00–203

UNITED STATES v. CLEVELAND INDIANS BASEBALL CO.

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

April 17, 2001

Syllabus

Under a grievance settlement agreement, respondent Cleveland Indians Baseball Company (Company) owed 8 players backpay for wages due in 1986 and 14 players backpay for wages due in 1987. The Company paid the back wages in 1994. This case presents the question whether, under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA), the back wages should be taxed by reference to the year they were actually paid (1994) or, instead, by reference to the years they should have been paid (1986 and 1987). Both tax rates and the amount of the wages subject to tax (the wage base) have risen over time. Consequently, allocating the 1994 payments back to 1986 and 1987 would generate no additional FICA or FUTA tax liability for the Company and its former employees, while treating the back wages as taxable in 1994 would subject both the Company and the employees to significant tax liability. The Company paid its share of employment taxes on the back wages according to 1994 tax rates and wage bases. After the Internal Revenue Service denied its claims for a refund of those payments, the Company initiated this action in District Court. The Company relied on Sixth Circuit precedent holding that a settlement for back wages should not be allocated to the period when the employer finally pays but to the periods when the wages were not paid as usual. The District Court, bound by that precedent, entered judgment for the Company and ordered the Government to refund FICA and FUTA taxes. The Sixth Circuit affirmed.

Held: Back wages are subject to FICA and FUTA taxes by reference to the year the wages are in fact paid. Pp. 5-19.

(a) The Internal Revenue Code imposes FICA and FUTA taxes "on every employer . . . equal to [a percentage of] wages . . . paid by him with respect to employment." 26 U.S.C. Sections 3111(a), 3111(b), 3301. The Social Security tax provision, Sec. 3111(a), prescribes tax rates applicable to "wages paid during" each year from 1984 onward. The Medicare tax provision, Sec. 3111(b)(6), sets the tax rate "with respect to wages paid after December 31, 1985." And the FUTA tax provision, Sec. 3301, sets the rate as a percentage "in the case of calendar years 1988 through 2007 . . . of the total wages . . . paid by [the employer] during the calendar year." Section 3121(a) establishes the annual ceiling on wages subject to Social Security tax by defining "wages" to exclude any remuneration "paid to [an] individual by [an] employer during [a] calendar year" that exceeds "remuneration . . . equal to the contribution and benefit base . . . paid to [such] individual . . . during the calendar year with respect to which such contribution and benefit base is effective." Section 3306(b)(1) similarly limits annual wages subject to FUTA tax. Pp. 5-6.

(b) The Government calls attention to these provisions' constant references to *wages paid during a calendar year* as the touchstone for determining the applicable tax rate and wage base. The meaning of this language, the Government contends, is plain: Wages are taxed according to the calendar year they are in fact paid, regardless of when they should have been paid. The Court agrees with the Company that *Social Security Bd. v. Nierotko*, 327 U.S. 358, undermines the Government's plain language argument. The *Nierotko* Court concluded that, for purposes of determining a wrongfully discharged worker's eligibility for Social Security benefits under Sec. 209(g), as that provision was formulated in the 1939 Amendments to the Social Security Act, a backpay award had to be allocated as wages to calendar quarters of the year "when the regular wages were not paid as usual." *Id.* at 370, and n. 25. The Court found no conflict between this allocation-back rule and language in Sec. 209(g) tying benefits eligibility to the number of calendar quarters "in which" a minimum amount of "wages" "has been paid." *Nierotko's* allocation holding for benefits eligibility purposes, which the Government does not here urge the Court to overrule, thus turned on an implicit construction of Sec. 209(g)'s terms — "wages" "paid" "in" "a calendar quarter" — to include "regular wages" that should have been paid but "were not paid as usual," 327 U.S. at 370. Given this construction, it cannot be said that the FICA and FUTA provisions prescribing tax rates based on *wages paid during a calendar year* have a plain meaning that precludes allocation of backpay to the year it should have been paid. Pp. 6-10.

(c) However, the Court rejects the Company's contention that, because *Nierotko* read the 1939 "wages paid" language for benefits eligibility purposes to accommodate an allocation-back rule for backpay, the identical 1939 "wages paid" language for tax purposes must be read the same way. *Nierotko* dealt specifically and only with Social Security benefits eligibility, not with taxation. The Court's allocation holding in *Nierotko* in all likelihood reflected concern that the benefits scheme created in 1939 would be disserved by allowing an employer's wrongdoing to reduce the quarters of coverage an employee would otherwise be entitled to claim toward eligibility. No similar concern underlies the tax provisions. The legislative history demonstrates that the 1939 Amendments adopting the "wages paid" rule for taxation were designed to address Congress' worry that, as tax rates increased from year to year, administrative difficulties and confusion would attend the taxation of wages payable in one year, but not actually paid until another year.

(d) The Court is not persuaded Congress incorporated *Nierotko's* treatment of backpay into the tax provisions when it amended the Social Security Act shortly after *Nierotko* was decided. Prior to 1946, the FICA and FUTA wage bases were defined in terms of remuneration paid with respect to employment during a given year. The 1946 law amended Sec. 209(a), which defines the Social Security wage base for purposes of benefits calculation, by adopting the "wages paid" language already present in Sec. 209(g), the provision construed in *Nierotko*. Congress also used identical

"wages paid" language in redefining the FICA and FUTA wage bases for tax purposes. Although the legislative history makes clear that Congress sought to achieve conformity between the tax and benefits provisions, the conformity Congress sought had nothing to do with *Nierotko's* treatment of backpay. Rather, Congress' purpose in amending the FICA and FUTA wage bases for tax and benefits purposes was to define the yardstick for measuring "wages" as *the amount paid during the calendar year without regard to the year in which the employment occurred*. Because the concern that animates *Nierotko's* treatment of backpay in the benefits context has no relevance to the tax side, it makes no sense to attribute to Congress a desire for conformity not only with respect to the general rule for measuring "wages," but also with respect to *Nierotko's* backpay exception. Pp. 10-14.

(e) There is some force to the Company's contention that the Government's refusal to allocate back wages to the year they should have been paid creates inequities in taxation and incentives for strategic behavior that Congress did not intend. But this case presents no structural unfairness in taxation comparable to the structural inequity in *Nierotko's* context. In *Nierotko*, an inflexible rule allocating backpay to the year it is actually paid would never work to the employee's advantage; it could inure *only* to the detriment of the employee, counter to the thrust of the benefits eligibility provisions. Here, by contrast, the Government's rule sometimes disadvantages the taxpayer, as in this case; other times it works to the disadvantage of the fisc. Anomalous results must be considered in light of Congress' evident interest in reducing complexity and minimizing administrative confusion within the FICA and FUTA tax schemes. Given these concerns, it cannot be said that the Government's rule is incompatible with the statutory scheme. The most that can be said is that Congress intended the tax provisions to be both efficiently administrable and fair, and that this case reveals the tension that sometimes exists when Congress seeks to meet those twin aims. Pp. 14-17.

(f) Confronted with this tension, the Court defers to the Internal Revenue Service's interpretation. The Court does not sit as a committee of revision to perfect the administration of the tax laws. *United States v. Correll*, 389 U.S. 299, 306–307. Instead, it defers to the Commissioner's regulations as long as they implement the congressional mandate in a reasonable manner. *Id.*, at 307. The Internal Revenue Service has long maintained regulations interpreting the FICA and FUTA tax provisions. In their current form, the regulations specify that wages must be taxed according to the year they are actually paid. Echoing the language in 26 U.S.C. Sec. 3111(a) (FICA) and Sec. 3301 (FUTA), these regulations have continued unchanged in their basic substance since 1940. Although the regulations, like the statute, do not specifically address backpay, the Service has consistently interpreted them to require taxation of back wages according to the year the wages are actually paid, regardless of when those wages were earned or should have been paid. The Court need not decide whether the Revenue Rulings themselves are entitled to deference. In this case, the Rulings simply reflect the agency's longstanding interpretation of its own regulations. Because that interpretation is reasonable, it attracts substantial judicial deference. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512. Pp. 17-18.

215 F.3d 1325, reversed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment.

SUPREME COURT OF THE UNITED STATES

No. 00–203

UNITED STATES, PETITIONER *v.* CLEVELAND INDIANS BASEBALL COMPANY

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

[April 17, 2001]

JUSTICE GINSBURG delivered the opinion of the Court.

The Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) impose excise taxes on employee wages to fund Social Security, Medicare, and unemployment compensation programs. This case concerns the application of FICA and FUTA taxes to payments of back wages. The Internal Revenue Service has consistently maintained that, for tax purposes, backpay awards should be attributed to the year the award is actually paid. Respondent Cleveland Indians Baseball Company (Company) urges, and the Court of Appeals for the Sixth Circuit held, that such awards must be allocated, as they are for purposes of Social Security benefits eligibility, to the periods in which the wages should have been paid. According due respect to the Service's reasonable, longstanding construction of the governing statutes and its own regulations, we hold that back wages are subject to FICA and FUTA taxes by reference to the year the wages are in fact paid.

I

Pursuant to a settlement of grievances asserted by the Major League Baseball Players Association concerning players' free agency rights, several Major League Baseball clubs agreed to pay $280 million to players with valid claims for salary damages. Under the agreement, the Company owed 8 players a total of $610,000 in salary damages for 1986, and it owed 14 players a total of $1,457,848 in salary damages for 1987. The Company paid the awards in 1994. No award recipient was a Company employee in that year.

This case concerns the proper FICA and FUTA tax treatment of the 1994 payments. Under FICA, both employees and employers must pay tax on wages to fund Social Security and Medicare; under FUTA, employers (but not employees) must pay tax on wages to fund unemployment benefits. For purposes of this litigation, the Government and the Company stipulated that the settlement payments awarded to the players qualify as "wages" within the meaning of FICA and FUTA. The question presented is whether those payments, characterized as back wages, should be taxed by reference to the year they were actually paid (1994), as the Government urges, or by reference to the years they should have been paid (1986 and 1987), as the Company and its supporting *amicus*, the Major League Baseball Players Association, contend.

In any given year, the amount of FICA and FUTA tax owed depends on two deter-

minants. The first is the tax rate. 26 U.S.C. Sections 3101, 3111 (FICA), Sec. 3301 (FUTA). The second is the statutory ceiling on taxable wages (also called the wage base), which limits the amount of annual wages subject to tax. Sec. 3121(a)(1) (FICA), Sec. 3306(b)(1) (FUTA). Both determinants have increased over time. In 1986, the Social Security tax on employees and employers was 5.7 percent on wages up to $42,000;[1] in 1987, it was 5.7 percent on wages up to $43,800;[2] and in 1994, 6.2 percent on wages up to $60,600.[3] Although the Medicare tax on employees and employers remained constant at 1.45 percent from 1986 to 1994,[4] the taxable wage base rose from $42,000 in 1986 to $43,800 in 1987,[5] and by 1994, Congress had abolished the wage ceiling, thereby subjecting all wages to the Medicare tax.[6] In 1986 and 1987, the FUTA tax was 6.0 percent on wages up to $7,000;[7] in 1994, it was 6.2 percent on wages up to $7,000.[8]

In this case, allocating the 1994 payments back to 1986 and 1987 works to the advantage of the Company and its former employees. The reason is that all but one of the employees who received back wages in 1994 had already collected wages from the Company exceeding the taxable maximum in 1986 and 1987. Because those employees as well as the Company paid the maximum amount of employment taxes chargeable in 1986 and 1987, allocating the 1994 payments back to those years would generate no additional FICA or FUTA tax liability. By contrast, treating the back wages as taxable in 1994 would subject both the Company and its former employees to significant tax liability. The Company paid none of the employees any other wages in 1994,[9] and FICA and FUTA taxes attributable to that year would be calculated according to tax rates and wage bases higher than their levels in 1986 and 1987.

Uncertain about the proper rule of taxation, the Company paid its share of employment taxes on the back wages according to 1994 tax rates and wage bases. Its FICA payment totaled $99,382, and its FUTA payment totaled $1,008.[10] After the Internal Revenue Service denied its claims for a refund of those payments, the Company initiated this action in District Court, relying on *Bowman v. United States*, 824 F.2d 528 (CA6 1987). In *Bowman*, the Sixth Circuit held that "[a] settlement for back wages should not be allocated to the period when the employer finally pays but 'should be allocated to the periods when the regular wages were not paid as usual.'" *Id.*, at 530 (quoting *Social Security Bd. v. Nierotko*, 327 U.S. 358, 370 (1946)). The District Court, bound by *Bowman*, entered judgment for the Company and ordered the Government to refund $97,202 in FICA and FUTA taxes.[11]

On appeal, the Government observed that two Courts of Appeals have held, in disagreement with *Bowman*, that under the law as implemented by Treasury Regulations, wages are to be taxed for FICA purposes in the year they are actually received. *Walker v. United States*, 202 F.3d 1290, 1292–1293 (CA10 2000) (finding *Nierotko* "inapposite" and *Bowman* "unpersuasive"); *Hemelt v. United States*, 122 F.3d 204, 210 (CA4 1997) (finding it "clear under the Treasury Regulations that 'wages' are to be taxed for FICA purposes in the year in which they are received"). The Court of Appeals for the Sixth Circuit nevertheless affirmed on the authority of *Bowman*. 215 F.3d 1325 (2000) (judgt. order).

We granted certiorari to resolve the conflict among the Courts of Appeals, 531 U.S. 943 (2000), and now reverse the Sixth Circuit's judgment.

II

The Internal Revenue Code imposes employment taxes "on every employer . . . equal to [a percentage of] wages . . . paid by him with respect to employment." 26 U.S.C. Secs. 3111(a), 3111(b), 3301. The Social Security tax provision, Sec. 3111(a), contains a table prescribing tax rates applicable to "wages paid during" each year from 1984 onward (*e.g.*, "In cases of wages paid during . . . 1990 or thereafter . . . [t]he rate shall be . . . 6.2 percent."). The Medicare tax provision, Sec. 3111(b)(6), says "with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent." And the FUTA tax provision, 26 U.S.C. Sec. 3301 (1994 ed., Supp. IV), says the rate shall be "6.2 percent in the case of calendar years 1988 through 2007 . . . of the total wages (as defined in section 3306(b)) paid by [the employer] during the calendar year."

Section 3121(a) of the Code establishes the annual ceiling on wages subject to Social Security tax. It does so by defining "wages" to exclude any remuneration "paid to [an] individual by [an] employer during [a] calendar year" that exceeds "remuneration . . . equal to the contribution and benefit base . . . paid to [such] individual by [such] employer during the calendar year with respect to which such contribution and benefit base is effective." Section 3306(b)(1) similarly limits annual wages subject to FUTA tax by excluding

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[1] 26 U.S.C. Secs. 3101(a), 3111(a), 3121(a)(1); 51 Fed. Reg. 40256, 40257 (1986).

[2] Secs. 3101(a), 3111(a), 3121(a)(1); 50 Fed. Reg. 45558, 45559 (1985).

[3] Secs. 3101(a), 3111(a), 3121(a)(1); 58 Fed. Reg. 58004, 58005 (1993).

[4] Secs. 3101(b), 3111(b).

[5] 26 U.S.C. Sec. 3121(a)(1) (1982 ed.); 51 Fed. Reg. 40256, 40257 (1986); 50 Fed. Reg. 45558, 45559 (1985).

[6] 26 U.S.C. Sec. 3121(a)(1).

[7] 26 U.S.C. Secs. 3301, 3306(b)(1) (1982 ed. and Supp. III).

[8] 26 U.S.C. Secs. 3301, 3306(b)(1).

[9] If a player received wages in 1994 from another employer in addition to receiving back wages from the Company, the player — but not the Company — would be entitled to a credit or refund of any Social Security tax paid in excess of the amount of tax due on a single taxable wage base ($60,600). 26 U.S.C. Sec. 6413(c)(1). To illustrate, suppose a player received $50,000 in back wages from the Cleveland Indians and an additional $50,000 in wages from the New York Mets in 1994. Assuming all $100,000 in wages are taxed in 1994, the player would be entitled to a credit or refund of Social Security tax paid in excess of the amount of tax due on $60,600. By contrast, the Indians and the Mets would *each* be liable for Social Security taxes on $50,000 in wages paid to that player. 26 U.S.C. Sec. 3111 (Social Security tax is "an excise tax, with respect to having individuals in his employ"). Thus, under the Government's proposed rule, the Cleveland Indians would owe Social Security taxes on all amounts up to $60,600 that it paid to each player in 1994, regardless of whether the players themselves had reached or exceeded the $60,600 ceiling through multiple wage sources.

[10] Although the Company also withheld $99,382 to pay the employees' share of FICA taxes, it does not seek to recover any taxes paid on behalf of the employees in this suit.

[11] This amount is slightly less than the total FICA and FUTA taxes paid by the Company in 1994. The reason is that one of the employees who received a 1994 payment for wages due in 1987 received no wages from the Company in 1987. The Company thus owed a small amount of FICA and FUTA taxes on the back wages paid to him even when those wages were allocated back to 1987.

from “wages” any remuneration “paid to [an] individual by [an] employer during [a] calendar year” that exceeds “remuneration . . . equal to $7,000 . . . paid to [such] individual by [such] employer during [the] calendar year.”

Both sides in this controversy have offered plausible interpretations of Congress’ design. We set out next the parties’ positions and explain why we ultimately defer to the Internal Revenue Service’s reasonable, consistent, and longstanding interpretation of the FICA and FUTA provisions in point. Under that interpretation, wages must be taxed according to the year they are actually paid.

A

In the Government’s view, the text of the controlling FICA and FUTA tax provisions explicitly instructs that employment taxes shall be computed by applying the tax rate and wage base in effect when wages are actually paid. In particular, the Government calls attention to the statute’s constant references to *wages paid during a calendar year* as the touchstone for determining the applicable tax rate and wage base. 26 U.S.C. Sec. 3111(a) (setting Social Security tax rates for “wages paid during” particular calendar years); Sec. 3121(a) (defining Social Security wage base in terms of “remuneration . . . paid . . . during the calendar year”); Sec. 3301 (setting FUTA tax rate as a percentage of “wages . . . paid . . . during the calendar year”); Sec. 3306(b)(1) (defining FUTA wage base in terms of “remuneration . . . paid . . . during any calendar year”). The meaning of this language, the Government contends, is plain: Wages are taxed according to the calendar year they are in fact paid, regardless of when they should have been paid.

In support of this reading, the Government observes that Congress chose the words in the current statute specifically to replace language in the original 1935 Social Security Act providing that FICA and FUTA tax rates applied to wages paid or received “with respect to *employment during the calendar year*.” Social Security Act (1935 Act), Secs. 801, 804, 901, 49 Stat. 636–637, 639 (emphasis added). The Treasury Department had interpreted this 1935 language to mean that wages are taxed at “the rate in effect *at the time of the performance of the services* for which the wages were paid.” Treas. Regs. 91, Arts. 202, 302 (1936) (emphasis added). In 1939, Congress amended the 1935 Act to provide that FICA and FUTA tax rates would no longer apply on the basis of when services were performed, but would instead apply “with respect to *wages paid during the calendar yea[r]*.” Social Security Act Amendments of 1939 (1939 Amendments), Secs. 604, 608, 53 Stat. 1383, 1387 (emphasis added). This 1939 language remains essentially unchanged in the current FICA and FUTA tax provisions, 26 U.S.C. Secs. 3111(a) and 3301.

Acknowledging that the 1939 Amendments established a “wages paid” rule for FICA and FUTA taxation, the Company nevertheless argues that *Social Security Bd. v. Nierotko*, 327 U.S. 358 (1946), undermines the Government’s plain language argument. According due weight to our precedent, we agree.

In *Nierotko*, the National Labor Relations Board had ordered the reinstatement of a wrongfully discharged employee with “back pay” covering wages lost during the period from February 1937 to September 1939. *Id.*, at 359. The employer paid the award in July 1941. *Id.*, at 359–360. The primary question presented and aired in the Court’s opinion was whether backpay for a time in which the employee was not on the job should nevertheless count as “wages” in determining the employee’s eligibility for Social Security benefits. *Id.*, at 359. Notwithstanding the contrary view of the Social Security Board and the Bureau of Internal Revenue, the Court held that backpay covering the wrongful discharge period met the definition of “wages” in the 1935 Act. *Id.*, at 360–370.

In the final two paragraphs of the *Nierotko* opinion, the Court took up the question of how the backpay award should be allocated for purposes of determining the worker’s eligibility for benefits. As originally enacted, the Social Security Act extended benefits to persons over 65 who had earned at least $2,000 in wages in each of any five years after 1936. 1935 Act, Secs. 201(a), 210(c), 49 Stat. 622, 625. In 1939, however, Congress introduced a new scheme, which remains in place today, tying eligibility for benefits to the number of calendar-year “quarters of coverage” accumulated by an individual. 1939 Amendments, Secs. 209(g), (h), 53 Stat. 1376–1377 (codified at 42 U.S.C. Secs. 413(a)(2), 414). Section 209(g) defined a “quarter of coverage” as either “a calendar quarter in which the individual has been paid not less than $50 in wages” or any quarter except the first “where an individual has been paid in a calendar year $3,000 or more in wages.” 53 Stat. 1377.

Nierotko swiftly dispatched the question whether “‘back pay’ must be allocated as wages . . . to the ‘calendar quarters’ of the year in which the money would have been earned, if the employee had not been wrongfully discharged.” 327 U.S., at 370. Rejecting the Government’s argument that such allocation was impermissible because the 1939 Amendments to the benefits scheme refer to “‘wages’ to be ‘paid’ in certain ‘quarters,’” *id.*, at 370, and n. 25 (citing *id.*, at 362, n. 7 (citing Sec. 209(g))), the Court concluded: “If, as we have held above, ‘back pay’ is to be treated as wages, we have no doubt that it should be allocated to the periods when the regular wages were not paid as usual.” *Id.*, at 370.

Although the allocation question in *Nierotko* was a secondary issue addressed summarily by the Court, we think the Company is correct that *Nierotko* undercuts the plain meaning argument urged by the Government here. *Nierotko* found no conflict between an allocation-back rule for backpay and the language in Sec. 209(g) tying benefits eligibility to the number of calendar quarters “in which” a minimum amount of “wages” “has been paid.” The Court’s allocation holding for benefits eligibility purposes, which the Government does not urge us to overrule, Tr. of Oral Arg. 9, thus turned on an implicit construction of Sec. 209(g)’s terms — “wages” “paid” “in” “a calendar quarter” — to include “regular wages” that should have been paid but “were not paid as usual,” 327 U.S., at 370. Given this construction of Sec. 209(g), now codified in 42 U.S.C. Sec. 413(a)(2), we cannot say that the FICA and FUTA provisions prescribing tax rates based on *wages paid during a calendar year*, codified in 26 U.S.C. Secs. 3111(a), 3301, have a plain meaning that precludes allocation of backpay to the year it should have been paid. Cf. *Hilton v. South Carolina Public*

Railways Comm'n, 502 U.S. 197, 205 (1991) ("*stare decisis* is most compelling" where "a pure question of statutory construction" is involved).

B

From here, we part ways with the Company. Although we agree that *Nierotko* blocks the Government's argument that the "wages paid" formulation in 26 U.S.C. Secs. 3111(a) and 3301 has a dispositively plain meaning, we reject the Company's next contention. Because *Nierotko* read the 1939 "wages paid" language for benefits eligibility purposes to accommodate an allocation-back rule for backpay, the Company urges, the identical 1939 "wages paid" language for tax purposes must be read the same way. We do not agree that the latter follows from the former like the night, the day.

Nierotko dealt specifically and only with Social Security benefits eligibility, not with taxation. The Court's allocation holding in *Nierotko* in all likelihood reflected concern that the benefits scheme created in 1939 would be disserved by allowing an employer's wrongdoing to reduce the quarters of coverage an employee would otherwise be entitled to claim toward eligibility. No similar concern underlies the tax provisions. Although Social Security taxes are used to pay for Social Security benefits in the aggregate, there is no direct relation between taxes and benefits at the level of an individual employee. As the Company itself acknowledges, "Social Security tax 'contributions,' unlike private pension contributions, do not create in the contributor a property right to benefits against the government, and wages rather than [tax] contributions are the statutory basis for calculating an individual's benefits." Brief for Respondent 14.

Nierotko thus does not compel symmetrical construction of the "wages paid" language in the discrete taxation and benefits eligibility contexts. Although we generally presume that "identical words used in different parts of the same act are intended to have the same meaning," *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932), the presumption "is not rigid," and "the meaning [of the same words] well may vary to meet the purposes of the law," *ibid.* Cf. Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L. J. 333, 337 (1933) ("The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them . . . has all the tenacity of original sin and must constantly be guarded against."). The benefits scheme delineated in Title 42 would "no doubt" be set awry without an allocation-back rule for back wages, notwithstanding "accounting difficulties." *Nierotko*, 327 U.S. at 370. But that surely cannot be said for the taxation scheme described in Title 26, where Congress' evident concern was not worker eligibility for benefits, but fiscal administrability.[12]

The 1939 Amendments adopting the "wages paid" rule for taxation reflected Congress' worry that, as tax rates increase from year to year, "difficulties and confusion" would attend the taxation of wages payable in one year, but not actually paid until another year. S. Rep. No. 734, 76th Cong., 1st Sess., 75–76; see also H.R. Rep. No. 728, 76th Cong., 1st Sess., 57–58. Congress understood that an employee's annual compensation may be "based on a percentage of profits, or on future royalties, the amount of which cannot be determined until long after the close of the year." S. Rep. No. 734, 76th Cong., 1st Sess., at 75. Requiring employers to "estimate unascertained amounts and pay taxes and contributions on that basis" would "cause a burden on employers and administrative authorities alike." *Id.*, at 75–76. Congress correctly anticipated that "[t]he placing of [FICA and FUTA] tax[es] on the 'wages paid' basis [would] relieve this situation." *Id.*, at 76. "Under the amendment the rate applicable would be the rate in effect at the time that the wages are paid and received without reference to the rate which was in effect at the time the services were performed." H.R. Rep. No.728, *supra*, at 58.

As an additional ground for construing the tax and benefits provisions *in pari materia*, the Company insists that Congress incorporated *Nierotko's* treatment of backpay into the tax provisions when it amended the Social Security Act shortly after *Nierotko* was decided. Prior to 1946, the FICA and FUTA wage bases had been defined in terms of remuneration "paid . . . with respect to employment during" a given year. 1935 Act, Sec. 811(a), 49 Stat. 639 (FICA); 1939 Amendments, Sec. 606, 53 Stat. 1383 (FUTA). Paralleling the 1939 Amendments to the tax rate provisions, Congress in 1946 established the current "wages paid" rule for identifying the wages that compose the FICA and FUTA wage bases in a given year. Social Security Act Amendments of 1946 (1946 Amendments), Secs. 412, 414, 60 Stat. 989-991 (codified at 26 U.S.C. Secs. 3121(a), 3306(b)(1)). The 1946 law amended Sec. 209(a), which defines the Social Security wage base for purposes of benefits calculation, by adopting the "wages paid" language already present in Sec. 209(g), the provision construed in *Nierotko*. Sec. 414, 60 Stat. 990–991. Congress also used identical "wages paid" language in redefining the FICA and FUTA wage bases for tax purposes. Sec. 412, 60 Stat. 989. Relying on the presumption that Sec. 209(a), as amended, incorporated *Nierotko's* construction of Sec. 209(g), see *Cannon v. University of Chicago*, 441 U.S. 677, 696–699 (1979), and observing that Congress redefined the wage bases for taxation to "confor[m] with the changes in section 209(a)," S. Rep. No. 1862, 79th Cong., 2d Sess., 36 (1946); H.R. Rep. No. 2447, 79th Cong., 2d Sess., 35 (1946), the Company urges that the amended benefits and tax provisions codified *Nierotko's* backpay allocation rule.

We are unpersuaded. Even assuming that the benefits provision, Sec. 209(a), is properly construed as incorporating *Nierotko's* reading of Sec. 209(g), we think the "confor[mity]" Congress sought to achieve between the tax and benefits provisions, S. Rep. No. 1862, *supra*, at 36; H.R.

[12] In determining that "accounting difficulties" were "not . . . insuperable" to its allocation holding, *Nierotko* noted that "'back pay' is now treated distributively" under Sec. 119 of the Revenue Act of 1943. 327 U.S. at 370, and n. 26. Section 119 provided that backpay exceeding 15 percent of gross income may be allocated to earlier periods for income tax purposes if such allocation would reduce the taxpayer's liability. Sec. 119(a), 58 Stat. 39. But Congress eliminated the 1943 backpay allocation rule in 1964, see Pub. L. 88-272, Sec. 232(a), 78 Stat. 107, leaving behind the principle "too firmly embedded in the income tax law to permit of any question," that "payments of compensation are income to a taxpayer on a cash basis in the year of receipt, as distinguished from the year in which the compensation is earned," 2 J. Mertens, Law of Federal Income Taxation Sec. 12.42, p. 179 (1973). The symmetry urged by the Company in construing the tax and benefits provisions of FICA and FUTA thus comes only at the expense of asymmetry in the collection of income taxes and employment taxes.

Rep. No. 2447, *supra*, at 35, had nothing to do with *Nierotko's* treatment of backpay. The Committee Reports make clear that Congress' purpose in amending the FICA and FUTA wage bases was to define the "yardstick" for measuring "wages" as "*the amount paid during the calendar year . . . , without regard to the year in which the employment occurred.*" S. Rep. No. 1862, *supra*, at 35 (emphasis added); H.R. Rep. No. 2447, *supra*, at 35 (emphasis added). It is with respect to this rule — measuring "wages" based on "the amount paid during the calendar year" — that Congress sought conformity between the Title 26 tax provisions and the Title 42 benefits provision. See S. Rep. No. 1862, *supra*, at 36 (tax wage base), 37 (benefits wage base); H.R. Rep. No. 2447, *supra*, at 35 (tax wage base), 36 (benefits wage base). Far from indicating an intent to codify *Nierotko*, those Reports suggest that Congress, if it considered *Nierotko* at all, considered it an exception to the general rule for measuring "wages" in a given year.[13] Because the concern that animates *Nierotko's* treatment of backpay in the benefits context has no relevance to the tax side, *supra* at 10–11, it makes no sense to attribute to Congress a desire for conformity not only with respect to the general rule for measuring "wages," but also with respect to *Nierotko's* backpay exception.

[13] Indeed, the contemporaneous understanding of the Commissioner of Internal Revenue was that the 1946 Amendments supplanted *Nierotko's* allocation rule for backpay. See Letter from Joseph D. Nunan, Jr., Commissioner of Internal Revenue, to Social Security Administration, Bureau of Old-Age and Survivors Insurance (Mar. 6, 1947) ("The *Nierotko* decision requiring your Agency to make an allocation of the back pay award to prior periods was rendered on the basis of the law in effect at that time. The Social Security Act Amendments of 1946, having been enacted subsequent to the date of the *Nierotko* decision, must be interpreted in the light of the language contained in such Amendments and the Congressional intent.") (available in Lodging for Respondent, Exh. F). Nevertheless, for benefits eligibility and calculation purposes, the Social Security Administration (SSA) by regulation continues to apply the *Nierotko* rule to "[b]ack pay under a statute," 20 CFR Sec. 404.1242(b) (2000) (such backpay "is allocated to the periods of time in which it should have been paid if the employer had not violated the statute"), while declining to apply *Nierotko* to "[b]ack pay not under a statute," Sec. 404.1242(c) ("This back pay cannot be allocated to prior periods of time, but must be reported by the employer for the period in which it is paid.").

C

Were the Company to rely solely on arguments for symmetry in statutory construction, we would be inclined to conclude, given *Nierotko's* lack of concern with taxation, that the tax provisions themselves, informed by legislative purpose, require back wages to be taxed according to the year they are actually paid. But the Company has one more arrow in its quiver.

Apart from its arguments for symmetry, the Company contends that the Government's refusal to allocate back wages to the year they should have been paid creates inequities in taxation and incentives for strategic behavior that Congress did not intend. This contention is not without force. Under the Government's rule, an employee who should have been paid $100,000 in 1986, but is instead paid $50,000 in 1986 and $50,000 in backpay in 1994, would owe more tax than if she had been paid the full $100,000 due in 1986. Conversely, a wrongdoing employer who should have paid an employee $50,000 in each of five years covered by a $250,000 backpay award would pay only one year's worth of employment taxes (limited by the annual ceilings on taxable wages) in the year the award is actually paid. The Government's rule thus appears to exempt some wages that should be taxed and to tax some wages that should be exempt.

Applying the Government's rule to other provisions of the Code produces similar anomalies. Section 3121(a)(4), for example, exempts disability benefits from FICA tax if paid by an employer to an employee more than six months after the employee worked for the employer. 26 U.S.C. Sec. 3121(a)(4). Disability benefits included in a backpay award would be exempt from FICA tax if the employee had not worked for the employer for six months prior to the backpay award, even if the benefits should have been paid within six months after the employee stopped working for the employer. According to the Company, such results amount to tax windfalls, and invite employers wrongfully to withhold pay or benefits in order to reap the advantages of a strategically timed payment. See Brief for Respondent 33–40 (additional examples of windfalls and avoidance schemes). These outcomes may be avoided, the Company argues, by construing the tax provisions to require taxation of back wages according to the year the wages should have been paid.

It is, of course, true that statutory construction "is a holistic endeavor" and that the meaning of a provision is "clarified by the remainder of the statutory scheme . . . [when] only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). The Company's examples leave little doubt that the Government's rule generates a degree of arbitrariness in the operation of the tax statutes. But in *Nierotko's* context, an inflexible rule allocating backpay to the year it is actually paid would never work to the employee's advantage; it could inure *only* to the detriment of the employee, counter to the thrust of the benefits eligibility provisions.[14] In this case, by contrast, there is no comparable structural unfairness in taxation. The Government's rule sometimes disadvantages the taxpayer, as in this case. Other times it works to the disadvantage of the fisc, as the Company's examples show. The anomalous results to which the Company points must be considered in light of Congress' evident interest in reducing complexity and minimizing administrative confusion within the FICA and FUTA tax schemes. See *supra* at 11–12. Given the practical administrability concerns that underpin the tax provisions, we cannot say that the Government's rule is incompatible with the statutory scheme. The most we can say is that Congress intended the tax provisions to be both efficiently administrable and fair, and that this case reveals the tension that sometimes exists when Congress seeks to meet those twin aims.

D

Confronted with this tension, "we do not sit as a committee of revision to perfect the administration of the tax laws." *United States v. Correll*, 389 U.S. 299, 306–307 (1967). Instead, we defer to the Commissioner's regulations as long as

[14] The SSA has interpreted its regulation governing "[b]ack pay under a statute," 20 CFR Sec. 404.1242(b) (2000), to allow the employee to choose whether to allocate the back pay to the year it is paid or to the year it should have been paid. Social Security Administration, Reporting Back Pay and Special Wage Payments to the Social Security Administration 2, Pub. 957 (Sept. 1997).

they "implement the congressional mandate in some reasonable manner." *Id.*, at 307. "We do this because Congress has delegated to the [Commissioner], not to the courts, the task of prescribing all needful rules and regulations for the enforcement of the Internal Revenue Code." *National Muffler Dealers Assn., Inc. v. United States*, 440 U.S. 472, 477 (1979) (citing *Correll*, 389 U.S. at 307 (citing 26 U.S.C. Sec. 7805(a))). This delegation "helps guarantee that the rules will be written by 'masters of the subject' . . . who will be responsible for putting the rules into effect." 440 U.S., at 477 (quoting *United States v. Moore*, 95 U.S. 760, 763 (1878)).

The Internal Revenue Service has long maintained regulations interpreting the FICA and FUTA tax provisions. In their current form, the regulations specify that the employer tax "attaches *at the time that the wages are paid* by the employer," 26 CFR Sec. 31.3111–3 (2000) (emphasis added), and "is computed by applying to the wages paid by the employer the rate in effect *at the time such wages are paid*," Sec. 31.3111–2(c) (emphasis added); see Secs. 31.3301–2, –3(b) (same for FUTA). Echoing the language in 26 U.S.C. Secs. 3111(a) (FICA tax) and 3301 (FUTA tax), these regulations have continued unchanged in their basic substance since 1940. See T.D. 6516, 25 Fed. Reg. 13032 (1960); Treas. Regs. 107 (as amended by T.D. 5566, 1947–2 Cum. Bull. 148); Treas. Regs. 106 (as amended by T.D. 5566, 1947–2 Cum. Bull. 148); Treas. Regs. 106, Secs. 402.301–.303, 402.401–.403 (1940). Cf. *National Muffler*, 440 U.S. at 477 ("A regulation may have particular force if it is a substantially contemporaneous construction of the statute by those presumed to have been aware of congressional intent.").

Although the regulations, like the statute, do not specifically address backpay, the Internal Revenue Service has consistently interpreted them to require taxation of back wages according to the year the wages are actually paid, regardless of when those wages were earned or should have been paid. Rev. Rul. 89–35, 1989–1 Cum. Bull. 280; Rev. Rul. 78–336, 1978–2 Cum. Bull. 255. We need not decide whether the Revenue Rulings themselves are entitled to deference. In this case, the Rulings simply reflect the agency's longstanding interpretation of its own regulations. Because that interpretation is reasonable, it attracts substantial judicial deference. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994). We do not resist according such deference in reviewing an agency's steady interpretation of its own 61-year-old regulation implementing a 62-year-old statute. "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." *Cottage Savings Assn. v. Commissioner*, 499 U.S. 554, 561 (1991) (citing *Correll*, 389 U.S., at 305–306).

* * * *

In line with the text and administrative history of the relevant taxation provisions, we hold that, for FICA and FUTA tax purposes, back wages should be attributed to the year in which they are actually paid. Accordingly, the judgment of the United States Court of Appeals for the Sixth Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 00-203

UNITED STATES, PETITIONER *v.* CLEVELAND INDIANS BASEBALL COMPANY

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

[April 17, 2001]

JUSTICE SCALIA, concurring in the judgment.

If I believed that the text of the tax statutes addressed the issue before us, I might well find for the respondent, giving that text the same meaning the Court found it to have in the benefits provisions of the Social Security Act. See *Social Security Bd. v. Nierotko*, 327 U.S. 358, 370, and n. 25 (1946). The Court's principal reason for assigning the identical language a different meaning in the present case — leaving aside statements in testimony and Committee Reports that I have no reason to believe Congress was aware of — is that tax assessments do not present the equitable considerations implicated by the potential arbitrary decrease of benefits in *Nierotko*. See *ante,* at 10–11. But the Court acknowledges that departing from *Nierotko* will produce arbitrary variations in tax liability. See *ante*, at 15–16. As between an immediate arbitrary increase in tax liability and a deferred arbitrary decrease in benefits, I cannot say the latter is the greater inequity. The difference is at least not so stark as to cause me to regard the two regulatory schemes as different in kind, which I would insist upon before giving different meanings to identical statutory texts.

In fact, however, I do not think that the text of the FICA and FUTA provisions, 26 U.S.C. Secs. 3111(a), 3111(b), 3301, addresses the issue we face today. Those provisions, which direct that taxes shall be assessed against "wages paid" during the calendar year, would be controlling if the income we had before us were "wages" within the normal meaning of that term; but it is not. The question we face is whether *damages awards compensating an employee for lost wages* should be regarded for tax purposes as wages paid when the award is received, or rather as wages paid when they would have been paid but for the employer's unlawful actions. (The parties have stipulated that the damages awards should be regarded as taxable "wages paid" of some sort, see also *Social Security Bd. v. Nierotko, supra*, at 364–370.) The proper treatment of such damages awards is an issue the statute does not address, and hence it is an issue left to the reasonable resolution of the administering agency, here the Internal Revenue Service. In *Nierotko*, which we decided at a time when it was common for courts to fill statutory gaps that would now be left to the agency, we provided one rule for purposes of the benefits provisions. The Internal Revenue Service has since provided another rule for purposes of the tax provisions. Both rules are reasonable; neither is compelled; and neither involves a direct application of the statutory term "wages paid" which would require (or at least strongly suggest) a uniform result. I therefore concur in the Court's judgment deferring to the Government's regulations.

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 2001–79

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:

113 Calhoun Street Foundation, Inc., Charleston, SC
Advanced Community Educators, Inc., Decatur, GA
Aenon Evangelical Ministry, Trevose, PA
African-American Heritage Foundation, Inc., Stone Mountain, GA
African American Women Empowerment, Inc., Riviera Beach, FL
American Defense Coalition, Mt. Pleasant, SC
American Dream Career Museum Company, Mountaintop, PA
American Patriotic Charities, Inc., Augusta, GA
Atlanta Technical Assistant Organization, Inc., Atlanta, GA
Autism Society of North Carolina, Inc., Raleigh, NC
Bankhead Courts RMC, Inc., Atlanta, GA
Barefoot Childrens Society, Inc., High Point, NC
Barnwell County Hospital Foundation, Barnwell, SC
BBAM Community and Economic Development Corporation, Tupelo, MS
Believers Outreach Ministries, Inc., Los Alamitos, CA
Blackburn Elementary School Parent Teacher Organization, Newton, NC
Boys & Girls Club of Toombs Co., Inc., Vidalia, GA
British & International Sailors Society, Mt. Pleasant, SC
Brothers II Residential Center, Valdosta, GA
Cabrailsong School of Vocal Arts, Columbia, SC
Callie Clark Seales Scholarship Fund, Sumter, SC
Cape Cod Waves Girls Ice Hockey, Inc., Osterville, MA
Cape Sportsmans Society, Inc., Columbia, SC
Carolinas Volunteer Auxiliary, Inc., Florence, SC
Carpenters for Christ International, Fair Play, SC
Casa Bonita Housing, Inc., A Non-Profit Public Benefit Corporation, Stockton, CA
Cause for Paws, Inc., Woodstock, GA
Chapss, Inc., Douglasville, GA
Cherokee Clean & Beautiful Commission, Inc., Canton, GA
Chiefs Athletic Scholarship Fund, Inc., N. Myrtle Beach, SC
Circle of Reflection Enterprises, Inc., Atlanta, GA
Community Interactions, Inc., Metuchen, NJ
Community Service Group Foundation, James Island, SC
Cross Cultural Institute of America, Inc., Spartansburg, SC
CSRA Breastfeeding Coalition, Clearwater, SC
CSRA Share and Care Foundation, Inc., Washington, GA
Dekalb M.R. Homes II, Inc., Atlanta, GA
Disadvantaged Childrens Education Fund, Inc., Greensboro, GA
Eastern Orangeburg County Enterprise Community, Holly Hill, SC
Education Zone Network, Detroit, MI
Ethnographic and Environmental Science Institute, Berkeley, CA
Family Assistance Management Service, Inc., Charleston, SC
Family Health Institute, Lanham, MD
Family Life Education Center, Inc., An Alternative to Child Abuse & Negl., Cedartown, GA
Feline Refuge, Mt. Pleasant, SC
Fertile Ground, Inc., Atlanta, GA
Filmmakers of Color Actors of Color, Inc., Atlanta, GA
Fold, Inc., Asheville, NC
Forum to Stop Family Violence in Clayton County, Inc., Decatur, GA
Fowler Middle School, Tigard, OR
Genessential, Inc., Stone Mountain, GA
Georgia Art Education Association, Inc., Marietta, GA
Give Us Hope, Inc., Norcross, GA
Golden Bells of Atlanta, Norcross, GA
Good Horseman Foundation, Pine Lake, GA
Gospel Sound Ministries, Florence, SC
Grady Graves Annex, Inc., Atlanta, GA
Greater Atlanta Family Center, Inc., Decatur, GA
Greater Bethanyvine City Outreach Community Service Ministry, Inc., Atlanta, GA
Healthy Kids of North Carolina, Inc., Raleigh, NC
Helping Youth Pursue Excellence, Inc., Atlanta, GA
Historical Society of Forsyth County, Inc., Cumming, GA
Housing Ideas, Inc., Atlanta, GA
Institute for Human Development, Inc., Detroit, MI
International Hope Foundation, West Palm Beach, FL
Invaders for Christ, Inc., Union City, GA
Itawa Retreat Center, Inc., Roswell, GA
Jericho Road Ministries, Longview, TX
Jones County Senior Citizens, Inc., Gray, GA
Judah Team Ministries, Inc., Smyrna, GA
Justice for Children, Summerville, SC
Life Signs, Inc., Pelion, SC
Listen Up-A Drug Prevention and Education Company, College Park, GA
Live, Inc., Atlanta, GA
Live & Learn Counseling Center, Inc., Decatur, GA
Love in Action Ministries, Inc., Atlanta, GA
Lower Sampson Development Corp., Willard, NC
Mazzei Foundation, Inc., Tulsa, OK
Metro Outreach Project, Inc., Atlanta, GA
Midlands Foundation for Scholastic Success, Columbia, SC
Midlands Wellness and Recreation Institute, Swansea, SC
Mike Muth Basketball Scholarship Fund, Inc., Williamston, SC

Miss-Lou Mental Health Association, Natchez, MS
Mississippi Housing & Community Services, Inc., Jackson, MS
Mt. Olive Housing, Inc., Myrtle Beach, SC
Naresh C. Jain Foundation, Buena Park, CA
Nathaniel House Personal Care Home, Atlanta, GA
Nevada Testing Institute, Inc., North Las Vegas, NV
New Atlanta Early Learning Center, Inc., Atlanta, GA
New Dance Company of San Joaquin Valley, Stockton, CA
New Directions Development Corporation, Inc., Atlanta, GA
New Tyler Child Enrichment Center, Incorporated, Memphis, TN
New York Retirees Association of Georgia, Inc., Decatur, GA
North Carolina Indian Community Development Corporation, Raleigh, NC
North Carolina Peace Corps Association, Durham, NC
Onesimus Foundation, Inc., Atlanta, GA
Operation Dignity, Inc., Decatur, GA
Options for Living-East One, Inc., Albany, GA
Options for Living-East Two, Inc., Albany, GA
Pain Foundation, Kansas City, MO
Palmetto Baseball League, Inc., Columbia, SC
Palmetto Girls Soccer Association, Columbia, SC
Partners Advancing the Community, Inc., Hogansville, GA
Peaceworks, Charleston, SC
Peachstate Football Officials Association, Atlanta, GA
Progressive Columbia, Inc., Atlanta, GA
Project Adopt, Inc., Stone Mountain, GA
Rabun County Real Life Crusade, Inc., Clayton, GA
Raduium Springs Foundation, Inc., Albany, GA
Recovery Center Foundation, Hilton Head Island, SC
Reidville Historical Society, Reidville, SC
Reins of Life Academy, Inc., Springfield, GA
Renewed Life, Inc., Blythewood, SC
Residents Working for Georgia, Inc., Macon, GA
Rippavilla, Inc., Columbia, TN
Rock County Family Coordinating Council, Luverne, MN
Save Our Swamp, Inc., Conway, SC
S.C. Center for the Book, Columbia, SC
Shandon Baptist Church Foundation, Columbia, SC
Share International, Inc., Atlanta, GA
Somali Community Services of Seattle, Seattle, WA
South Carolina Affiliate of the American Geriatric Society, Rock Hill, SC
South Carolina Amateur Sports, Inc., Columbia, SC
Southern Hispanic Resource Center, Inc., Jonesboro, GA
Southwest Atlanta Community Partnership, Inc., Atlanta, GA
St. Benedicts Society, Inc., Atlanta, GA
Star of Hope, Inc., New Orleans, LA
Stars of Heaven, Inc., Ellenwood, GA
Sumter Bluegrass Series, Inc., Manning, SC
Systas 4 Systas, Inc., East Orange, NJ
Tattnall Band Boosters, Inc., Reidsville, GA
Tenn-Vest, Incorporated, Memphis, TN
Tiger Band Booster Club, Smithville, TX
Tri-Community Collaborative, Inc., Atlanta, GA
Troup Shelter for Abused & Neglected Children, LaGrange, KY
Urban Youth Enrichment Concepts, Inc., Atlanta, GA
Village Museum, McClellanville, SC
Waccamaw High School Athletic Booster Club, Inc., Pawleys Island, SC
Wando High School Band Boosters, Mt. Pleasant, SC
Washington County Golden Hawks Athletic Association, Inc., Sandersville, GA
Wee-Love, Inc., Ladson, SC
William Henry Waldon Jr., Outreach Ministry, Inc., Atlanta, GA
Wings of Love, Atlanta, GA
Word of Truth Community Housing Association, Detroit, MI

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

New Backup Withholding Rate for Amounts Paid After August 6, 2001

Announcement 2001–80

Purpose

This announcement is to advise payers about a reduction in the backup withholding rate authorized by section 3406(a)(1) of the Internal Revenue Code. Section 101(c)(10) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) reduced the rate for backup withholding on reportable payments.

New Backup Withholding Rate

Effective for amounts paid after August 6, 2001, payers should backup withhold at a reduced rate of 30.5%.

For amounts paid after December 31, 2001, the backup withholding rate will be further reduced to 30%.

New Rate Not Reflected in *2000* Products

The backup withholding rate shown in the December 2000 revision of the following products is incorrect for amounts paid after August 6, 2001.

Tax Forms.

- Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY
- Instructions for Form W-8BEN
- Instructions for Form W-8ECI
- Instructions for Form W-8EXP
- Instructions for Form W-8IMY
- Form W-9, Request for Taxpayer Identification Number and Certification
- Instructions for the Requester of Form W-9

The Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY, and the separate instructions for Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY will be revised in August 2001 to reflect the new rates.

Form W-9 and the Instructions for the Requester of Form W-9 will be revised in December 2001 to reflect the new backup withholding rate for amounts paid after December 31, 2001.

Technical publications.

- Publication 17, *Your Federal Income Tax*
- Publication 225, *Farmer's Tax Guide*
- Publication 505, *Tax Withholding and Estimated Tax*
- Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*
- Publication 542, *Corporations*
- Publication 550, *Investment Income and Expenses*
- Publication 583, *Starting a Business and Keeping Records*
- Publication 1212, *List of Original Issue Discount Instruments*

The 2001 version of these publications will show the new backup withholding rate for amounts paid after December 31, 2001.

New Rate Not Reflected in *2001* Products

The backup withholding rate shown in the 2001 version of the following products is incorrect for amounts paid after August 6, 2001.

- Form W-2G, *Certain Gambling Winnings*
- Instructions for Form 1042-S
- Form 1099-DIV, *Dividends and Distributions*
- Form 1099-G, *Certain Government and Qualified State Tuition Program Payments*
- Form 1099-INT, *Interest Income*
- Form 1099-OID, *Original Issue Discount*
- Form 1099-MISC, *Miscellaneous Income*
- Form 1099-PATR, *Taxable Distributions Received From Cooperatives*
- Instructions for Forms 1099, 1098, 5498, and W-2G

The 2002 version of these forms and instructions will show the new backup withholding rate for amounts paid after December 31, 2001.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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